Texas Municipal Courts Education Center

2024 Bench Book

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CAVEAT

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For youth diversion resources, including checklists and forms, visit www.tmcec.com/youth-diversion.

ABBREVIATIONS

A.B.C.	Alcoholic Beverage Code
A.G.	Attorney General
Art.	Article
C.C.P.	Code of Criminal Procedure
Ch.	Chapter of Act of Legislation
DADAP	Drug and Alcohol Driving Awareness Program
D.L.	Driver's License
E.C.	Education Code
et al	and elsewhere
et seq.	(et sequentes) and those that follow
F.C.	Family Code
F. Supp.	Federal Supplement
Fin. C.	Finance Code
G.C.	Government Code
H.B.	House Bill
H.S.C.	Health and Safety Code
Infra	(Below) Refers the reader to an ensuing part of the book.
L.N.	Legislative Note
Leg.	Legislature
O.C.	Occupations Code
P.C.	Penal Code
P.W.C.	Parks and Wildlife Code
S.B.	Senate Bill
Supra	(Above) Refers the reader to a previous part of the book.
S.W.2d	Southwestern Reporter, Second Series
Sec.	Section
T.A.C.	Texas Administrative Code
T.C.	Transportation Code
Tex. Crim. App.	Texas Court of Criminal Appeals
Tex. Ct. App.	Texas Court of Appeals
Tex. R. Civ. P.	Texas Rules of Civil Procedure
TMCEC	Texas Municipal Courts Education Center
TMCA	Texas Municipal Courts Association
T.R.A.P.	Texas Rules of Appellate Procedure
T.R.E.	Texas Rules of Evidence
V.A.C.S.	Vernon's Annotated Civil Statutes

PREFACE

The TMCEC *Bench Book* is a reference guide for Texas municipal judges serving both as trial court judges as well as magistrates. This 15th edition is titled the TMCEC *2024 Bench Book* and incorporates important statutory changes from the 88th Regular Legislature.

While there were many changes to Texas statutes coming out of the session, two bills offered significant opportunities (and challenges) for TMCEC in updating the *Bench Book* as well as the rest of TMCEC's publications. H.B. 4504, which goes into effect January 1, 2025, is the Texas Legislative Council's complete non-substantive revision of Chapter 45 of the Code of Criminal Procedure. On January 1, 2025, most of Chapter 45 will be repealed and replaced by the re-organized Chapter 45A. As the effective date will occur between our publication cycles, TMCEC opted to include dual citations for every citation to an Article in Chapter 45. Chapter 45 is cited over 250 times in the TMCEC *2024 Bench Book*, and each one now will be represented with the current Chapter 45 article, followed by the corresponding future Chapter 45A article. The citations will appear in the following format: Chapter 45 Article/Chapter 45A Article, C.C.P. For example, Art. 45.057/45A.457, C.C.P. Please note that Chapters 2 and 55 also underwent the revision process created by H.B. 4504. This book incorporates dual citations to articles in 2A and 55A as well.

The other bill that has a longer timeline before it creates procedural changes is H.B. 3186, the Texas Youth Diversion and Early Intervention Act. While this bill goes into effect on January 1, 2024, it only applies to offenses committed on or after January 1, 2025. At this time, most of TMCEC's youth diversion resources will reside online (www.tmcec.com/youth-diversion), but some references to changes made by H.B. 3186 are present in this edition of the TMCEC 2024 Bench Book.

We have done our best to offer procedural guidance regarding the law as it stands at publication and noted where changes in the law will take effect in the coming months and years.

This book often references *The Recorder* and the *TMCEC 2024 Forms Book*. Both resources can be easily accessed on TMCEC's website at www.tmcec.com by clicking on the publications button. Our publications and educational offerings only happen due to the collaborative teamwork of the TMCEC staff: Ryan Kellus Turner, Regan Metteauer, Ned Minevitz, Ben Gibbs, Thomas Velez, Leandra Quick, Elaine Riot, Elizabeth De La Garza, Patty Thamez, Deadra Stark, Matthew Kelling, Tayler Adams, Brandi Valentine, Adrianne Schroeder, Crystal Ferguson, Dina Powell, and Antaris Jackson.

Significant gratitude is owed to the countless calls TMCEC receives on the toll-free legal line. These inquiries often set off a chain reaction of discussions, debates, and revisions that ultimately lead to better publications. Likewise, we are indebted to the Texas Court of Criminal Appeals, the Texas Municipal Courts Education Center's Board of Directors, and our constituents for their support of TMCEC.

The TMCEC *Bench Book* has grown over the years, and many people have worked to make it a better publication. As it is a perpetual work-in-progress, we welcome your comments and suggestions. The original version was published in 1996. That version and all subsequent ones were made possible through helpful comments and suggestions of municipal judges and court support personnel throughout Texas.

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CHAPTER 1 MAGISTRATE DUTIES

General Provisions Applicable to Adults

There is no statutory definition of a "magistrate," but Article 2.10/2A.152, C.C.P., does tell us the duty of magistrates:

> It is the duty of every magistrate to preserve the peace within his jurisdiction by the use of all lawful means; to issue all process intended to aid in preventing and suppressing crime; to cause the arrest of offenders by the use of lawful means in order that they may be brought to punishment.

The duty, as defined above, is broadly worded, but this chapter as well as Chapter 2 will outline in further detail many of the duties that municipal judges have as magistrates. As magistrates, municipal judges serve an important gate-keeping function in the adjudication of all criminal matters, playing an active role in the beginning stages of the life of a criminal action.

While every member of the judiciary in Texas is a magistrate, municipal judges and justices of the peace perform more magistrate duties than all other members of the judiciary combined. Magistrates have co-equal jurisdiction with all other magistrates within the county, and their jurisdiction is coextensive with the limits of the county. *Gilbert v. State*, 493 S.W.2d 783 (Tex. Crim. App. 1973), and *Ex parte Clear*, 573 S.W.2d 224 (Tex. Crim. App. 1978).

As magistrates, municipal judges are authorized to inform adult offenders of their respective rights as required by law. This is one of the most common and important functions of a magistrate. The duties of arresting peace officers and of magistrates are detailed in Article 14.06, C.C.P., which provides that peace officers must take the accused before a magistrate when a warrantless arrest is made pursuant to one of the exceptions to the warrant requirement. Such exceptions are stated in Chapter 14, C.C.P. Similarly, Article 15.17, C.C.P., requires that individuals arrested pursuant to a warrant also be brought before a magistrate. Presentation before a magistrate must take place without unnecessary delay, but in no event more than 48 hours after the person is arrested. Article 15.17, C.C.P.

Texas law contains no specific term or phrase for the presentation of the accused before a magistrate. The lack of a statutory term has resulted in the use of various terms (e.g., "magistration," "15.17 hearing"), which leads to potential confusion. In the past, the U.S. Supreme Court has referred to the accused's presentation before the magistrate as an "initial appearance," although the term "magistration" appears to be gaining popularity. In 2008, the U.S. Supreme Court in *Rothgery v. Gillespie County*, 554 U.S. 191, noted the lack of a formal term for what they acknowledged as "magistration." While the Court of Criminal Appeals has shown no preference for any one term, it has taken issue with courts and attorneys erroneously referring to it as an "arraignment." *Watson v. State*, 762 S.W.2d 591 (Tex. Crim. App. 1988). An arraignment involves fixing the identity of the offender and taking a plea. See Checklist 6-2.

Generally, a magistrate is involved in the preliminary stages of a criminal proceeding. Such proceedings involve adults accused of criminal offenses. Because juvenile justice laws in Texas are civil, the preliminary stages of a child being taken into custody are governed by Title 3, F.C., not Article 15.17, C.C.P. In this sense, children who are taken into custody are not "magistrated" in the same manner as adults. Magistrates are, however, frequently involved in the procedures governing the taking of a confession by a child. See Checklists 13-26 and 13-27.

For more information on the role of magistrates, see *Municipal Courts and the Texas Judicial System,* Chapter 1.

General Provisions Applicable to Adults

1. Magistrate's Warnings and Setting Bail for Adult

Checklist 1-1	Script/Notes
❒ 1. Determine whether the person has been (1) subject to custodial arrest; or (2) arrested and released after being issued a citation for an enumerated Class A or B misdemeanor.	
❒ a. Subject to custodial arrest:	
❒ (1) Determine probable cause.	*Gerstein v. Pugh,* 420 U.S. 103 (1975).
❒ (A) If arrest is by a warrant, no further inquiry as to probable cause is needed.	*County of Riverside v. McLaughlin*, 500 U.S. 44 (1991).
❒ (B) If arrest is without a warrant, conduct a probable cause hearing either by sworn testimony or written affidavit to review the facts and circumstances of the arrest to determine if probable cause exists for continued detention of arrestee.	Magistrate to use a practical common sense approach to determine probable cause by considering all facts presented under oath; the "totality of the circumstances" test to determine whether there is a fair probability that the arrestee committed the offense with which he or she is charged. *Guzman v. State*, 955 S.W. 2d 85 (Tex. Crim. App. 1997).
❒ (2) If there is no probable cause, release the arrestee.	See *TMCEC 2024 Forms Book*: Release: Magistrate's Determination of No Probable Cause.
❒ (3) If there is probable cause, proceed.	
❒ (4) Appearance before a magistrate may be in person or through a videoconference allowing two-way communication of image. A record of the communication between the arrested person and the magistrate shall be made.	Art 15.17, C.C.P. A videoconference includes secure internet conferencing.

❒ b. Citation for enumerated Class A or B misdemeanor:

❒ (1) If the person resides in the county where the offense occurred, a peace officer who is charging a person with committing an offense that is an enumerated Class A or B misdemeanor may, instead of taking the person before a magistrate pursuant to Article 14.06(a), C.C.P., issue a citation to the person that contains written notice of the time and place the person must appear before a magistrate, the name and address of the person charged, and the offense charged. — Art. 14.06(c), C.C.P.

❒ (2) Citations may only be issued for the following enumerated Class A or B misdemeanors: — Art. 14.06(d), C.C.P.

❒ (A) Possession of four ounces or less of marihuana; — Sec. 481.121(b)(1)-(2), H.S.C.

❒ (B) Possession of four ounces or less of a substance in Penalty Group 2-A; — Sec. 481.1161(b)(1)-(2), H.S.C.

❒ (C) Criminal mischief, where the value of damage done was $100 or more but less than $750; — Sec. 28.03(b)(2), P.C.

❒ (D) Graffiti, where the value of the damage done was $100 or more but less than $2,500; — Sec. 28.08(b)(2)-(3), P.C.

❒ (E) Theft, where the value of the property stolen was $100 or more but less than $750, or the value of property obtained by a hot check was $20 or more but less than $500; — Sec. 31.03(e)(2)(A), P.C.

❒ (F) Theft of a service, where the value of the service stolen was $100 or more but less than $750; — Sec. 31.04(e)(2), P.C.

❒ (G) Tampering with a governmental record, if the record is a temporary tag issued under Chapter 502 or 503, Transportation Code; — Sec. 37.10(c)(6), P.C.

❒ (H) Possession of contraband in a correctional facility, if the offense was punishable as a Class B misdemeanor; and	Sec. 38.114, P.C.
❒ (I) Driving with an invalid license, if the defendant has a prior driving with invalid license conviction.	Sec. 521.457(f), T.C.
❒ (3) If a person issued a citation pursuant to Article 14.06, C.C.P., appears before a magistrate, the magistrate shall perform the duties imposed by Art. 15.17, C.C.P., as if the person had been arrested and brought before the magistrate by a peace officer.	Art. 15.17(g), C.C.P. This requirement applies to both those defendants issued a citation for an enumerated Class A or B misdemeanor and those issued a citation for a Class C misdemeanor.
❒ (4) After the magistrate performs the duties imposed by this article, the magistrate, except for good cause shown, may release the person on personal bond.	Art. 15.17(g), C.C.P.
❒ (5) If a person issued a citation under Article 14.06(c) fails to appear as required by that citation, the magistrate before whom the person is required to appear shall issue a warrant for the arrest of the accused.	Art. 15.17(g), C.C.P.
❒ 2. Identify yourself to the arrestee.	
❒ 3. Determine if the arrestee sufficiently understands the English language or possesses any impairments.	
❒ 4. If necessary, swear in a qualified interpreter.	Art. 38.30, C.C.P. See Checklist 12-5.
❒ 5. If the arrestee is hearing impaired, obtain the services of an interpreter as provided by Article 38.31, C.C.P., to interpret the warning.	Art. 15.17(c), C.C.P.
❒ 6. Determine the arrestee's age at the time of the offense.	
❒ a. If the arrestee has not reached his or her 17th birthday, or was under 17 at the time of the offense but is now 17 or older, use the juvenile admonishment (warning).	See Checklists 13-26 and 13-27.
❒ b. If the arrestee is at least 17 or was 17 at the time of the offense, continue.	

❒ 7. Determine whether arrestee is currently on bail for a separate offense.	Art. 15.17(a), C.C.P.
❒ a. If a defendant is charged with a felony while released on bail in a pending felony case in the same county as the previous offense, the defendant may only be released on bail by the court before whom the case for the previous offense is pending or another court designated in writing by the court before whom the case for the previous offense is pending.	Art. 17.027(a)(2), C.C.P.
❒ b. If a defendant is charged with a felony while released on bail in a pending felony case in a different county from the previous offense, electronic notice of the charge must be promptly given to the court before whom the case for the previous offense is pending to reevaluate the bail decision, determine whether conditions were violated, and decide if other actions are necessary.	Art. 17.027(a)(2), C.C.P.
❒ 8. Advise the arrestee in clear language of the offense with which he or she is charged.	See *TMCEC 2024 Forms Book*: Magistrate's Warning.
❒ a. Name the offense.	"You are charged with the offense of _____. It is a _____ Degree/Class Misdemeanor/Felony."
❒ b. Inform arrestee of any affidavit filed in the case.	
❒ 9. Warn the arrestee of the following rights:	Although it is not constitutionally required for misdemeanors, it is a good practice to admonish all defendants of possible immigration consequences. *State v. Jimenez,* 987 S.W.2d 886 (Tex. Crim. App. 1999).
❒ a. The right to remain silent;	
❒ b. That the arrestee is not required to make a statement and that any statement made can and will be used against the arrestee;	

❒ c. The right to have an attorney present during any interview with peace officers or prosecutors;

❒ d. The right to terminate the interview at any time; and

❒ e. The right to an examining trial if the offense charged is a felony.

❒ f. If applicable, the magistrate shall inform the person that the person may file the ability to pay affidavit described by Art. 17.028(f), C.C.P.

Art. 15.17(a), C.C.P.

❒ 10. The Vienna Convention on Consular Notifications requires that a foreign national be offered the opportunity to have his or her country's consulate notified that he or she is facing criminal action. The magistrate should do the following:

Download the U.S. Dept. of State's *Consular Notification and Access* at https://travel.state.gov/content/travel/en/consularnotification.html.

❒ a. Admonish the person of his or her right to request that his or her country's consular office be notified of this criminal action.

Mandatory notification requirements arise from bilateral agreements between the United States and 56 countries. A full list can be found in the U.S. Dept. of State's *Consular Notification and Access.* All countries not listed as mandatory are considered permissive.
For example:
"If you are a non-United States citizen, you may request that your country's consular office here in the United States be notified of your situation. You may also communicate with your consular officers. A consular officer may be able to help you obtain legal representation and may contact your family and visit you in detention, among other things. You can request this notification now, or at any time in the

	future. You may first speak to your defense attorney about communicating with your consulate."
❒ b. If defendant requests notification, notify the consular office "without delay."	If the person requests consular notification, the magistrate should notify the consulate; it will not satisfy your duty to just let the defendant call the consulate.
❒ c. Document your notification, the detainee's response, and any other relevant paperwork.	
❒ 11. Warn arrestee of right to counsel and appointment of counsel.	See Checklist 1-9.
❒ a. Warn of the right to retain counsel.	
❒ b. Warn of the right to request appointment of counsel if the person cannot afford counsel.	Only indigent defendants charged with a crime that may result in punishment by confinement are entitled to have an attorney appointed. However, if a court concludes that the interests of justice require representation by counsel, the court may appoint counsel. Art. 1.051, C.C.P. See Checklist 8-3 for indigence hearings.
❒ c. Describe the local procedures, created by the district and county judges, for requesting appointment of counsel.	
❒ d. Ensure reasonable assistance in completing the necessary forms.	
❒ e. Appoint counsel, but only if the magistrate is designated by the local district and county judges as the appropriate authority under Article 26.04, C.C.P., to appoint counsel.	

❒ f. Forward the completed paperwork to the appropriate designee if not designated by the local district and county judges to appoint counsel:

❒ (1) Without unnecessary delay; and

❒ (2) Not later than 24 hours after request for appointment.

❒ 12. After determining whether the person is currently on bail for a separate criminal offense and whether the bail decision is subject to Art. 17.027, C.C.P., admit the person to bail if allowed by law.

Art. 15.17(a), C.C.P.

❒ 13. A record must be made in each case in which a person is arrested and taken before a magistrate for an Article 15.17 hearing. It may be written, recorded, or in other form adopted by the county, and it should include:

Art. 15.17(e), C.C.P. See *TMCEC 2024 Forms Book*: Magistrate Warning.

❒ a. The magistrate informing the person of his or her right to request appointment of counsel;

❒ b. The magistrate asking the person whether he or she wants to request appointment of counsel; and

❒ c. Whether the person requested appointment of counsel.

❒ 14. Inquire if the arrestee understands his or her rights.

❒ a. A magistrate has a duty to clarify the rights if the arrestee indicates a lack of understanding.

❒ b. A magistrate must ensure that reasonable assistance is given to the arrestee in completing the necessary forms for requesting appointment of counsel at the time of the Article 15.17 hearing.

See Checklist 1-9 and Art. 26.04, C.C.P., if you are the designated authority to appoint counsel.

If a municipal judge appoints an attorney, the city may be responsible for paying the attorney, unless an interlocal agreement is entered to the contrary.

❒ c. A magistrate must ensure a defendant filing an alibity to pay affidavit under Art. 17.028(f) receives reasonable assistance in completing it.

Art. 17.028(g-l)(2), C.C.P.

❒ 15. Consider bail and pretrial release.

A magistrate cannot require a defendant to post bail in cash only. *Ex parte Deaton*, 582 S.W.2d 151 (Tex. Crim. App. 1979); *Ex parte Rodriguez*, 583 S.W.2d 792 (Tex. Crim. App. 1979); Tex. Atty. Gen. Op. JM-363 (1985). The exception to this rule is when a bond forfeiture has been declared and the defendant is arrested on a capias. The court may then require a cash bond. Art. 23.05, C.C.P. For more on bail bonds, see Art. 17.02, C.C.P.

Art. 17.023, C.C.P.

❒ a. A defendant charged with a felony or misdemeanor punishable by confinement may be released on bail only by a magistrate who is:

❒ (1) Any of the following:

(A) a resident of this state;

(B) a justice of the peace serving under Sec. 27.054 or 27.055, G.C.; or

(C) a judge or justice serving under Ch. 74, G.C.; and

❒ (2) In compliance with the training requirements of Art. 17.024, C.C.P.

❒ b. A defendant may be released on bond by posting a cash deposit or surety bond, or by agreeing to a personal bond, if permitted by the magistrate.

❒ 16. A magistrate considering the release on bail of a defendant charged with a Class B misdemeanor or higher shall order that:

❒ a. A public safety report be generated; and

A personal bond office, a suitably trained person (including judicial personnel or sheriff's department personnel with consent of the sheriff), or the magistrate may prepare the report. Art. 17.022, C.C.P.

❒ b. The public safety report be provided to the magistrate as soon as is practicable but not later than 48 hours after the defendant's arrest.

Art. 17.022(a)(2), C.C.P.

❒ 17. A magistrate considering the release on bail of a defendant charged only with a misdemeanor punishable by fine only or a defendant given a citation under Art. 14.06(c), C.C.P., may order, prepare, or consider a public safety report, but is not required to.

Art. 17.022(e), C.C.P.

❒ 18. Setting Bail

See *TMCEC 2024 Forms Book*: Magistrate's Determination of Bail and Commitment Form.

❒ a. Without unnecessary delay, but not more than 48 hours after the defendant is arrested, the magistrate shall make one of the following bail decisions after individualized consideration of all circumstances and of the factors required by Art. 17.15(a), C.C.P.:

Art. 17.028, C.C.P.

❒ (1) grant a personal bond with or without conditions;

❒ (2) grant a surety or cash bond with or without conditions; or

❒ (3) deny bail in accordance with the Texas Constitution and other law.

See Checklist 1-5.

❒ b. Bail and any conditions of bail shall be sufficient to give reasonable assurance that the undertaking will be complied with. The power to require bail is not to be used to make bail an instrument of oppression.	Art. 17.15, C.C.P. Unless specifically provided by other law, there is a rebuttable presumption that bail, conditions of release, or both bail and conditions of release are sufficient to reasonably ensure the defendant's appearance in court as required and the safety of the community, law enforcement, and the victim of the alleged offense. Art. 17.028(c), C.C.P.
❒ c. The magistrate shall impose the least restrictive conditions, if any, and the personal bond or cash or surety bond to reasonably ensure the defendant's appearance and safety of the community, law enforcement, and victim of the alleged offense.	Art. 17.028(b), C.C.P. Neither the requirement to impose the least restrictive conditions and an amount to reasonably ensure appearance and safety in Art. 17.028(b) nor the rebuttable presumption in Art. 17.028(c) require the court to hold an evidentiary hearing not required by other law. Art. 17.028(c-1), C.C.P.
❒ d. Bail schedules or standing orders inconsistent with Art. 17.028, C.C.P., or that authorize a magistrate to make a bail decision for a defendant without considering each of the factors in Art. 17.15(a), C.C.P., are not permitted.	Art. 17.028(d), C.C.P.
❒ e. If the defendant is charged with a Class B misdemeanor or higher and is unable to give bail in the amount required by a schedule or order described by Art. 17.028(e), other than a defendant who is denied bail, provide the defendant with the opportunity to file a sworn affidavit, which must be substantially in the form provided in Art. 17.028(f), C.C.P. This applies at any time before or during the bail proceeding.	Art. 17.028(f), C.C.P. Filing an affidavit is not required before a magistrate considers the defendant's ability to make bail under Art. 17.15, C.C.P. Art. 17.028(k), C.C.P.

❒ (1)	To allow the magistrate to assess information relevant to the defendant's financial situation, the defendant must also complete the form under Art. 26.04, C.C.P. used to request appointment of counsel or a form promulgated by OCA.	Art. 17.028(g), C.C.P.
❒ (2)	The defendant is entitled to notice by the magistrate of the right to file this affidavit, reasonable assistance to complete the affidavit and the form, and prompt review by the magistrate on the bail amount.	Art. 17.028(g-1), C.C.P. The review may be conducted by the magistrate making the bail decision under Art. 17.028(a) or may occur as a separate proceeding.
❒ (3)	The magistrate shall consider the facts presented and the rules established by Art. 17.15(a), C.C.P. and shall set the defendant's bail.	Art. 17.028(h), C.C.P. A written or oral statement obtained under Art. 17.028, C.C.P. or evidence derived from the statement may be used only to determine whether the defendant is indigent, to impeach direct testimony of the defendant, or to prosecute the defendant for an offense under Ch. 37, P.C. Art. 17.028(l).
❒ (4)	If the magistrate does not set the defendant's bail in an amount below the amount required by a schedule or order described by Art. 17.028(a), C.C.P., the magistrate shall issue written findings of fact supporting the bail decision.	Art. 17.028(h), C.C.P.
❒ (5)	If a delay occurs that will cause the review to be held later than 48 hours after the defendant's arrest, the magistrate or an employee of the court or of the county in which the defendant is confined must provide notice of the delay to the defendant's counsel or the defendant if he or she does not have counsel.	Art. 17.028(i), C.C.P. Each defendant for whom a review was not held within 48 hours of arrest must be reported to OCA.

	(6) If the defendant does not appear capable of executing an affidavit, the magistrate may enter an order or take other action authorized by Art. 16.22, C.C.P. (Early Identification of Defendant Suspected of Having a Mental Illness or Intellectual Disability).	Art. 17.028(j), C.C.P.
❒ f.	In setting the amount of bail and any conditions of bail, the magistrate shall consider:	Art. 17.15(a), C.C.P. The amount of bail and any conditions of bail must be in accordance with Arts. 17.20, 17.21, and 17.22, C.C.P. and the rules in Art. 17.15(a), C.C.P.
	❒ (1) The nature of the offense and the circumstances under which the offense was committed, including whether the offense involved violence as defined by Article 17.03, C.C.P., or violence directed against a peace officer.	Art. 17.15(a)(3), C.C.P.
	❒ (2) The ability to make bail.	See Checklist 8-3 for determining ability to pay.
	❒ (3) The future safety of the victim of the alleged offense, law enforcement, and the community.	
	❒ (4) The defendant's criminal history record, including the public safety report and statewide telecommunications system maintained by DPS, any acts of family violence, other pending criminal charges, and any instances of failure to appear in court following release on bail.	A magistrate may make a bail decision regarding a defendant charged only with a misdemeanor punishable by a fine only or a defendant who receives a citation under Art. 14.06(c), C.C.P. without considering the factor required by Art. 17.15(a)(6). Art. 17.028 (m), C.C.P.
	❒ (5) The citizenship status of the defendant.	

❒ g. The public safety report system may not be the only item relied on by a judge or magistrate in making a bail decision.	Art. 17.022(d)(1), C.C.P. A magistrate may set bail for a defendant charged only with a misdemeanor without ordering, preparing, or considering a public safety report if the system is unavailable for longer than 12 hours due to a technical failure at OCA. Art. 17.022(f), C.C.P.
❒ h. The court may also consider any other issues deemed appropriate including any or all of the following:	
❒ (1) The range of punishment for the offense charged;	
❒ (2) The arrestee's community ties;	Do you live in _____ County? How will you get to court if you are released? Does anyone else live with you?
❒ (3) Work record; or	
❒ (4) Family ties.	
❒ i. If a pretrial services agency operates in the judicial district or county, order the arrestee to be interviewed and the information brought to you immediately.	
❒ j. The magistrate may impose any reasonable condition related to safety of the victim or safety of the community.	Art. 17.40, C.C.P.
❒ k. Bail may only be denied or temporarily denied in certain instances.	See Checklist 1-2.
❒ l. If bail is denied or temporarily denied, make a written finding explaining the legal basis.	A defendant who is denied bail or who is unable to give bail in the amount required by any bail schedule or standing order shall be provided with the warnings in Art. 15.17, C.C.P. Art. 17.028(e), C.C.P.

❒ m. Set the amount of bail.	"I now set bail at $_____."
❒ n. Set conditions of bail.	See Checklist 1-6."Further, I am setting the following conditions and I order you to abide by each and every one of them." Where the alleged victim is a child younger than 18 years of age, see Art. 17.41, C.C.P. and *TMCEC 2024 Forms Book*: Bail Condition Where Child is Alleged Victim.
❒ (1) Record each condition in writing; or	
❒ (2) Recite each condition into the record; and	
❒ (3) Require the arrestee to acknowledge that he or she understands each condition.	"Do you understand each of these conditions?"
❒ (4) Provide written notice to the defendant of the conditions of release on bond and the penalties for violating a condition of release (or designate someone to provide the notice).	Art. 17.51(e), C.C.P. This must be a separate record. Art. 17.51(f), C.C.P.
❒ (5) As soon as practicable but not later than the next business day after the date a magistrate issues an order imposing, modifying, or removing a condition of release on bond, the clerk of the court shall send a copy of the order to the attorney representing the State and the sheriff of the county where the defendant resides. If the order prohibits the defendant from going near a child care facility or school, the clerk shall send a copy to the facility or school.	Art. 17.51, C.C.P. This may be sent electronically or in another manner that can be accessed by the recipient. Art. 17.51(d), C.C.P. The clerk may delay sending the copy of the order only if he or she lacks information necessary to ensure service and enforcement. Art. 17.51(b), C.C.P.

❒ (6) As soon as practicable but not later than the next day after the date a magistrate issues an order imposing a condition of bond on a defendant under Chapter 17, C.C.P. for a violent offense or an offense under Section 42.072, P.C., the magistrate shall notify the sheriff of the condition and provide to the sheriff the following:

❒ (A) Information listed in Section 411.042(b)(6), G.C.;

❒ (B) the name and addres of any named person the condition of bond is intended to protect, and if different and applicable, the name and address of the victim of the alleged offense;

❒ (C) the date the order releasing the defendant on bond was issued; and

❒ (D) If arrest is by a warrant, no further inquiry as to probable cause is needed.

Art. 17.50, C.C.P. Offenses triggering the notification requirement include:

(1) Murder under Sec. 19.02, P.C.;

(2) Capital Murder under Sec. 19.03, P.C.;

(3) Kidnapping under Sec. 20.03, P.C.;

(4) Aggravated Kidnapping under Sec. 20.04, P.C.;
(5) Indecency With a Child under Sec. 21.11, P.C.;

(6) Sexual Assault under Sec. 22.011, P.C.;

(7) Aggravated Assault under Sec. 22.02, P.C.;

(8) Aggravated Sexual Assault under Sec. 22.021, P.C.;

(9) Injury to a Child, Elderly Individual, or Disabled Individual under Sec. 22.04, P.C.;

(10) Aggravated Robbery under Sec. 29.03, P.C.;

(11) Continuous Sexual Abuse of Young Child or Children under Sec. 21.02, P.C.;

(12) Continuous Trafficking of Persons under Sec. 20A.03, P.C.;

(13) Stalking under Sec. 42.072, P.C.; and

(14) Any offense involving family violence, as defined by Sec. 71.004, Family Code.

❒ o. The magistrate shall, promptly but not later than 72 hours after the time bail is set, submit the bail form described by Sec. 72.038, G.C., in accordance with that section.	Art. 17.022(d)(2), C.C.P. Note that Sec. 72.038(c), G.C. provides that the person setting bail, an employee of the court that set the defendant's bail, or an employee of the county in which the defendant's bail was set must provide the form electronically to OCA through the public safety report system.
❒ 19. Consider the arrestee for release on personal bond.	See Checklist 1-5.
❒ 20. Other restrictions:	
❒ a. Magistrate does not have discretion to restrict the type of bail, cash, or surety, to the exclusion of the other. A magistrate may require a cash bond only when a forfeiture of bail has been declared. A magistrate may designate that personal recognizance bond be denied by stating "cash or surety" on the bail setting.	*Ex parte Deaton*, 582 S.W.2d 151 (Tex. Crim. App. 1979); *Ex parte Rodriguez*, 583 S.W.2d 792 (Tex. Crim. App. 1979); Art. 23.05, C.C.P.
❒ b. A magistrate may not set differential bail based on the type of bond (e.g., $200 cash or $500 surety).	
❒ c. A magistrate should not set bail as an instrument of oppression (i.e., too high in light of financial resources).	Bail that is more than what the court would accept as a fine in a fine-only misdemeanor case is probably too high when there is no history of failing to appear.
❒ 21. Other consideration: If applicable, enter magistrate's "Order for Emergency Protection."	See Checklist 1-8.
❒ 22. Special procedures for fine-only offenses:	Art. 15.17(b), C.C.P.
❒ a. Magistrate may set surety/cash appearance bond.	
❒ b. Magistrate may set personal bond.	
❒ c. Magistrate may release without setting bond:	Art. 15.17(b), C.C.P.

❒ (1) Only in fine-only misdemeanors;

See *TMCEC 2024 Forms Book*: Release: With Order to Appear.

❒ (2) Magistrate must give defendant the time and place to appear to answer to the charges against him or her in writing;

❒ (3) Release without bond is not available if defendant has a prior felony or Class A or B misdemeanor conviction.

❒ 23. A magistrate may take a plea of guilty if person was arrested under warrant for a **fine-only offense** issued in a county other than the one in which the person is arrested.

Art. 15.18(a)(2), C.C.P.
See *TMCEC 2024 Forms Book*: Out-of-County Magistrate's Bench Judgment.

❒ a. Magistrate has discretion to take a plea in lieu of setting bail.

❒ b. Defendant must make written plea of guilty or nolo contendere and waiver of jury trial.

❒ c. Magistrate shall:

❒ (1) Set fine;

❒ (2) Determine costs;

❒ (3) Accept payment;

❒ (4) Give credit for time served:

❒ (A) Determine a period of time between eight and 24 hours;

Art. 45.048/45A.262, C.C.P.

❒ (B) Credit of at least $150 for each period of time.

❒ (5) Determine indigence;

See Checklist 8-3.

❒ (6) On satisfaction of judgment, discharge the defendant.

❒ d. Magistrate must, before the 11th business day following the plea, transmit to the court with jurisdiction the following:

Art. 15.18(b), C.C.P.

❒ (1) Written plea;

❒ (2) Any orders entered in the case; and

❒ (3) Any fine or cost collected in the case.

❒ 24. If the arrested person fails or refuses to give bail as provided in Article 15.18, C.C.P., the magistrate shall commit the person to the jail of the county where the person was arrested. It is the magistrate's duty to immediately notify the sheriff of the county in which the offense was committed: (1) that the arrest and commitment occurred; and (2) whether the person was also arrested under a warrant issued under Section 508.251, G.C., in relation to the conditions of his or her parole or mandatory supervision.

Art. 15.19, C.C.P.

❒ a. The sheriff, upon receiving notice under Article 15.19, C.C.P., of a person's arrest pursuant to a warrant for violation of a condition of parole or mandatory supervision, should have the arrested person brought before the proper magistrate or court before the 11th day after the day the person was committed to jail.

Art. 15.20, C.C.P.

❒ b. The arrested person shall be released on personal bond without sureties or other security if the proper office of the county where the offense is alleged to have been committed does not demand an arrested person and take charge of the person before the 11th day after the date the person is committed to the jail of the county in which the person is arrested. The Magistrate shall forward the personal bond to the sheriff of the county where the offense is alleged to have been committed.

Art. 15.21, C.C.P.
See *TMCEC 2024 Forms Book*: Release: Personal Bond after No Timely Demand.

CHAPTER 1 MAGISTRATE DUTIES

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2. When Bail May Be Denied or Delayed

Checklist 1-2	Script/Notes
❒ 1. Bail may be denied in capital cases when the State presents proof evident that conviction and death sentence will result from trial.	Art. I, Sec. 11, Tex. Const.
❒ 2. A district judge may deny bail in non-capital cases when there is a substantial showing by the State within seven days of arrest that the defendant:	When a person accused of a felony is brought before a magistrate, the magistrate should contact the district court. Art. 17.21, C.C.P. If the court is not in session, then the magistrate may set the bail. Art. 17.22, C.C.P. Because Art. I, Sec. 11a, Tex. Const., provides that only a district judge may deny bail in non-capital cases and that the order denying the bail must be entered within seven calendar days of a defendant's incarceration, a municipal judge exercising his or her authority as a magistrate should notify the district court immediately and send the warning sheet to the district court as soon as possible.
❒ a. Is guilty of the charged felony, with two prior convictions; the second being subsequent to the first:	
❒ (1) Both in point of time of commission of the offense; and	
❒ (2) Conviction;	
❒ b. Committed a felony while on bail for a prior felony for which he or she was indicted;	*Bills v. State*, 796 S.W.2d 194 (Tex. Crim. App. 1990).
❒ c. Committed a felony involving the use of a deadly weapon after being convicted of a prior felony; or	

❒ d. Committed a violent or sexual offense while under the supervision of a criminal justice agency of the State or political subdivision of the State for a prior felony.

Art. I, Sec. 11a, Texas Const.

❒ 3. The State's burden is:

❒ a. To prove guilt of the defendant in Steps 2(a) and 2(c) above; or

❒ b. That the offense was committed while on bail in Steps 2(b) or 2(d) above.

❒ 4. A judge or magistrate may deny bail pending trial for a defendant:

Art. 17.153, C.C.P.

❒ a. Charged with a felony offense from the following provisions of the Penal Code, if committed against a child younger than 14 years of age:

❒ (1) Chapter 21 (Sexual Offenses);

❒ (2) Section 25.02 (Prohibited Sexual Conduct); or

❒ (3) Section 43.25 (Sexual Performance by a Child);

❒ (4) Section 20A.02 (Trafficking of Persons), if the defendant is alleged to have trafficked the child with the intent or knowledge that the child would engage in sexual conduct as defined under Section 43.25 or if the defendant benefited from participating in a venture that involved a trafficked child engaging in sexual conduct as defined under Section 43.25; or

❒ (5) Section 43.05(a)(2) (Compelling Prostitution); or

❒ b. Who has been found, by the magistrate or judge at a hearing by a preponderance of the evidence, to have violated a condition of bond set under Article 17.41, C.C.P., related to the safety of the victim or the safety of the community.

❒ 5. The court's order is reduced to writing.

❒ 6. In non-capital cases only, set aside the order after 60 days and set bail if the defendant has not been tried.

❒ 7. A district judge at a subsequent hearing to set or reinstate bail may deny bail to any person accused of a felony who is released on bail pending trial and whose bail is subsequently revoked or forfeited for a violation of a condition of release related to the safety of a victim of the alleged offense or to the safety of the community.

Art. I, Sec. 11b, Tex. Const.

❒ 8. A magistrate or judge may deny bail to any person who is accused of a felony or an offense involving family violence if the person has previously been released on bail and whose bail is subsequently revoked or forfeited for a violation of a condition of release. In order to deny bail, a magistrate or judge must determine by a preponderance of the evidence at a subsequent hearing that the person violated a condition of release related to the safety of a victim of the alleged offense or to the safety of the community.

Art. I, Sec. 11b, Tex. Const.

❒ 9. A magistrate or judge may deny bail to any person who is arrested for (1) violating an order for emergency protection, (2) an offense involving family violence, (3) violating an active protective order rendered by a court in a family violence case (including a temporary ex parte order that has been served on the person), or (4) engaging in conduct that constitutes an offense involving the violation of any of the proceeding orders. Subsequent to being taken into custody, bail may be denied if, following a hearing, a judge or magistrate determines by a preponderance of the evidence that the person violated the order or engaged in the conduct constituting the offense.

Art. I, Sec. 11c, Tex. Const.

CHAPTER 1 MAGISTRATE DUTIES

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3a. Release Because a Magistrate Has Not Determined Whether Probable Cause Exists

Checklist 1-3(a)	Script/Notes
❒ 1. All persons arrested must be brought before a magistrate without unnecessary delay, never later than 48 hours after arrest.	Art. 15.17(a), C.C.P.
❒ 2. A person arrested without a warrant must be released if a magistrate has not determined whether probable cause exists to believe that the person committed the offense within a certain time frame.	See *TMCEC 2024 Forms Book*: Release: Magistrate's Determination of No Probable Cause. This law presumably is used in the absence of a magistrate, as the release is triggered not when a magistrate has determined there is no probable cause, but rather when a magistrate has not determined whether probable cause exists at all.
❒ 3. In misdemeanor cases, if a magistrate has not determined whether probable cause exists:	Art. 17.033(a), C.C.P.
❒ a. A defendant arrested without a warrant must be released on bond not to exceed $5,000, not later than the 24th hour after the arrest; or	
❒ b. The arrestee must be released on a personal bond if arrestee is unable to make or secure surety/cash appearance bond.	
❒ 4. In felony cases, if a magistrate has not determined whether probable cause exists:	Art. 17.033(b), C.C.P.
❒ a. A defendant must be released on bond not to exceed $10,000 not later than the 48th hour after the arrest; or	
❒ b. The arrestee must be released on a personal bond if arrestee is unable to make or secure surety/cash appearance bond.	
❒ 5. On application by the prosecutor, the magistrate may postpone release for not more than 72 hours from arrest.	Art. 17.033(c), C.C.P.

❒ a. Application must state the reason why a magistrate has not made a probable cause determination.

❒ 6. The time limits for release as outlined above do not apply to a person arrested without a warrant who is taken to a medical facility before being taken before a magistrate. Such an arrestee's time limit begins to run at the time of release from the facility rather than from the time of arrest.

Art. 17.033(d), C.C.P.

CHAPTER 1 MAGISTRATE DUTIES

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3b. When the Defendant Must Be Released Because the State is Not Ready

Checklist 1-3(b)	Script/Notes
The magistrate that enters orders under Article 15.17, C.C.P., keeps jurisdiction of the defendant's charge until a charging instrument (indictment, information, or complaint) is filed in a court with jurisdiction. Once the charging instrument has been filed in the cause, the magistrate has no further jurisdiction or responsibility.	*Guerra v. Garza*, 987 S.W.2d 593 (Tex. Crim. App. 1999).
❒ 1. When the State is not ready and the defendant is unable to post the bail previously set, the defendant must be released on personal bond, or reasonable bail that the defendant can make must be set, if the defendant is charged with:	Art. 17.151, C.C.P.; *Jones v. State*, 803 S.W.2d 712 (Tex. Crim. App. 1991).
❒ a. Any grade of felony and he or she has been incarcerated for 90 days;	
❒ b. A misdemeanor punishable by 180 days in jail or more and he or she has been incarcerated for 30 days;	
❒ c. A misdemeanor punishable by 180 days in jail or less and he or she has been incarcerated for 15 days; or	
❒ d. A misdemeanor punishable by fine-only and he or she has been incarcerated for five days; and	
The defendant is not otherwise:	
❒ e. Serving a sentence of confinement for another offense;	
❒ f. Being detained pending trial of another case and time has not yet lapsed on that case;	
❒ g. Incompetent to stand trial, during a period of incompetence; or	

❒ h. Being detained for a violation of the conditions of a previous release related to the safety of a victim of the alleged offense or to the safety of the community.	Absent a violation of bond condition, Art. 17.151, C.C.P., requires release on personal bond if the State is not ready to proceed to trial without consideration of the safety of either victims or the community. *Ex parte Gill,* 413 S.W.3d 425 (Tex. Crim App. 2013).
❒ 2. When defendant is indigent, either reduce bail to an amount the defendant can post or release the defendant on personal bond.	

CHAPTER 1 MAGISTRATE DUTIES

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4. Requisites and Filing of a Bail Bond

Checklist 1-4	Script/Notes
❒ 1. Requisites of a bail bond:	Art. 17.08, C.C.P. See Art. 17.071, C.C.P., for the definition of and requirements for charitable bail organizations paying bail bonds.
❒ a. Made payable to "The State of Texas;"	
❒ b. Defendant and surety, if any, bind themselves that the defendant will appear before the proper court or magistrate to answer the accusation against him or her;	
❒ c. States whether the defendant is charged with a felony or misdemeanor;	
❒ d. Signed by name or mark of the defendant and surety, if any, with a mailing address for each;	
❒ e. States the time and place, when and where the defendant binds himself or herself to appear;	
❒ f. States the court or magistrate before whom to appear;	
❒ g. States that the defendant is bound to appear before any court or magistrate before whom the matter may be pending at any time and place required under law or by any court or magistrate;	

❒ h. Conditioned that the defendant and sureties, if any, will pay all necessary and reasonable expenses incurred by any and all sheriffs or other peace officers in re-arresting the defendant if failure to appear before the court or magistrate named in the bond at the time stated therein; and

❒ i. Such expense shall be in addition to the principal amount of the bond.

❒ j. In addition to the requirements of Article 17.08, a bail bond for a defendant charged with an offense under Section 20A.02, 20A.03, 43.02, 43.03, 43.031, 43.04, 43.041, or 43.05, Penal Code, must include the address, identification number, and state of issuance as shown on a valid driver's license or identification card for the defendant and any surety, including any agent executing the bail bond on behalf of a corporation acting as surety.

Art. 17.081, C.C.P

❒ 2. Set any reasonable conditions that will assure the appearance of the defendant.

Ex parte Anderer, 61 S.W.3d 398 (Tex. Crim. App. 2001). See *TMCEC 2024 Forms Book*: Magistrate's Determination of Bail and Commitment Form.

❒ 3. Sureties, generally:

❒ a. If only one surety, must be worth at least double the amount of bail set less exempted, encumbered, or indebted property.

Art. 17.13, C.C.P.

❒ b. Must be a resident of this state.

❒ c. A corporate surety must have a power of attorney designating an authorized agent on file.

Art. 17.07, C.C.P.

❒ d. A minor may not be a surety.

Art. 17.10, C.C.P.

❒ e. A person who has signed as a surety on a bond and is in default is disqualified to sign as a surety as long as he or she is in default.	Art. 17.11, Sec. 2, C.C.P. A surety is in default from the time execution may be issued on the final judgment in a bond forfeiture proceeding unless the final judgment is superseded by the posting of a supersedeas bond (a bond required of someone who petitions to set aside a judgment or execution). If surety is a corporation, see Section 1704.212(c), O.C. A corporation may not act as a bail bond surety in a county in which the corporation is in default on five or more bonds.
❒ f. A surety may file a motion for the purpose of discharging bail when no indictment or information has been timely presented against the defendant.	Art. 32.01, C.C.P.
❒ 4. In any manner permitted by the county in which it is written, a bail bond may be filed electronically with the court, judge, magistrate, or other officer taking the bond.	Art. 17.026, C.C.P.

CHAPTER 1 MAGISTRATE DUTIES

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5. Requisites of a Personal Bond

Other than in instances where probable cause is not determined in a timely manner (see Checklist 1-3(a)), the magistrate has discretion to grant personal bonds. As described in the following checklist, depending on the offense, Texas law either requires or allows the magistrate to impose other conditions.

Checklist 1-5	Script/Notes
❒ 1. In addition to the requisites of a bail bond set out in Art. 17.08, C.C.P. (See Checklist 1-4), personal bonds must also contain:	Art. 17.04, C.C.P.
❒ a. Name;	
❒ b. Address;	
❒ c. Place of employment;	
❒ d. Date and place of birth;	
❒ e. Height;	
❒ f. Weight;	
❒ g. Color of hair and eyes;	
❒ h. Driver's license number and state of issuance, if any;	
❒ i. Nearest relative's name and address, if any; and	
❒ j. Oath.	I swear that I will appear before (*the court or magistrate*) at (*address, city, county*), Texas, on the (*date*), at the hour of (*time, a.m. or p.m.*) or upon notice by the court, or pay to the court the principal sum of (*amount*) plus all necessary and reasonable expenses incurred in any arrest for failure to appear. Art. 17.04, C.C.P.

❒ k. No oath is required for an arrestee with a mental illness or intellectual disability, or if the defendant is released on personal bond under 17.032, C.C.P., or is found incompetent to stand trial in accordance with Chapter 46B, C.C.P. — Art. 17.04(b), C.C.P.

❒ 2. Arrestees charged with the following may not be released on personal bond (except as provided by Arts. 15.21, 17.032, 17.033, and 17.151, C.C.P.): — Art. 17.03(b-2), C.C.P.

- ❒ a. Offenses involving violence; — For a list of "offenses involving violence," see Art. 17.03(b-3)(2), C.C.P.
- ❒ b. A felony assault under 22.01(a)(1), P.C.;
- ❒ c. Deadly conduct under 22.05, P.C.;
- ❒ d. Terroristic threat under 22.07, P.C.; or
- ❒ e. Disorderly conduct involving a firearm under Sec. 42.01(a)(7) or (8), P.C., while released on bail or community supervision for an offense involving violence.

❒ 3. Only the court before whom the case is pending may release on personal bond a defendant who is charged with: — Art 17.03(b), C.C.P.

- ❒ a. Burglary;
- ❒ b. Organized criminal activity;
- ❒ c. Any aggravated felony under Chapter 481 or Section 485.033, H.S.C.; or
- ❒ d. Failure to submit to testing as required by the court or a magistrate or whose test results for alcohol or drugs are positive.

❒ 4. Order drug or alcohol testing, education, and treatment if you, or the investigating or arresting law enforcement officer, reasonably believe: — Art. 17.03(c), C.C.P.

- ❒ a. That drug or alcohol abuse was related to the offense; or

❒ b. Drugs or alcohol are presently in the body of the defendant; and

❒ c. The condition will serve to reasonably assure the appearance of the defendant in court.

❒ 5. Costs of testing may be assessed as a condition of bond or as court costs.

Art. 17.03(e), C.C.P.

❒ 6. If a charge has been filed in your municipal court, you may not asses a personal bond reimbursement fee.

A municipal judge releasing a defendant charged with a Class C misdemeanor under Article 45.016/45A.107, C.C.P., may not assess a personal bond reimbursement fee. Art. 17.42(4)(a), C.C.P.

❒ 7. Order the personal bond fee:

Arts. 17.03(g) and 17.42, C.C.P. Bond fees can be assessed only if a court releases a defendant on a personal bond at the recommendation of a personal bond office before sentencing on a pending case.

❒ a. Paid before the defendant is released;

❒ b. Paid as a condition of bond;

❒ c. Paid as court costs;

❒ d. Reduced; or

❒ e. Waived.

❒ 8. Release an offender with a mental illness or intellectual disability, unless good cause is shown otherwise, if:

Art. 17.032(b), C.C.P.
See *TMCEC 2024 Forms Book*: Release: Personal Bond - Certain Mentally Ill Defendants. This is a requirement notwithstanding Art. 17.03(b) or an adopted bond schedule or standing order entered by a judge.

❒ a. The defendant is not charged with and has not previously received deferred adjudication, community supervision or probation, any deferred final disposition of a case, or a final conviction for:

- ❒ (1) Murder;
- ❒ (2) Capital murder;
- ❒ (3) Kidnapping;
- ❒ (4) Aggravated kidnapping;
- ❒ (5) Indecency with a child;
- ❒ (6) Assault (Class A);
- ❒ (7) Sexual assault;
- ❒ (8) Aggravated assault;
- ❒ (9) Aggravated sexual assault;
- ❒ (10) Injury to a child, elderly person, or invalid;
- ❒ (11) Aggravated robbery;
- ❒ (12) Continuous sexual abuse of young child or children; or
- ❒ (13) Continuous trafficking of persons; and

❒ b. The defendant is examined by a mental health or intellectual and developmental disability expert as provided in Art. 16.22, C.C.P.;

❒ c. The written report submitted by the applicable expert under Art. 16.22, C.C.P. concludes the defendant is a person with mental illness and is nonetheless competent to stand trial and recommends treatment or services;

See Checklist 1-11.

❒ d. Appropriate community based mental health or intellectual disability services are available for the defendant under Section 534.053 or 534.103, H.S.C., or through another mental health or intellectual and developmental disability services provider; and

❒ e. The magistrate finds, after considering all the circumstances, a pretrial risk assessment, if applicable, and any other credible information provided by the attorney representing the state or the defendant, that release on personal bond would reasonably ensure the defendant's appearance in court as required and the safety of the community and the victim of the alleged offense.

❒ 9. Unless good cause is shown, order as a condition of bond that the defendant submit to outpatient or inpatient mental health treatment or intellectual and developmental disability services if the defendant's:

Art. 17.032(c), C.C.P.

❒ a. Mental illness or intellectual disability is chronic in nature; or

❒ b. Ability to function independently will continue to deteriorate if the defendant does not receive the recommended treatment or services.

❒ 10. Consider imposing any other conditions reasonably necessary to ensure the defendant's appearance in court to protect the community and the victim of the alleged offense.

Arts. 17.032(d), C.C.P.

❒ 11. If the county from which the warrant of arrest was issued has a personal bond office, a copy of the bond must be forwarded to the personal bond office in that county.

Art. 17.031(b), C.C.P.
The personal bond office shall create a record of persons released on personal bond, update it monthly, and file a copy of the record with the district or county clerk. Art. 17.42, Sec. 5, C.C.P.

❒ 12. A municipal judge may require a personal bond to secure the defendant's appearance in accordance with this code, but may not, either instead of or in addition to the personal bond, require a defendant to give a bail bond unless:

Upon the filing of charges, a specific rule applies to bail set by municipal and justice courts. See Art. 45.016(a)-(b)/45A.107(a)-(b), C.C.P.

- ❒ a. The defendant fails to appear with respect to the applicable offense;
- ❒ b. The judge determines that the defendant has sufficient resources or income to give a bail bond; and
- ❒ c. The judge determines that a bail bond is necessary to secure the defendant's appearance in accordance with the Code of Criminal Procedure.

❒ 13. If a defendant required to give a bail bond by a municipal judge does not give a required bail bond within 48 hours of the bail bond being set, the justice or judge:

Art. 45.016(c)/45A.107(c), C.C.P.

- ❒ a. Shall reconsider the requirement for the defendant to give the bail bond and presume that the defendant does not have sufficient resources or income to give the bond; and
- ❒ b. May require the defendant to give a personal bond.

❒ 14. If the defendant refuses to give a personal bond or, except as provided by Art. 45.016(c)/45A107(c), C.C.P., refuses or otherwise fails to give a bail bond, the defendant may be held in custody.

Art. 45.016(d)/45A107(d), C.C.P.

CHAPTER 1 MAGISTRATE DUTIES

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6. Conditions of Bail

Checklist 1-6	Script/Notes
❒ 1. Magistrates have the general discretion to impose any of the following as conditions of release for any offense:	
❒ a. Any reasonable condition related to the safety of the victim of the alleged offense or the safety of the community.	Art. 17.40, C.C.P.
❒ b. Home curfew and electronic monitoring.	Arts. 17.43 and 17.44(a)(1), C.C.P.
❒ c. Weekly drug testing for controlled substances.	Art. 17.44(a)(2), C.C.P.
❒ d. Providing to a local law enforcement agency one or more specimens for the purpose of creating a DNA record under Subchapter G, Chapter 411, G.C.	Art. 17.47(a), C.C.P.
❒ 2. Magistrates have the discretion to impose any of the following as conditions of release for the following specific offenses:	
❒ a. An offense involving family violence:	Art. 17.49, C.C.P.
❒ (1) Refrain from going to or near a residence, school, place of employment, or other location as specifically described in the bond, frequented by an alleged victim of the offense;	Before imposing this condition, a magistrate must give the victim an opportunity to provide a list of areas from which the victim would like the defendant excluded. Art. 17.49(c), C.C.P.
❒ (2) Carry or wear a global positioning system (GPS) device and pay the costs associated with the device;	

❒ (3) Pay the reimbursement fee associated with providing the victim a receptor that can receive information from the GPS device worn by the defendant and that notifies the victim if the defendant is at or near a prohibited location. Before imposing this condition, a magistrate must provide to an alleged victim information regarding:

If the magistrate determines that a defendant is indigent, the magistrate may require the defendant to pay a reimbursement fee based on a sliding scale established by local rule in an amount less than the full amount associated with operating the GPS system. Art. 17.49(h) and (i), C.C.P.

(A) the victim's right to participate in a global positioning monitoring system or to refuse to participate in that system and the procedure for requesting that the magistrate terminate the victim's participation;

Art. 17.49(d), C.C.P.

(B) the manner in which the global positioning monitoring system technology functions and the risks and limitations of that technology, and the extent to which the system will track and record the victim's location and movements;

(C) any locations that the defendant is ordered to refrain from going to or near and the minimum distances, if any, that the defendant must maintain from those locations;

(D) any sanctions that the court may impose on the defendant for violating a condition of bond imposed under Art. 17.49, C.C.P.;

(E) the procedure that the victim is to follow, and support services available to assist the victim, if the defendant violates a condition of bond or if the global positioning monitoring system equipment fails;

(F) community services available to assist the victim in obtaining shelter, counseling, education, child care, legal representation, and other assistance available to address the consequences of family violence; and

(G) the fact that the victim's communications with the court concerning the global positioning monitoring system and any restrictions to be imposed on the defendant's movements are not confidential; or

❒ (4) Refrain from tracking or monitoring personal property or a motor vehicle in the possession of the alleged victim of the offense, without the victim's effective consent, including by using a tracking application on a personal electronic device or physically following the victim or causing another to physically follow the victim.

❒ b. Prostitution: Art. 17.45, C.C.P.

❒ (1) Attend AIDS/HIV education; and/or

❒ (2) Attend AIDS/HIV counseling.

❒ c. Stalking: — Art. 17.46, C.C.P.

❒ (1) No direct or indirect communication with the alleged victim; or

❒ (2) Prohibited from going near a residence, place of employment, or business of the victim or to go near a school, day-care facility, or similar facility where a dependent child of the victim is in attendance. — Note: The magistrate must specifically describe the prohibited locations and the minimum distances, if any, that the defendant must maintain from the locations.

❒ 3. Magistrates are required to impose specific conditions of release for the following specific offenses:

❒ a. If the charge is a subsequent "Driving, Flying or Boating While Intoxicated," "Intoxication Assault" or "Intoxication Manslaughter," the magistrate shall require on release that a defendant: — Art. 17.441, C.C.P. See *TMCEC 2024 Forms Book:* Bail with Ignition Interlock Condition. A magistrate may designate an appropriate agency to verify the installation of the device and to monitor the device. Magistrates may not require the installation of the device if the magistrate finds that to do so would not be in the best interest of justice.

❒ (1) Have installed on the motor vehicle owned or most regularly operated by the defendant a vehicle ignition interlock device;

❒ (2) Not operate any motor vehicle unless the vehicle is equipped with that device;

❒ (3) Have the device installed on appropriate motor vehicle within 30 days of release on bond; and

❒ (4) Pay the expense of installation.

❒ b. Trafficking of persons, sexual offenses, assaultative offenses, public indecency, or prohibited sexual conduct, if committed against a child under 18 years old: — Art. 17.41, C.C.P.

❒ (1) No direct communication with the alleged victim;

Note: To the extent that this condition conflicts with an existing court order granting possession or access to a child, this order prevails for a period specified by the magistrate, not to exceed 90 days.

❒ (2) Prohibited from going near a residence, school, or other location as specifically described in the bond, frequented by the alleged victim.

❒ c. As a condition of release on bond for a defendant charged with an offense under section 20A.02, 20A.03, 43.03, 43.031, 43.04, 43.041, or 43.05, P.C., against a person 18 years of age or older, the magistrate shall require that the defendant not:

Art. 17.465, C.C.P.

❒ (1) Communicate directly or indirectly with the victim; or

❒ (2) Go to or near the residence, place of employment, or business of the victim; or if applicable, go to or near a school, day care facility, or similar facility where a dependant child of the victim is in attendance.

Under Art. 17.465(c), C.C.P., the magistrate shall specifically describe the prohibited locations under subsection (b)(2) and the minimum distances, if any, that the defendant must maintain from the locations.

❒ d. If the charge is "Aggravated Kidnapping with Intent to Inflict Injury or Sexual Abuse," "Indecency with a Child," "Sexual Assault," "Aggravated Sexual Assault," "Prohibited Sexual Conduct," "Burglary of a Habitation with/or without Intent to Commit a Felony (excluding felony theft)," "Compelling Prostitution," "Sexual Performance by a Child," or "Possession or Promotion of Child Pornography," the defendant shall provide to a local law enforcement agency one or more specimens for the purpose of creating a DNA record under Subchapter G, Chapter 411, G.C.

Art. 17.47(b), C.C.P.

CHAPTER 1 MAGISTRATE DUTIES

General Provisions Applicable to Adults

7. When Bail May Be Raised, Changed, or Forfeited

Checklist 1-7	Script/Notes
❒ 1. Bail may be changed if:	Art. 17.09, Sec. 3, C.C.P. In order to change bonds properly set by a magistrate, another judge must have jurisdiction of the case. Jurisdiction vests upon the filing of a charging instrument in the proper trial court. *Guerra v. Garza*, 987 S.W.2d 593 (Tex. Crim. App. 1999).
❒ a. The initial bail bond is defective;	
❒ b. The initial bail bond is excessive;	
❒ c. The initial bail bond is insufficient;	
❒ d. The sureties, if any, are not acceptable;	*Ex parte King*, 613 S.W.2d 503 (Tex. Crim. App. 1981).
❒ e. The initial bail was set prior to indictment and indictment is returned; or	Art. 11.56, C.C.P.
❒ f. The initial bail bond was conditioned upon treatment under Article 17.40, C.C.P., and that condition is violated.	Art. 22.021, C.C.P.
❒ 2. Bail may not be raised or forfeited:	
❒ a. Without cause;	Art. 17.09, Sec. 3, C.C.P.
❒ b. If the defendant fails to hire counsel as ordered by the court; or	
❒ c. If defendant appears within a reasonable time.	Art. 22.02, C.C.P. Three to five minutes late is not enough to raise or forfeit bail, with no prior forfeiture history. *Meador v. State*, 780 S.W.2d 836 (Tex. App.—Houston [14th Dist.] 1989, no pet.).

❒ 3. In certain instances, magistrates are required to provide reasonable notice of a proposed bail reduction and an opportunity for a hearing to the attorney representing the state or the defendant's counsel.	Art. 17.091, C.C.P. Note: This requirement only applies to offenses listed in Section 3g, Article 42A.054, C.C.P., or an offense described by Article 62.001(5), C.C.P. (defining "reportable conviction or adjudication").

CHAPTER 1 MAGISTRATE DUTIES

General Provisions Applicable to Adults

8. Magistrate's Order for Emergency Protection (MOEP), Article 17.292, C.C.P.

After an arrest involving family violence, stalking, sexual assault, indecent assault, or aggravated sexual assault, a magistrate may enter a magistrate's order of emergency protection for either: (1) a period of not less than 31 days or more than 61 days; or (2) a period of not less than 61 days or more than 91 days if the alleged offense involves the use or exhibition of a deadly weapon. The order may be entered upon the magistrate's own motion or upon request by the victim, the guardian of the victim, a peace officer, or by the attorney representing the State. If an order is issued, the defendant must be served by the magistrate or the magistrate's designee in person or electronically. The MOEP no longer has to be presented in open court, but the magistrate shall make a separate record of the service in written or electronic format.

Article 17.292, C.C.P., requires courts to send protective orders to law enforcement and victims by the end of the next business day and permits transmission in electronic form. Law enforcement must enter the orders not later than the third day after receiving the orders. Delays sending or entering a copy of the order are permissible only if the magistrate, clerk, or law enforcement agency lacks information necessary to ensure service and enforcement.

Checklist 1-8	Script/Notes
❒ 1. Determine if any of the following persons are present, and whether there is a motion by any of the following for a MOEP:	See *TMCEC 2024 Forms Book*: Magistrate's Order for Emergency Protection.
❒ a. A peace officer involved in the arrest;	
❒ b. The attorney representing the State of Texas;	
❒ c. The victim; or	
❒ d. The guardian of the victim.	
❒ 2. If none of the above is present, consider requesting the presence of one or more of the above, or granting an order on the magistrate's motion.	
❒ 3. Determine if the case involves "trafficking of persons," "continuous trafficking of persons," "family violence," "stalking," "sexual assault," "indecent assault," or "aggravated sexual assault." Family violence could be:	Art. 17.292(a), C.C.P. Family Violence is found in Section 42.072, P.C., and Sec. 71.004, F.C.
❒ a. An act or threat of violence by one member of a family or household against another member of a family or household;	

❒ b. Abuse of a child of the family or household by a member of the family or household; or

❒ c. Dating violence, where victim and defendant have a dating relationship (more than a casual acquaintanceship or ordinary fraternization).

Sec. 71.0021, F.C.

❒ 4. Based upon the information provided supporting the arrest of the defendant, consider whether a MOEP order is necessary.

❒ a. At a defendant's appearance before a magistrate after an arrest for a family violence offense, a magistrate shall issue an order for emergency protection for offenses involving:

Art. 17.292(b), C.C.P.

❒ (1) Serious bodily injury to the victim; or

❒ (2) The use or exhibition of a deadly weapon during the commission of an assault.

❒ 5. Identify the:

❒ a. Victim;

❒ b. Members of the victim's family or household; and

❒ c. Children.

❒ 6. Identify the:

❒ a. Residence;

❒ b. Place of employment or business; and

❒ c. School or child care facility where a child to be protected by the order is in attendance or is enrolled.

If an order for emergency protection prohibits a person from going to or near a child care facility or school, the magistrate shall send a copy of the order to the child care facility or school. Art. 17.292(i), C.C.P.

❒ 7. Determine the minimum distances the defendant must maintain from each location.	Art. 17.292(e), C.C.P.
❒ 8. Determine whether the children, if any, should be protected by the order.	
❒ 9. Determine if the location is within:	
❒ a. A municipality; or	
❒ b. The unincorporated part of the county.	
❒ 10. Determine whether a family lawsuit involving the parties is pending.	Art. 17.292(f), (f-1) and (f-2), C.C.P.
❒ 11. The MOEP controls over other court orders with conflicting conditions, including child custody orders, while the MOEP is pending, unless:	Art. 17.292(f), C.C.P.
❒ a. The order is a protective order issued by a family court after a hearing; or	Art. 17.292(f-1), C.C.P.
❒ b. The order is an ex parte order of the family court that was aware of the MOEP and specifically dictates that the new order controls.	Art. 17.292(f-2), C.C.P.
❒ 12. Determine if possession of firearms should be prohibited. Magistrates should note if the defendant is a peace officer.	Sec. 46.04, P.C.
❒ 13. Determine if the defendant has a handgun license.	Arts. 17.292(l) and 17.293, C.C.P.
❒ a. You are required to suspend the handgun license.	
❒ b. Upon suspension of the license, you or the clerk must immediately send a copy of the order to DPS.	Attention: Suspension/ Revocation, Texas Department of Public Safety, Handgun Licensing, Section #0235, P.O. Box 4143, Austin, Texas 78765-4143 512.424.2000, ext. 3.
❒ 14. Determine if a condition should be imposed as described by Article 17.49(b), C.C.P.	Art. 17.292, C.C.P.
❒ 15. Identify the defendant on the order by date of birth.	

❒ 16. Enter these findings in the protection order.

❒ 17. Consider which prohibitions will be a part of the order. Magistrates may prohibit the arrested party from:

Art. 17.292, C.C.P.

- ❒ a. Committing family violence or an assault on the person protected under the order;
- ❒ b. Committing an act in furtherance of a Trafficking of Persons or Stalking offense;
- ❒ c. Communicating directly with the person protected or with a member of protected person's family or household in a threatening or harassing manner;
- ❒ d. Communicating a threat through any person to a member of the protected person's family or household or to the person protected under the order;
- ❒ e. Communicating, if the magistrate finds good cause, in any manner with a person protected under the order or a member of the family or household of a person protected under the order, except through the party's attorney or a person appointed by the court;
- ❒ f. Going to or near the residence, place of employment, or business of a member of the family or household or of the person protected under the order;
- ❒ g. Going to or near the residence, child care facility, or school where a child protected under the order resides or attends; and/or
- ❒ h. Possessing a firearm, unless the person is a peace officer, as defined by Section 1.07, Penal Code, actively engaged in employment as a sworn, full-time paid employee of a state agency or political subdivision.

❒ i. Tracking or monitoring personal property or a motor vehicle in the possession of the person protected under the order or of a member of the family or household of the person protected under the order, without the protected person's effective consent, including by:

❒ (1) using a tracking application on a personal electronic device in the possession of the person or the family or household member or using a tracking device; or

❒ (2) physically following the person or the family or household member or causing another to physically follow the person or member.

❒ 18. Sign the order.

❒ a. The order must contain the following statements printed in bold-faced type or in capital letters:

Art. 17.292, C.C.P.

A VIOLATION OF THIS ORDER BY COMMISSION OF AN ACT PROHIBITED BY THE ORDER MAY BE PUNISHABLE BY A FINE OF AS MUCH AS $4,000 OR BY CONFINEMENT IN JAIL FOR AS LONG AS ONE YEAR OR BY BOTH. AN ACT THAT RESULTS IN OR A SEPARATE OFFENSE MAY BE PROSECUTED AS A SEPARATE MISDEMEANOR OR FELONY OFFENSE, AS APPLICABLE, IN ADDITION TO A VIOLATION OF THIS ORDER. IF THE ACT IS PROSECUTED AS A SEPARATE FELONY OFFENSE, IT IS PUNISHABLE BY CONFINEMENT IN PRISON FOR AT LEAST TWO YEARS. THE POSSESSION OF A FIREARM BY A PERSON, OTHER THAN A PEACE OFFICER, AS DEFINED BY SECTION 1.07, PENAL CODE, ACTIVELY ENGAGED IN EMPLOYMENT AS A SWORN, FULL-TIME PAID EMPLOYEE OF A STATE AGENCY OR POLITICAL SUBDIVISION, WHO IS SUBJECT

TO THIS ORDER MAY BE PROSECUTED AS A SEPARATE OFFENSE PUNISHABLE BY CONFINEMENT OR IMPRISONMENT.

NO PERSON, INCLUDING A PERSON WHO IS PROTECTED BY THIS ORDER, MAY GIVETO ANYONE TO IGNORE OR ANY PROVISION OF THIS ORDER.THE TIME IN WHICH THIS ORDER IS, EVERY PROVISION OF THIS ORDER IS IN FULL FORCE AND EFFECT UNLESS A COURT CHANGES THE ORDER.

❒ 19. Ensure that a copy of the order is served on the defendant in person or electronically and that he or she signs the acknowledgment.

❒ 20. File the original order and acknowledgment with the court clerk.

❒ 21. As soon as possible but not later than the next business day, transmit copies of the order to the Chief of Police where the member of the family or household or individual protected by the order resides, as well as a copy to the victim.

The copies of the order and any other information may be sent electronically or in another manner accessible by the recipient. Art. 17.292(h), C.C.P. See *TMCEC 2024 Forms Book*: Clerk's Letter: Copy of Magistrate's Order of Emergency Protection.

❒ 22. If the victim is not present at the time the order is issued, order an appropriate peace officer to make a good faith effort to notify the victim within 24 hours by calling the victim's residence and place of employment.

❒ 23. The MOEP lasts no less than 31 days or more than 61 days unless the alleged offense involves the exhibition of a deadly weapon. Then the period shall last no less than 61 days or more than 91 days.

❒ 24. A MOEP may be transferred to the court with jurisdiction of the underlying criminal case:

Art. 17.292(n), C.C.P.

- ❒ a. On motion, notice, and hearing (serve all parties, including the State); or
- ❒ b. On agreement of all parties.

❒ 25. The magistrate or the court to which a MOEP was transferred under Step 24 may modify all or part of the MOEP if:

Art. 17.292(j) and (n), C.C.P. See *TMCEC 2024 Forms Book*: Motion to Modify Magistrate's Order of Emergency Protection.

❒ a. Notice is made to each affected party of a hearing; and

Art. 17.292(j), C.C.P.

❒ b. The magistrate finds that:

❒ (1) The order as originally issued is unworkable;

❒ (2) The modification will not place the victim at greater risk than the original order; and

❒ (3) The modification will not in any way endanger a person protected under the order.

See *TMCEC 2024 Forms Book*: Order Modifying Magistrate's Order of Emergency Protection.

❒ 26. On request by a person protected by an order for emergency protection issued under Article 17.292, or if determined necessary by the magistrate, the court issuing the order may protect the person's mailing address by rendering an order:

Art. 17.294, C.C.P.
See TMCEC *2024 Forms Book*: Magistrate's Order of Confidentiality of Certain Information in Order for Emergency Protection.

❒ a. requiring the person protected under the order to:

❒ (1) disclose the person's mailing address to the court;

❒ (2) designate another person to receive on behalf of the person any notice or documents filed with the court related to the order; and

❒ (3) disclose the designated person's mailing address to the court;

❒ b. requiring the court clerk to:

❒ (1) strike the mailing address of the person protected by the order from the public records of the court, if applicable; and

❒ (2) maintain a confidential record of the mailing address for use only by the court or a law enforcement agency for purposes of entering the information required into the statewide law enforcement information system maintained by the Department of Public Safety; and

❒ c. prohibiting the release of the information to the defendant.

CHAPTER 1 MAGISTRATE DUTIES

General Provisions Applicable to Adults

9. Appointment of Counsel – When the Right Attaches

Checklist 1-9	Script/Notes
❒ 1. The right to counsel "attaches" at magistration.	*Rothgery v. Gillespie County*, 554 U.S. 191 (2008).
❒ 2. Article 26.04, C.C.P., controls appointment of counsel and requires the judges of the county courts, statutory county courts, and district courts trying criminal cases in each county to adopt and publish written countywide procedures for appointment of counsel.	See Checklist 1-1. It is rare that the municipal judge acting as a magistrate will be required to appoint counsel. This duty is normally the prerogative of the local administrative statutory county court judge and local administrative court judge.
❒ 3. Those judges acting as a body may designate someone to make the actual appointment under the guidelines and procedures they adopt. That could be a municipal judge.	
❒ 4. The procedures adopted by the body of judges must include procedures, financial standards, and forms to determine indigence and whether counsel should be appointed.	Consult your county's indigent defense plan. A copy of your jurisdiction's local indigent defense plan and guidelines is available online at: http://tidc.tamu.edu/public.net/Reports/IDPlanNarrative.aspx.
❒ a. Standards can include all of the defendant's financial information including spousal income available to the defendant.	
❒ b. The designee appointing counsel cannot consider whether the defendant posted bail.	
❒ 5. If a municipal judge is made the designee of the district or county judges to appoint counsel, the municipal judge should review the local plan concerning the responsibility to notify counsel of assignment and the information that is required to be provided to the accused.	

CHAPTER 1 MAGISTRATE DUTIES

General Provisions Applicable to Adults

10. Examining Trial

Checklist 1-10	Script/Notes
❒ 1. The defendant in any felony case is entitled to an examining trial prior to indictment to determine the truth of the accusation against the defendant or to review bail.	Art. 16.01, C.C.P.
❒ a. An examining trial may also be held upon the filing of an affidavit or sworn motion alleging that:	Art. 16.16, C.C.P.
❒ (1) The amount of bail is insufficient;	
❒ (2) The sureties are not worth twice the amount of the bail; or	
❒ (3) The bail bond is defective.	
❒ 2. The right to an examining trial in a felony terminates upon the return of an indictment.	
❒ 3. There is no right to an examining trial in a misdemeanor.	
❒ 4. The defendant may be either in custody or free on bail.	
❒ 5. The defendant must be allowed sufficient time prior to any hearing to obtain counsel.	Art. 16.01, C.C.P.
❒ 6. Appointment of counsel must be made pursuant to the procedures adopted by the local criminal courts. The magistrate should provide appropriate assistance to the defendant to obtain counsel through that system.	Arts. 1.051 and 16.01, C.C.P. See Checklist 1-9.
❒ 7. The Texas Rules of Evidence apply to the examining trial.	Art. 16.07, C.C.P.
❒ 8. The defendant must be present at the examining trial. The State must be represented by the district attorney.	Art. 16.08, C.C.P.

❒ 9. The court may issue a subpoena, or an attachment without having first issued a subpoena, for any witness within the county. — Art. 16.10, C.C.P.

❒ 10. An attachment for an out-of-county witness may be issued when: — Art. 16.11, C.C.P.

- ❒ a. The party applying for the attachment swears in an affidavit that the testimony is material; and
- ❒ b. The affidavit sets forth the facts expected to be proven by the witness.
- ❒ c. If the court finds the facts set forth to be immaterial or the facts are admitted to be true by the adverse party, the attachment shall not issue.

❒ 11. The proceeding must be transcribed by a court reporter. Alternatively a statement of facts, agreed to by the State and defense and approved by the presiding magistrate, may be used to preserve the testimony of the witnesses. The State or a defendant may preserve testimony for use in an examining trial by the taking of a deposition. — Arts. 16.09 and 39.01, C.C.P.

❒ 12. Before beginning the hearing, inform the defendant: — Art. 16.03, C.C.P.

- ❒ a. Of the right to make a statement relative to the accusation in the complaint;
- ❒ b. That he or she may not be compelled to make any statement; and
- ❒ c. That if he or she does make a statement, it may be used in evidence against him or her.

❒ 13. If the defendant desires to make a statement he or she may only do so prior to the examination of any witnesses.

- ❒ a. The statement must be reduced to writing, and
- ❒ b. Signed, but not sworn to, by the defendant.

❒ 14. The magistrate shall then attest by his or her own certificate and signature to the execution and signing of the statement.	Art. 16.04, C.C.P.
❒ 15. Allow the prosecutor to question the State's witnesses and the defense counsel to cross-examine them.	Art. 16.06, C.C.P.
❒ 16. The court may question the witnesses if no prosecutor appears.	Art. 16.06, C.C.P.
❒ 17. The proceeding may not be continued unless:	Art. 16.14, C.C.P.
❒ a. Either the defendant or the prosecutor signs a sworn statement setting forth the following:	
❒ (1) The name, address, and facts that either expect to prove with the testimony of the witness; or	
❒ (2) The nature of the evidence.	
❒ b. The court is satisfied that the testimony or evidence is material, and the adverse party denies the truth.	
❒ 18. At the conclusion of the proceeding, enter an order:	Art. 16.17, C.C.P.
❒ a. Committing the defendant to jail;	
❒ b. Discharging the defendant; or	
❒ c. Admitting the defendant to bail.	
❒ 19. Failure to enter an order within 48 hours after the proceeding has been completed operates as a finding of no probable cause and the defendant is discharged.	Art. 16.17, C.C.P.

CHAPTER 1 MAGISTRATE DUTIES

General Provisions Applicable to Adults

11. Examination of Defendant in Custody Suspected of Having Mental Illness or Intellectual Disability

Checklist 1-11	Script/Notes
Definitions:	
"Mental illness" means an illness, disease, or condition, other than epilepsy, senility, alcoholism, or mental deficiency that: (a) substantially impairs a person's thoughts, perceptions of reality, emotional process, or judgment; or (b) grossly impairs behavior as demonstrated by recent disturbed behavior.	Sec. 571.003(14), H.S.C.
"Intellectual disability" means significantly subaverage general intellectual functioning that is concurrent with deficit in adaptive behavior and originates during the developmental period.	Sec. 591.003(7-a), H.S.C.
"Subaverage general intellectual functioning" refers to measured intelligence on standardized psychometric instruments of two or more standard deviations below the age-group mean for the tests used.	Sec. 591.003(20), H.S.C.
"Department" means the Texas Department of Aging and Disability Services.	Sec. 591.003(7), H.S.C.
"Person with intellectual disability" means a person determined by a physician or psychologist licensed in this state or certified by the department to have subaverage general intellectual functioning with deficits in adaptive behavior.	Sec. 591.003(15-a), H.S.C.
"Adaptive behavior" means how effectively individuals cope with common life demands and how well they meet the standards of personal independence expected of someone in their particular age group, sociocultural background, and community setting.	Sec. 591.003(1), H.S.C.

❒ 1. The sheriff or municipal jailer has a duty to notify the judge that there may be reasonable cause to believe that a defendant committed to the sheriff's custody has a mental illness or is a person with an intellectual disability.

See *TMCEC 2024 Forms Book:* Sheriff's Notification – Sheriff's or Municipal Jailer's Notification – Person in Custody with Possible Mental Illness/ Intellectual Disability. Sheriff or municipal jailer shall notify a magistrate within 12 hours after receiving evidence or a statement that may establish reasonable cause. Art. 16.22(a), C.C.P.

The notice must include any information related to the sheriff's or municipal jailer's determination, such as information regarding the defendant's behavior immediately before, during, and after the defendant's arrest and, if applicable, the results of any previous assessment of the defendant. Sec. 16.22(a)(1), C.C.P.

❒ 2. Determine if there is reasonable cause to believe (1) defendant has a mental illness, or (2) is a person with an intellectual disability, by considering:

Art. 16.22(a)(1), C.C.P.

- ❒ a. The defendant's behavior; and
- ❒ b. The result of a prior evaluation indicating a need for referral for further mental health or intellectual disability assessment.

❒ 3. Is there reasonable cause?

- ❒ a. If the judge determines that there is no reasonable cause, no further action is required.

❒ b. If reasonable cause is determined, issue a written order that the defendant be interviewed.

See *TMCEC 2024 Forms Book*: Magistrate's Order for Mental Illness/Intellectual Disability Exam. The interview must be conducted by the service provider that contracts with the jail to provide mental health or intellectual and disability services, local mental health authority, local intellectual and developmental disability authority, or another qualified mental health or intellectual disability expert. Art. 16.22(a), C.C.P.

❒ c. A magistrate is not required to order an interview or other collection of information if the defendant is no longer in custody, if the defendant in the year preceding the defendant's applicable date of arrest has been determined to have a mental illness or to be a person with an intellectual disability by the service provider that contracts with the jail to provide mental health or intellectual and disability services, local mental health authority, the local mental health authority, local intellectual and developmental disability authority, or another mental health or intellectual disability expert, or the defendant was only arrested or charged with an offense punishable as a Class C misdemeanor.

Art. 16.22(a)(2), C.C.P.

❒ d. An interview may be conducted in person in the jail, by telephone, or through a telemedicine medical service or telehealth service.

Art. 16.22(a-4), C.C.P.

❒ 4. From the time of the order, the expert designated by the judge must return a written report within 96 hours for a defendant held in custody or 30 days for a defendant released from custody.

Art. 16.22(b), C.C.P.

❒ a. The judge is required to give copies of the report to the prosecutor; the defense attorney; the trial court; the sheriff or other person responsible for the defendant's medical records while the defendant is confined in county jail; and as applicable: any personal bond office established under Article 17.42 for the county in which the defendant is being confined; or the director of the office or department that is responsible for supervising the defendant while the defendant is released on bail and receiving mental health or intellectual and developmental disability services as a condition of bail.

❒ 5. What if the defendant fails or refuses to submit to an examination?

❒ a. The judge may order the defendant to custody for examination for a period not to exceed 72 hours; but

See *TMCEC 2024 Forms Book*: Order into Custody for Mental Illness/Intellectual Disability Exam; Warrant for Mental Health/Intellectual Disability Exam – Person Failing to Submit Voluntarily. It is advisable to work within your community to establish procedures for in-detention examinations. If the defendant has been released from custody, the judge will need to know to which facility to commit the individual.

❒ b. The judge may not order a defendant to a facility operated by the State Health Services or the Department of Aging and Disability Services without the consent of the head of that facility.

CHAPTER 1 MAGISTRATE DUTIES

Property Hearings: Disposition of Stolen Property

12. Restoration When No Trial Pending

Chapter 47, C.C.P. governs the disposition of stolen property. Except in instances where a peace officer comes into property governed by the Texas Pawnshop Act (Chapter 371 of the Finance Code), an officer who comes into custody of property alleged to have been stolen must hold it if the property ownership is contested or disputed. Art. 47.01(a), C.C.P. If an officer comes into custody of property governed by the Texas Pawnshop Act, the property must be held regardless of whether the ownership of the property is contested or disputed. Art. 47.01(b), C.C.P. When an officer seizes allegedly stolen property, the officer is required to immediately file a schedule with the court having jurisdiction of the case describing the property seized and its estimated value. Art. 47.03, C.C.P. The schedule must certify both that the officer seized the property and the reason for the seizure. Furthermore, the officer is required to notify the court of the names and addresses of each party known to the officer who has a claim to possession of the seized property. The following checklists contemplate property hearings being conducted under one of two scenarios: (1) restoration when no trial is pending, or (2) restoration upon trial or trial pending.

Checklist 1-12	Script/Notes
❒ 1. Jurisdiction and Venue: Jurisdiction under this section is based solely on jurisdiction as a criminal magistrate and not as a court with civil jurisdiction. Jurisdiction and venue to hear a seizure case lies with any:	Art. 47.01a, C.C.P.
❒ a. District judge, county judge, or justice of the peace in the county where the property is held or in which the property was alleged to have been stolen; or	
❒ b. Municipal judge in the municipality where the property is being held or in which the property was alleged to have been stolen.	This is one of the few instances remaining in Texas criminal procedure where the authority of the municipal judge as a magistrate is limited to the boundaries of the municipality.
❒ 2. Change of Venue: A court may transfer venue to a court in another county on the motion of an interested party.	Art. 47.01a(d), C.C.P.

❒ 3. Petition for Hearing Filed: If a criminal action involving the property in question is not pending, then any of the courts having jurisdiction may hold a hearing to determine the right to possession of the property, upon the petition of any interested party, including a county, a city, or the state.

Art. 47.01a(a), C.C.P. Note: A peace officer is an "interested party" since the evidence may establish that the State has a superior right to possession. A hearing may be held on the petition of a seizing officer. See *TMCEC 2024 Forms Book*: Notice of Stolen Property Hearing. The C.C.P. is silent as to the obligation of the Court to provide notice to interested parties. Nevertheless, due to the property interest at stake, due process interests, and a judge's ethical adjudicative responsibilities (Canon 3B(8) *Code of Judicial Conduct*), interested parties should be given notice of the date and time of the hearing.

❒ 4. Notice Provided.

❒ 5. Conduct the Hearing.

See Checklist 1-14.

❒ 6. Post-Hearing Orders: After a hearing and appropriate findings, the court may enter the following orders:

❒ a. Order the property delivered to whoever has the superior right of possession:

Art. 47.01a(e). Note: The person with the superior right of possession is responsible for any transportation necessary for delivery.

❒ (1) Without conditions;

See *TMCEC 2024 Forms Book*: Magistrate Duties: Order Restoring Stolen Property When No Trial is Pending. Art. 47.01a(a)(1), C.C.P. Presumably, this is construed to mean that claimants are exempt from paying charges pursuant to Art. 47.07, C.C.P.

❒ (2) Subject to the condition that the property be made available to the State if needed in future prosecutions.

Art. 47.01a(a)(2), C.C.P. This requires a written motion by an attorney representing the State. Furthermore, it contemplates that a trial is pending and that the motion is made before the trial is to begin.

❒ b. Order the property be awarded to the custody of a peace officer, pending resolution of the investigation involving the property.

Art. 47.01a(a)(3), C.C.P.

❒ c. If it is shown in a hearing that probable cause exists to believe that the property was acquired by theft or by another manner that makes its acquisition an offense and that the identity of the actual owner of the property cannot be determined, the magistrate shall order the peace officer to:

Art. 47.01a(b), C.C.P.

❒ (1) Deliver the property to a government agency for official purposes;

Art. 47.01a(b)(1), C.C.P.

❒ (2) Deliver the property to a person authorized by Article 18.17, C.C.P., to receive and dispose of the property; or

Art. 47.01a(b)(2), C.C.P.

❒ (3) Destroy the property.

Art. 47.01a(b)(3), C.C.P.

❒ 7. Appeals: Appeal from a hearing held in a municipal court or justice court under Article 47.01(a), C.C.P., shall be heard by a county court or a statutory county court. Such appeals are governed by the rules of procedure for appeals for civil cases from justice court to county court.

Art. 47.12(b), C.C.P.

❒ a. The requirement that the notice of appeal be given at the conclusion of the hearing does not require that the notice be given in open court. The hearing does not conclude until the court's ruling is both announced and received.

Phillips v. State, 77 S.W.3d 465 (Tex. App.—Houston [1st Dist.] 2002); *White v. State*, 930 S.W.2d 673 (Tex. App.—Waco 1996).

❒ b. Only an "interested person" who appears at a hearing may appeal and must post an appeal bond by the end of the next business day.

Art. 47.12(c), C.C.P.

❒ c. The court may require an appeal bond in the amount the court deems appropriate, but not more than twice the value of the property, made payable to the party awarded possession at the hearing, with sufficient sureties.	Art. 47.12(d), C.C.P.

CHAPTER 1 MAGISTRATE DUTIES

Property Hearings: Disposition of Stolen Property

13. Restoration upon Trial or Trial Pending

Checklist 1-13	Notes
❒ 1. Jurisdiction: Article 47.02, C.C.P., contemplates jurisdiction being:	
❒ a. In a trial court, post-adjudication of a theft or illegal acquisition of property case;	
❒ b. In a trial court in which a theft or other illegal acquisition of property case is pending; or	
❒ c. With any magistrate having jurisdiction in the county in which the property was alleged to have been stolen or, if the criminal action is pending in another county, the county in which the action is pending subject to Chapter 501, T.C. (The Texas Certificate of Title Act) and the consent of the prosecuting attorney.	
❒ 2. Conduct the Hearing.	See Checklist 1-14.
❒ 3. Post Hearing Orders.	See *TMCEC 2024 Forms Book*: Order Restoring Stolen Property on Trial.
❒ a. Upon Trial: The court trying the case shall order the property to be restored to a person appearing on presentation of proof to be the owner. The owner of the property is responsible for any transportation necessary to restore the property to the owner.	Art. 47.02, C.C.P.
If the property is not claimed within 30 days of conviction of the person who illegally acquired it, the property shall be disposed of pursuant to Article 18.17, C.C.P.	Art. 47.06, C.C.P.
The real owner of the property sold pursuant to Article 47.06, C.C.P. may recover such property under the terms prescribed in Article 18.17(e), C.C.P.	Art. 47.07, C.C.P.

❒ b. Trial Pending: If it is proved to the satisfaction of the judge that the person is a true owner of the property alleged to be stolen and the property is in the possession of the peace officer, the peace officer by written order shall restore it to the owner.

Art. 47.02, C.C.P.

❒ c. When Doubt Remains: If the court has doubt as to the ownership of the property, the court may require:

Art. 47.05, C.C.P.

❒ (1) A bond of the claimant for redelivery of the property should it be thereafter shown not to belong to the claimant; or

❒ (2) That the sheriff retains the property until further orders are made regarding possession.

❒ d. Claimant to Pay Charges: The claimant of the property must pay all reasonable charges for safekeeping prior to delivery of the property. The officer claiming that such charges are owed must verify such charges. If the charges are not paid, the property shall be sold as under execution and the proceeds of the sale, less the charges and cost of the sale, paid to the owner of the property.

The owner is responsible for any transportation necessary to return the property to the owner. Art. 47.02(c), C.C.P.

❒ 4. Appeals: No appeals from hearings under Article 47.02, C.C.P., are authorized.

Presumably, efforts to appeal would be dependent on the outcome of the appeal of the theft or property acquisition matter.

CHAPTER 1 MAGISTRATE DUTIES

Property Hearings: Disposition of Stolen Property

14. Hearing

Checklist 1-14	Script/Notes
❒ 1. The court shall:	Art 47.01a(a)(1), C.C.P.
❒ a. Order the property delivered to whomever has the superior right to possession; and	
❒ b. Make such orders as the facts require.	
❒ 2. If none of the interested parties appear at the hearing after having been properly notified, the court may presume that:	
❒ a. The parties do not have a valid claim to possession;	
❒ b. The parties have abandoned their claim to possession; or	
❒ c. They do not wish to assert a claim.	
❒ 3. The court may award possession of the property to the law enforcement agency if no interested party has proved a right to possess the property.	
❒ 4. If none of the interested parties appear at the hearing, except for the officer who has discovered another interested party since the scheduling of the hearing, the court should:	
❒ a. Instruct the officer to file an amended inventory of property seized, and to include the name and mailing address of the newly-discovered interested party on the amended form;	
❒ b. Reset the case; and	
❒ c. Notify the interested parties of the hearing.	
❒ 5. When the true owner of a stolen motor vehicle is unknown and there are no lien holders to be found:	

❒ a. The officer should proceed to file a seizure case; and

❒ b. The court should notify the respondent (the person from whom the vehicle was seized, if any), of the right to appear at the hearing and assert a claim of possession.

❒ 6. Order of Proceedings: The hearing should be conducted in an orderly manner to ensure that parties are given an opportunity to be heard. This may be accomplished through a question and answer format facilitated by the judge.

Though the C.C.P. is silent as to this issue, Canon 3B8, *Code of Judicial Conduct*, would nonetheless apply.

❒ 7. Burden of Proof: In contrast to criminal cases in which the State's case must be proven "beyond a reasonable doubt," a respondent or petitioner must establish a claim to the property by a "preponderance of the evidence."

"Preponderance of the evidence" means the greater weight and degree of credible evidence. *Upjohn Co. v. Freeman*, 847 S.W.2d 589 (Tex. App.—Dallas 1992, no writ).

❒ a. If there are no other interested parties present who might rebut the respondent's or petitioner's evidence, the right to possession is established.

At the hearing, any interested person may present evidence that the property was not acquired by theft or another offense or that the person is entitled to possess the property.

❒ 8. Rules of Evidence: In hearings conducted when no trial is pending, hearsay evidence is admissible.

Art. 47.01a(c), C.C.P. Article 47.02, C.C.P., does not address the admissibility of hearsay statements upon trial or when trial is pending.

❒ 9. Proceed to enter Post-Hearing Orders.

See Checklists 1-12 and 1-13 for more information on Post-Hearing Orders.

CHAPTER 2 SEARCH WARRANTS, ARREST WARRANTS, AND OTHER WRITS

1. The Chapter 15 Arrest Warrant

Warrants, in contrast to other writs such as the capias and capias pro fine, are issued primarily by judges in their capacity as magistrates. There is one notable exception to this rule in Texas: municipal judges and justices of the peace have authority to issue warrants of arrest for fine-only misdemeanors filed in their court pursuant to Article 45.014/45A.104, C.C.P. The 85th Regular Legislature made significant changes relating to Article 45.014/45A.104 warrants. The issuance of an arrest warrant is prohibited for the defendant's failure to appear at the initial court setting, including failure to appear as required by a citation issued under Article 14.06(b), unless certain additional notice is provided by telephone or regular mail. Furthermore, judges are required to recall an arrest warrant for the defendant's failure to appear if, before the arrest warrant is executed, the defendant voluntarily appears to resolve the arrest warrant and the arrest warrant is resolved in any manner authorized by the Code of Criminal Procedure; this is commonly referred to as the "safe harbor" provision.

As a magistrate, a municipal judge has authority to issue warrants of arrest for offenses including those that are outside of the municipal court's jurisdiction, such as Class A and B misdemeanors and felonies. For those offenses, a magistrate's authority for issuing arrest warrants is found in Chapter 15, C.C.P. Article 2.09, C.C.P. lists those persons who are magistrates in Texas. Included in that list are municipal judges. A magistrate's authority is countywide. *Gilbert v. State*, 493 S.W.2d 783 (Tex. Crim. App. 1973) and *Ex parte Clear*, 573 S.W.2d. 224 (Tex. Crim. App. 1978). A magistrate's authority to issue warrants is discussed in Checklist 2-1.

Checklist 2-1	Script/Notes
A "warrant of arrest" is a written order from a magistrate directed to a peace officer commanding the officer to take the body of the person accused of an offense to be dealt with according to law.	Art. 15.01, C.C.P. See *Municipal Courts and the Texas Judicial System*: Chapter 1.
❒ 1. No arrest warrant shall issue without probable cause supported by oath or affirmation. An arrest warrant may be issued:	Art. 1.06, C.C.P.
❒ a. When a verbal order of arrest is proper;	Art. 15.03(a)(1), C.C.P.
❒ b. When a person swears under oath that another has committed an offense against the laws of the State; or	Art. 15.03(a)(2), C.C.P. A person may appear before the magistrate in person or they may be presented to the magistrate through an electronic broadcast system. Art. 15.03(c), C.C.P. A recording of the communication must be made and preserved, if the defendant is charged with the offense, until the defendant is acquitted or all appeals have been exhausted. Art. 15.03(d), C.C.P.

❒ c. In any case in which the C.C.P. permits the issuance of an arrest warrant.

Art. 15.03(a)(3), C.C.P.

❒ 2. The arrest warrant:

See *TMCEC 2024 Forms Book*: Warrant of Arrest: Magistrate.

❒ a. Issues in the name of "The State of Texas;"

❒ b. Names the person to be arrested, if known, or reasonably describes the person to be arrested, including any or all of the following:

❒ (1) Nickname or "street" name;

❒ (2) Age;

❒ (3) Gender;

❒ (4) Height and weight;

❒ (5) Identifying marks; and

❒ (6) Ethnic origin.

❒ c. Alleges the commission of some offense against the laws of the State;

❒ d. Is signed by a magistrate with his or her office named in the body of the warrant or in connection with the officer's signature; and

❒ e. Includes the magistrate's name in legible handwriting, legible typewritten form, or legible stamp print.

Art. 2.101, C.C.P.

❒ 3. An arrest warrant must also be supported by an affidavit of probable cause stating:

Arts. 15.04 and 15.05, C.C.P., Art. 1.06, C.C.P.

❒ a. The name of the accused, if known, and if not known, a reasonably definite description;

❒ b. The time and place of the commission of the offense, as definitely as can be stated by the affiant; and

❒ c. Sufficient facts to support a finding of probable cause that the person named therein:

❒ (1) Committed the offense charged; and

❒ (2) Committed it within the period covered by the statute of limitations.

❒ 4. The specific requisites of the complaint or affidavit are covered later in this chapter.

See Checklist 2-4.

❒ 5. An arrest warrant is valid throughout Texas, unless issued by a city mayor.

Art. 15.06, C.C.P. A warrant issued by a mayor is generally only valid in the county in which it is issued. Art. 15.07, C.C.P.

❒ 6. Make sure a copy of any warrant or affidavit is provided to the clerk of the court for public disclosure once executed.

Art. 15.26, C.C.P.
See Checklist 2-11.

CHAPTER 2 SEARCH WARRANTS, ARREST WARRANTS, AND OTHER WRITS

2. The Capias

Like an arrest warrant, a capias results in the seizure of a person. A capias, however, cannot be issued by a magistrate. It can only be issued by a judge. Chronologically, an arrest warrant is normally issued **before** the commencement of criminal proceedings, while the capias is issued **after** the commencement of formal criminal proceedings. In the Code of Criminal Procedure, there are only three instances where a capias is utilized: (1) in instances occurring after commitment or bail and before trial ("capias" as defined in Chapter 23); (2) in instances occurring after judgment and sentence when the court seeks to have the defendant brought before the court (a "capias" as defined in Chapter 43); and (3) in instances occurring after a forfeiture of bail is declared by the court or a surety surrenders a defendant (Chapter 23). Thus, a "capias" in Chapter 23, by definition, is not the same as a "capias" in Chapter 43. Neither writ is synonymous with the capias pro fine.

Checklist 2-2	Script/Notes
❒ 1. A "capias" as defined in Chapter 23, is a writ that is: (1) issued by a judge of a court having jurisdiction of a case after commitment or bail and before trial, or by a clerk at the direction of the judge; and (2) directing any peace officer in Texas to arrest the person named therein and bring the person before that court immediately, or on a day stated in the order.	Art. 23.01, C.C.P.
❒ a. A Chapter 23 capias must:	
❒ (1) Issue in the name of "The State of Texas;"	
❒ (2) Name the person whose arrest is ordered or, if the name is unknown, a description;	
❒ (3) Specify which penal offense the person is accused of committing;	
❒ (4) State the name of the court to which and the time when it is returnable; and	
❒ (5) Contain the date and an official attestation by the issuing authority.	Art. 23.02, C.C.P.

❒ b.	A capias may be issued by the court in misdemeanor cases upon the filing of an information or complaint.	A capias may issue only after a judge's determination of probable cause. Art. 23.04, C.C.P.; *Sharp v. State*, 677 S.W.2d 513 (Tex. Crim. App. 1984).
❒ c.	A capias may be issued in electronic form for a person's failure to appear before a court or to comply with a court order.	Art. 23.031, C.C.P.
❒ d.	A capias shall be issued when a bail forfeiture is declared.	Art. 23.05, C.C.P.
❒ e.	Make sure copies of all capiases and affidavits are provided to the clerk of the court for public disclosure once executed.	Art. 15.26, C.C.P. See Checklist 2-11.
❒ 2.	A "capias" as defined in Chapter 43 is a writ that is: (1) issued by a court having jurisdiction of a case after judgment and sentence; and (2) directed to any peace officer of the State of Texas commanding the officer to arrest a person convicted of an offense and bring the arrested person before that court immediately or on a day or at a term stated in the writ.	Art. 43.015(1), C.C.P.
❒ a.	The court may issue a capias, as defined in Chapter 43, when a judgment and sentence have been rendered against a defendant and the defendant is absent.	Art. 43.04, C.C.P
❒ b.	A capias, issued pursuant to Chapter 43, may be issued in electronic form.	Art. 43.021, C.C.P.
❒ c.	A capias may be issued to any county in the State and shall be executed as in other cases, but no bail shall be taken.	Art. 43.06, C.C.P.

CHAPTER 2 SEARCH WARRANTS, ARREST WARRANTS, AND OTHER WRITS

3. The Chapter 45/45A Arrest Warrant

Warrants, in contrast to other writs such as the capias and capias pro fine, are issued primarily by judges in their capacity as magistrates. There is one notable exception to this rule in Texas: municipal judges and justices of the peace have authority to issue arrest warrants for fine-only misdemeanors filed in their court pursuant to Art. 45.014/45A.104, C.C.P. This Chapter 45/45A warrant is in many ways more similar to a capias than an arrest warrant, as it is issued by a judge as opposed to a magistrate and is often issued after the judge has jurisdiction over the offense due to the filing of the sworn complaint. It may also be issued by the judge after an affidavit establishing probable cause, but prior to formal charging, much like the Chapter 15 arrest warrant.

The 85th Regular Legislature made significant changes relating to the Article 45.014/45A.104 warrant. The issuance of an arrest warrant is prohibited for the defendant's failure to appear at the initial court setting, including failure to appear as required by a citation issued under Article 14.06(b) unless certain additional notice is provided by telephone or regular mail. Furthermore, judges are required to recall an arrest warrant for the defendant's failure to appear if, before the arrest warrant is executed, the defendant voluntarily appears to resolve the arrest warrant and the arrest warrant is resolved in any manner authorized by the Code of Criminal Procedure; this is commonly referred to as the "safe harbor" provision.

Checklist 2-3	Script/Notes
❒ 1. Prior to issuing an arrest warrant for the defendant's failure to appear at the initial court setting, including failure to appear as required by a citation issued under Article 14.06(b), C.C.P., the judge must provide by telephone or regular mail to the defendant notice that includes:	Art. 45.014/45A.104(e), C.C.P. See *TMCEC 2024 Forms Book*: Notice Initial Court Setting. A court may send any notice using mail or electronic mail. Sec. 80.002(a), G.C.
❒ a. A date and time, occurring within the 30-day period following the date that notice is provided, when the defendant must appear before the justice or judge;	
❒ b. The name and address of the court with jurisdiction in the case;	
❒ c. Information regarding alternatives to the full payment of any fine or costs owed by the defendant, if the defendant is unable to pay that amount;	

❒ d. A statement that the defendant may be entitled to a credit toward any fine or costs owed by the defendant if the defendant was confined in jail or prison after the commission of the offense for which the notice is given; and

❒ e. An explanation of the consequences if the defendant fails to appear before the justice or judge as required by this article.

❒ 2. The defendant must fail to appear before the justice or judge as required by this article.

❒ 3. A defendant who receives notice may request an alternative date or time to appear before the judge if the defendant is unable to appear on the date and time included in the notice.

Art. 45.014(f)/45A.104(f), C.C.P.

❒ 4. A judge may issue a warrant for the arrest of the accused and deliver the same to the proper officer to be executed when a sworn complaint or affidavit based on probable cause has been filed before the municipal court

Art. 45.014(a)/45A.104(a), C.C.P.

❒ 5. The arrest warrant is sufficient if it:

See *TMCEC 2024 Forms Book:* Warrant of Arrest: Judge.

❒ a. Issues in the name of "The State of Texas;"

Art. 45.014(b)(1)/45A.104(b)(1), C.C.P.

❒ b. Is directed to the proper peace officer or some other person specifically named in the warrant;

Art. 45.014(b)(2)/45A.104(b)(2), C.C.P.

❒ c. Includes a command that the body of the accused be taken, and brought before the authority issuing the warrant, at the time and place stated in the warrant;

Art. 45.014(b)(3)/45A.104(b)(3), C.C.P.

❒ d. States the name of the person whose arrest is ordered, if known, or if not known, it describes the person as in the complaint;

Art. 45.014(b)(4)/45A.104(b)(4), C.C.P.

❒ e. States that the person is accused of some offense against the laws of this state, naming the offense; and

Art. 45.014(b)(5)/45A.104(b)(5), C.C.P.

❒ f. Is signed by the judge, naming the office of the justice or judge in the body of the warrant or in connection with the signature of the justice or judge.	Art. 45.014(b)(6)/45A.104(b)(6), C.C.P.
❒ 6. Chapter 15 applies to a warrant of arrest issued under this article, except as inconsistent or in conflict with this chapter.	Art. 45.014(c)/45A.104(c), C.C.P. See Checklist 2-1.
❒ 7. In a county with a population of more than two million that does not have a county attorney, a judge may not issue a warrant under this section for the offense of Issuance of Bad Check under Section 32.41, P.C., unless the district attorney has approved the complaint or affidavit on which the warrant is based.	Art. 45.014(d)/45A.104(d), C.C.P.
❒ 8. A justice or judge shall recall an arrest warrant for the defendant's failure to appear if the defendant voluntarily appears and makes a good faith effort to resolve the arrest warrant before the warrant is executed.	Art. 45.014(g)/45A.104(g), C.C.P.

CHAPTER 2 SEARCH WARRANTS, ARREST WARRANTS, AND OTHER WRITS

4. Search Warrants for Persons and Property

A municipal judge, signing a search warrant in his or her capacity as a magistrate, must have geographical authority over the area to be searched (i.e., the county or counties in which the city is located). For example, an Austin municipal judge lacks the authority to issue a search warrant for property located in the City of El Paso. All magistrates have co-equal jurisdiction with all other magistrates within the county or counties in which their city is situated and their jurisdiction is coextensive with the limits of the county or counties. *Gilbert v. State*, 493 S.W.2d 783 (Tex. Crim. App. 1973) and *Ex parte Clear*, 573 S.W.2d. 224 (Tex.Crim. App. 1978).

Checklist 2-4	Script/Notes
A "search warrant" is a written order from a magistrate to a peace officer commanding the officer to search for and to seize designated property or things and to return them to the magistrate.	Art. 18.01(a), C.C.P.
❒ 1. Review the search warrant, being certain it:	
❒ a. Issues in the name of "The State of Texas;" and	
❒ b. Directs any peace officer of the county to search the person, place, or thing named, and seize one or more of the following:	Art. 18.02, C.C.P.
❒ (1) Property acquired by theft or by any manner that makes its acquisition a penal offense;	
❒ (2) Property specifically designed, made, or adapted for or commonly used in the commission of an offense;	
❒ (3) Arms or munitions kept or prepared for purposes of insurrection or riot;	
❒ (4) Weapons prohibited by the Penal Code;	
❒ (5) Gambling devices or equipment, altered gambling equipment, or gambling paraphernalia;	

❒ (6) Obscene materials kept or prepared for commercial distribution or exhibition;	
❒ (7) A drug, controlled substance, immediate precursor, chemical precursor, or other controlled substance property, including an apparatus or paraphernalia kept, prepared, or manufactured in violation of the laws of this state;	
❒ (8) Any property whose possession is prohibited by law;	
❒ (9) Implements or instruments used in commission of a crime;	
❒ (10) Property or items, except the personal writings by the accused, constituting evidence of an offense or constituting evidence tending to show that a particular person(s) committed an offense;	See Checklist 2-6 for special rules concerning "evidentiary" warrants for mere evidence.
❒ (11) Persons;	
❒ (12) Contraband subject to forfeiture under Chapter 59, C.C.P.; or	
❒ (13) Electronic customer data held in electronic storage.	A warrant for electronic customer data can only be issued by a district judge. Art. 18B.353, C.C.P.
❒ c. Identifies the property to be seized with particularity;	Art. 18.04(2), C.C.P.
❒ d. Identifies the location or property sought, including:	Art. 18.04(2), C.C.P.
❒ (1) A specific street address; and	

❒ (2) A full description of the building and surrounding areas. If no address is provided, this description should be detailed enough to distinguish the property to be searched. In cases of a multiple unit structure, such as apartment complexes, condominiums, and storage facilities, identify the specific unit to be searched.	
❒ e. Describes the person, place, or thing to be searched, including any or all of the following:	Art. 18.04(2), C.C.P.
❒ (1) Proper name, nickname, or street name;	
❒ (2) Age;	
❒ (3) Gender;	
❒ (4) Height and weight;	
❒ (5) Identifying marks; or	
❒ (6) Ethnic origin.	
❒ 2. Date and sign the warrant.	Art. 18.04(4), C.C.P.
❒ 3. Ensure that your name is included in clearly legible handwriting or in typewritten form along with your signature.	Arts.18.04(5); 2.101, C.C.P.
❒ 4. Record the date and hour the warrant is signed on the face of the warrant.	Art. 18.07(b), C.C.P.
❒ 5. If the facts presented for the issuance of a search warrant also establish probable cause that a person has committed an offense, the search warrant may also order the arrest of that person.	This is a "combination" search and arrest warrant. Art. 18.03, C.C.P.; see *TMCEC 2024 Forms Book*: Search and Arrest Warrant.
❒ 6. With the exception of affidavits for search warrants that have been temporarily sealed, make sure a copy of all warrants and affidavits are provided to the clerk of the court for public disclosure, when executed.	Art. 15.26, C.C.P. Art. 18.01(b), C.C.P. Art. 18.011, C.C.P. See Checklist 2-11.

CHAPTER 2 SEARCH WARRANTS, ARREST WARRANTS, AND OTHER WRITS

5. The Affidavit Supporting the Arrest Warrant, Capias, or Search Warrant

Checklist 2-5	Script/Notes
❒ 1. The affidavit must establish a substantial basis for concluding that there is a "fair probability" that a search will uncover evidence of wrongdoing or that a person has committed an offense.	*Illinois v. Gates*, 462 U.S. 213 (1983).
❒ 2. The affidavit must contain facts, not mere conclusions, from which the magistrate can make an independent determination of probable cause.	Art. 18.01(b), C.C.P. See *TMCEC 2024 Forms Book*: Affidavit for Probable Cause for Arrest Warrant.
❒ a. The determination is based on the totality of the circumstances, practicality, and common sense.	
❒ b. Probable cause is a level of certainty more than mere suspicion but less than a preponderance; it is not a more-likely-than-not standard.	See *Municipal Courts and the Texas Judicial System*: Chapter 1.
❒ 3. Any reliable evidence may be considered without regard to its admissibility at trial; hearsay and police records may be considered.	
❒ 4. Do not consider any information not in the warrant affidavit.	The four-corners doctrine limits the determination of sufficient probable cause to the four corners of the affidavit. *Lagrone v. State*, 742 S.W.2d 659 (Tex. Crim. App. 1987); *Adkins v. State*, 717 S.W.2d 363 (Tex. Crim. App. 1986).
❒ a. If the applicant for a warrant has additional information, have that information included in an affidavit that is attached to the warrant.	While the four-corners rule has been consistently applied to search warrants, its application to arrest warrants is less strict, especially with recent changes in the law allowing an oath to be made before a magistrate electronically. See "Rounding the Corners: Criminal Application of the Four-Corners Rule," *The Recorder* (June 2012).

❒ b. For search warrants submitted by electronic means, the magistrate may consider additional testimony or exhibits.

Magistrates who consider additional information will have additional responsibilities under Art. 18.01(b-1), C.C.P. See Checklist 2-10.

❒ 5. Determine whether the source of the information in the affidavit is reliable.

❒ a. The affiant is presumed to be honest (because of the oath).

❒ b. A named victim, eyewitness, or citizen informant who reports a crime is presumed reliable.

❒c. An unnamed informant's reliability may be shown by:

❒ (1) Recitation of lack of criminal record, good reputation in the community for general veracity, and gainful employment;

Wetherby v. State, 482 S.W.2d 852 (Tex. Crim. App. 1972).

❒ (2) Corroboration of details provided by the informant;

❒ (3) Recitation that informant has provided true, correct, and reliable information in the past; or

❒ (4) Declaration by informant against penal interest.

❒ 6. Determine the basis of the source's knowledge and whether the information from the source is credible.

❒ a. Is the information first-hand and the result of direct observation of the facts rather than an opinion or a conclusion?

❒ b. Is the information hearsay and, if so, is there an indication of its reliability?

❒ c. Is the information corroborated by other sources or independent investigation?

❒ d. Are there details not commonly known that suggest inside information by the informant?	
❒ e. In the case of a search warrant, does it state the time when the information was acquired?	*Schmidt v. State*, 659 S.W.2d 420 (Tex. Crim. App. 1983). Stale information will not support a conclusion that property is still on the premises to be searched.
❒ 7. The search warrant affidavit is generally public information after the warrant is executed and should be made available for public inspection.	Art. 18.01(b), C.C.P. See Checklist 2-12.
❒ 8. Make sure a copy of all warrants and affidavits are provided to the clerk of the court for public disclosure.	Art. 15.26, C.C.P. See Checklist 2-12.

CHAPTER 2 SEARCH WARRANTS, ARREST WARRANTS, AND OTHER WRITS

6. Search Warrants for Mere Evidence

Checklist 2-6	Script/Notes
A "mere evidence" or evidentiary search warrant is an order from the magistrate to a peace officer to search for and seize property or items, except the personal writings of an accused, that constitute evidence of an offense or tend to show a particular person committed an offense.	Art. 18.02(a)(10), C.C.P. A blood warrant is an example of a "mere evidence" search warrant. See Checklist 2-7.
❒ 1. An original mere evidence warrant may be issued by a judge of a municipal court of record or a county court judge who is a licensed attorney; a judge of a statutory county court, the Court of Criminal Appeals, or the Supreme Court.	Art. 18.01(h), C.C.P.
❒ 2. Except under the limited circumstances noted below, neither a judge of a non-record municipal court nor a justice of the peace may issue a mere evidence warrant. The exception is for counties that do not have: (1) a judge of a municipal court of record who is a licensed attorney; (2) a county judge who is a licensed attorney; or (3) a statutory county court judge.	Art. 18.01(i), C.C.P.
❒ 3. Any subsequent mere evidence warrant to search the same person, place, or thing subjected to a prior search under a mere evidence warrant may be issued only by a judge of a district court, a court of appeals, the Court of Criminal Appeals, or the Supreme Court.	Even municipal courts of record cannot issue a second mere evidence warrant. Art. 18.01(d), C.C.P.
❒ 4. Greater specificity is required in the affidavit for an evidentiary warrant than for a regular search warrant.	Art. 18.01(c), C.C.P.
❒ a. The affidavit must contain facts to establish probable cause that:	See Checklist 2-5 on probable cause.
❒ (1) A specific offense was committed;	
❒ (2) Specifically described property or items to be searched for and seized constitute evidence of the specific offense or that a particular person committed it; and	

❒ (3) The property or items constituting evidence are located at or on the particular person, place, or thing to be searched.

❒ 5. A warrant to search for "mere evidence" — as opposed to items in Article 18.02(a)(1-9) — may not be issued for the office of a: — Art. 18.01(e), C.C.P.

❒ a. Newspaper;

❒ b. News magazine; or

❒ c. Television or radio station.

❒ 6. The warrant must include, with the magistrate's signature, the magistrate's name in legible handwriting, typewritten form, or stamp print. — Art. 2.101, C.C.P.

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7. Blood Search Warrants

Checklist 2-7	Script/Notes
A blood search warrant is an order from the magistrate to a peace officer to seize a sample of a person's blood.	Arts. 18.01(j) and 18.02(a)(10), C.C.P.
❒ 1. A blood search warrant may be issued by any magistrate who is a licensed attorney if:	Art. 18.01(j), C.C.P. See *TMCEC 2024 Forms Book*: Blood Search Warrant.
❒ a. The suspect refuses to submit to a breath or blood alcohol test; and	
❒ b. Is charged with:	
❒ (1) Driving While Intoxicated;	Sec. 49.04, P.C.
❒ (2) Driving While Intoxicated with a Child Passenger;	Sec. 49.045, P.C.
❒ (3) Flying While Intoxicated;	Sec. 49.05, P.C.
❒ (4) Boating While Intoxicated;	Sec. 49.06, P.C.
❒ (5) Boating While Intoxicated with Child Passenger;	Sec. 49.061, P.C.
❒ (6) Assembling or Operating an Amusement Ride While Intoxicated;	Sec. 49.065, P.C.
❒ (7) Intoxication Assault; or	Sec. 49.07, P.C.
❒ (8) Intoxication Manslaughter.	Sec. 49.08, P.C.
❒ 2. Greater specificity is required in the affidavit for an evidentiary warrant than for a regular search warrant.	Art. 18.01(c), C.C.P. See *TMCEC 2024 Forms Book*: Affidavit for Blood Search Warrant.
❒ a. The affidavit must contain facts to establish probable cause that:	See Checklist 2-5 on probable cause.
❒ (1) A specific offense was committed;	

❒ (2) Specifically described property or items to be searched for and seized constitute evidence of the specific offense or that a particular person committed it; and

❒ (3) The property or items constituting evidence are located at or on the particular person, place, or thing to be searched.

❒ 3. A warrant issued under Art. 18.10(a)(10) to collect a blood specimen may be executed in any county adjacent to the county in which the warrant was issued and by any law enforcement officer authorized to make an arrest in the county of execution. The specimen may be removed from the county in which it was seized and returned to the county in which the warrant issued without a court order.

Arts. 18.067 and 18.10(b), C.C.P.

❒ 4. In the following circumstances, a blood search warrant is not necessary for police to obtain a blood sample:

❒ a. A suspect voluntarily agrees to submit to the drawing of a blood sample;

❒ b. A peace officer is mandated to obtain a blood sample if:

Sec. 724.012(a-1), T.C.

❒ (1) the officer arrests the person for a motor or watercraft intoxication offense;

❒ (2) the person refuses the officer's request to submit to the taking of a blood sample voluntarily;

❒ (3) the person was the operator of a motor vehicle or watercraft involved in a collision that the officer reasonably believes occurred as a result of the offense; and

❒ (4) at the time of the arrest, the officer reasonably believes that as a direct result of the collision any individual has died, will die, or has suffered serious bodily injury.

❒ c. Subject to Sec. 724.012(a-1), T.C., a police officer is mandated to obtain a breath or blood sample where a person has been arrested for a motor or watercraft intoxication offense, the person refuses the officer's request to submit to the taking of a specimen voluntarily, and

Sec. 724.012(b), T.C.

❒ (1) The person was the operator of a motor vehicle or a watercraft involved in a collision that the officer reasonably believes occurred as a result of the offense and, at the time of the arrest, the officer reasonably believes that as a direct result of the collision, an individual other than the person has suffered bodily injury and been transported to a hospital or other medical facility for treatment.

❒ (2) The offense for which the person was arrested is Driving While Intoxicated with Child Passenger or Boating While Intoxicated with Child Passenger; or

❒ (3) At the time of the arrest, the officer possesses or receives reliable information from a credible source that the person:

❒ (A) Has been previously convicted of or placed on community supervision for Driving While Intoxicated with Child Passenger, Boating While Intoxicated with Child Passenger, Intoxication Assault, or Intoxication Manslaughter; or

❒ (B) On two or more occasions, has been preciously convicted of or placed on community supervision for Driving While Intoxicated, Flying While Intoxicated, Boating While Intoxicated, or Assembling or Operating an Amusement Ride While Intoxicated.

❒ (4) A peace officer may not require the taking of a specimen under Section 724.012, T.C. unless the officer: — Sec. 724.012(e), T.C.

❒ (A) obtains a warrant directing that the specimen be taken; or

❒ (B) has probable cause to believe that exigent circumstances exist.

❒ (5) The warrant must include, with the magistrate's signature, the magistrate's name in legible handwriting, typewritten form, or stamp print. — Art. 2.101, C.C.P.

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8. Search Warrants to Photograph a Child. Art. 18.021, C.C.P.

Checklist 2-8	Script/Notes
❒ 1. The affidavit must contain the following information in addition to that normally required:	
❒ a. The allegation of one of the following specific offenses:	
❒ (1) Injury to a child;	Sec. 22.04, P.C.
❒ (2) Sexual assault of a child;	Sec. 22.011(a), P.C.
❒ (3) Aggravated sexual assault of a child; or	Sec. 22.021, P.C.
❒ (4) Continuous sexual abuse of young child or children.	Sec. 21.02, P.C.
❒ b. The name or a description of the victim;	
❒ c. A statement that evidence of the offense or evidence that a particular person committed the offense can be detected by photographing the child; and	Art. 18.01(f), C.C.P.
❒ d. A statement that the child to be located and photographed can be found at a particular place to be searched.	Art. 18.021(c), C.C.P.
❒ 2. Special conditions for the execution of the warrant are also found in Article 18.021, C.C.P.	
❒ 3. The return on the warrant shall include the exposed film.	Art. 18.021(d), C.C.P.
❒ 4. The warrant must include, with the magistrate's signature, the magistrate's name in legible handwriting, typewritten form, or stamp print.	Art. 2.101, C.C.P.

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9. Administrative Search Warrants. Art. 18.05, C.C.P.

In *Camara v. Municipal Court of the City and County of San Francisco*, 387 U.S. 523 (1967), the U.S. Supreme Court held that administrative searches trigger Fourth Amendment interests because submitting or refusing to submit may result in criminal prosecution. The Court also held that probable cause is required for issuance of a warrant for an administrative search, but the standard is lower than for issuance of a search warrant for fruits or instrumentalities of crime. In issuing administrative search warrants, magistrates should distinguish their function from that of issuing a search warrant. Administrative search warrants are for the inspection of premises, not the seizure of items. Administrative search warrants relate to preliminary inspection powers and should not be confused with the power of municipal courts of record to issue destruction orders to enforce provisions of Chapter 214, L.G.C., and Chapter 683, T.C. See Sec. 30.00005, G.C.

Checklist 2-9	Script/Notes
❒ 1. The warrant is issued to:	Art. 18.05(a), C.C.P.
❒ a. One of the following only:	
❒ (1) Fire marshal;	
❒ (2) Health officer; or	
❒ (3) Code enforcement officer.	
❒ b. Of any county, city, other political subdivision, or the State.	
❒ 2. For the inspection of any specified premises to determine the presence of a(n):	See *TMCEC 2024 Forms Book*: Search Warrant for Fire, Health, and Code Inspections.
❒ a. Fire hazard;	
❒ b. Health hazard;	
❒ c. Unsafe building condition; or	
❒ d. Violation of any:	
❒ (1) Fire, health, or building regulation;	
❒ (2) Statute; or	
❒ (3) Ordinance.	

❒ 3. If the officer is from a city, county, or other political subdivision, verify that he or she is designated as a person authorized to be issued the warrant.	Art. 18.05(d), C.C.P.
❒ 4. If the officer is from a political subdivision other than a city or county, verify that the political subdivision routinely inspects premises to determine whether there is a fire or health hazard, unsafe building condition, or a violation of fire, health or building regulations, statutes, or ordinances.	Art. 18.05(d), C.C.P.
❒ 5. A warrant may not be issued under Article 18.05, C.C.P., to a code enforcement official of a county with a population of 3.3 million or more for the purpose of allowing the inspection of specified premises to determine the presence of an unsafe building condition or a violation of a building regulation, statute, or ordinance.	Art. 18.05(e), C.C.P.
❒ 6. The affidavit must demonstrate probable cause to believe that the specifically named violation or hazardous condition is present in the premises to be inspected.	
❒ 7. The magistrate may consider the:	Art. 18.05(c), C.C.P.
❒ a. Specific knowledge of the affiant;	
❒ b. Age and general condition of the premises;	
❒ c. Previous violations or hazards found present in the premises;	
❒ d. Type of premises;	
❒ e. Purposes for which the premises are used; and	
❒ f. Presence of hazards or violations in, and the general condition of premises near, the premises sought to be inspected.	
❒ 8. The warrant must include, with the magistrate's signature, the magistrate's name in legible handwriting, typewritten form, or stamp print.	Art. 2.101, C.C.P.

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10. Search Warrants and Affidavits Submitted by Reliable Electronic Means

In *Clay v. State*, 391 S.W.3d 94 (Tex. Crim. App 2013), the Court held, in light of the specific facts of the case, that the telephonic administration of an oath for a search warrant did not run afoul of Article 18.01. Judge Meyers, dissenting, stated that only the Legislature could expand the statute. See "Case Law and Attorney General Opinion Update" *The Recorder* (November 2013). It appears that the Legislature valued Judge Meyers' dissent. During the 84th Legislature, subsection (b-1) was added to Article 18.01 of the Code of Criminal Procedure authorizing communication of information supporting the issuance of a search warrant by telephone or any other reliable electronic means. Additionally, a magistrate may examine, under oath, an applicant or another person on whose testimony the application is based.

Checklist 2-10	Script/Notes
If a search warrant as submitted fails to establish probable cause, information communicated by telephone or other reliable electronic means may be considered by the magistrate in determining whether to issue a search warrant.	Considering additional information using Art. 18.01(b-1), C.C.P., is not required under the law. Alternately, the magistrate may simply deny the issuance of the warrant.
❒ 1. If the applicant, and any person on whose testimony the application is based, is available to testify regarding additional facts, the magistrate may examine the person(s). If the magistrate chooses to do so, the magistrate shall:	Art. 18.01(b-1)(1), C.C.P.
❒ a. Place the applicant, or person on whose testimony the application is based, under oath;	
❒ b. Acknowledge any attestation in writing on the affidavit if the applicant, or person on whose testimony the application is based, attests to the contents of the affidavit;	Art. 18.01(b-1)(2), C.C.P.
❒ c. Ensure that any testimony is recorded verbatim by an electronic recording device, by a court reporter, or in writing;	Art. 18.01(b-1)(2)(A), C.C.P.
❒ d. Ensure that any electronic recording, court reporter's notes, exhibits and any other written record are transcribed, certified as accurate and properly preserved; and	Art. 18.01(b-1)(2)(B), C.C.P.
❒ e. Sign, certify the accuracy of, and preserve any other record; and ensure that the exhibits are preserved.	Art. 18.01 (b-1)(2)(D), C.C.P.

❒ 2. The applicant for a search warrant for which additional information is being considered, shall:	Art. 18.01 (b-1)(3), C.C.P.
❒ a. Prepare a proposed duplicate original of the warrant; and	
❒ b. Read or transmit the contents of the duplicate original warrant verbatim to the magistrate.	
❒ 3. The magistrate must ensure that the contents of a proposed duplicate original warrant as read or otherwise transmitted verbatim to the magistrate are entered into an original warrant, which then may serve as the original search warrant.	Art. 18.01 (b-1)(3), C.C.P.
❒ 4. A magistrate that modifies a warrant for which information is provided under Art. 18.01(b-1) shall:	Art. 18.01 (b-1)(4), C.C.P.
❒ a. Transmit the modified version of the warrant to the applicant by reliable electronic means; or	
❒ b. File the modified original and direct the applicant to modify the proposed duplicate original accordingly.	
❒ 5. The magistrate who issues a warrant for which information is provided under Art. 18.01(b-1) shall:	Art. 18.01 (b-1)(5), C.C.P. Evidence obtained pursuant to a search warrant for which information was provided in accordance with Section 18.01(b-1) is not subject to suppression on the ground that issuing the warrant in compliance with this subsection was unreasonable under the circumstances, absent a finding of bad faith. Art. 18.01 (b-1)(6), C.C.P.
❒ a. Sign the original documents and legibly print the magistrate's name;	Art. 2.101, C.C.P.
❒ b. Enter the date and time of issuance on the warrant; and	

❒ c. Transmit the warrant by reliable electronic means to the applicant or direct the applicant to sign and legibly print the magistrate's name and enter the date and time on the duplicate original.	Art. 2.101, C.C.P.
❒ 6. Evidence obtained pursuant to a search warrant for which information was provided in accordance with Section 18.01(b-1) is not subject to suppression on the ground that issuing the warrant in compliance with this subsection was unreasonable under the circumstances, absent a finding of bad faith.	Art. 18.01 (b-1) (6), C.C.P.

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11. Search Warrant Return and the Immediate Disposition of Seized Property

Checklist 2-11	Script/Notes
❒ 1. Review the search warrant returned and determine:	
❒ a. If the warrant was executed;	
❒ b. The manner of execution; and	
❒ c. If any articles were seized.	
❒ 2. Enter an order directing where and with whom the seized property will be kept for safekeeping.	See *TMCEC 2024 Forms Book*: Order Directing Safe Keeping of Property Taken Under a Search Warrant. Art 18.10, C.C.P.
❒ 3. Hold a hearing on any questions arising from the execution of the search warrant.	Art. 18.12, C.C.P.
❒ a. Discharge the defendant and release the property if good grounds for the issuance of the warrant are not shown.	Art. 18.13, C.C.P. This provision presumably applies only if the defendant is also arrested, perhaps under a combination arrest/search warrant.
❒ b. Retain any criminal instruments seized and order them to be held by the sheriff subject to a subsequent order as provided by Articles 18.17, 18.18, and 18.19, C.C.P., or Chapter 59, C.C.P.	
❒ 4. The property seized generally may not be removed from the county without an order approving the removal signed by a magistrate in the county in which the warrant was issued.	Art. 18.10, C.C.P. Note that a blood specimen taken under Art. 18.067, C.C.P. may be removed from the county in which it was seized and returned to the county in which the warrant was issued without a court order. Art. 18.10(b), C.C.P.
❒ 5. File the search warrant with the clerk of the court having jurisdiction of the case.	Art. 18.15, C.C.P.
❒ a. Send a record of any proceedings to the court of jurisdiction.	

❒ b. Retain a copy of all search warrants, affidavits, returns, and related documents.	
❒ 6. Make sure a copy of all warrants and affidavits are provided to the clerk of the court for public disclosure.	Art. 15.26, C.C.P. See Checklist 2-12.

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12. Public Disclosure of Arrest Warrants and Affidavits

Checklist 2-12	Script/Notes
❒ 1. Persons arrested have a right to know under what authority the arrest is made.	Art. 15.26, C.C.P.
❒ 2. The officer making the arrest need not actually have the warrant in his or her physical possession.	
❒ 3. Upon request, the defendant has the right to see the warrant and supporting affidavits as soon as possible.	
❒ 4. Warrants and supporting affidavits are public information.	
❒ 5. Unless temporarily sealed, the magistrate's clerk shall immediately, if executed, make a copy of warrants and affidavits.	Art. 18.01(b), C.C.P. An arrest warrant is executed by the arrest of the defendant. Art. 15.26, C.C.P. While "execution" is not explicitly defined with regard to search warrants, presumably it happens upon searching the place to be searched. Art. 18.06(b), C.C.P. The "magistrate's clerk" is the clerk of the court held by the judge giving the judge authority as a magistrate.
❒ a. Copies shall be available for public inspection in the clerk's office during normal business hours.	
❒ b. The clerk may charge for making copies.	
❒ c. The clerk may not charge for the right to inspect.	
❒ d. An open records request is not necessary.	
❒ e. A Rule 12 request is not necessary.	

❒ 6. An attorney representing the State in the prosecution of felonies may request a district judge or the judge of an appellate court to temporarily seal an affidavit presented under Article 18.01(b), C.C.P.

Art. 18.01(b), C.C.P.
Art. 18.011, C.C.P.

❒ a. A district or appellate judge may seal the affidavit if the prosecuting attorney establishes a compelling state interest that either: (1) public disclosure of the affidavit would jeopardize the safety of a victim, witness, or confidential informant or cause the destruction of evidence; or (2) the affidavit contains information obtained from a court-ordered wiretap that has not expired at the time the attorney representing the State requests the sealing of the affidavit.

Art. 18.011(a), C.C.P.

❒ b. The order may not prohibit the disclosure of information relating to the contents of a search warrant, return of a search warrant, or inventory of the property taken pursuant to a search warrant, or affect the right of the defendant to discover the contents of an affidavit. When the order expires, the affidavit must be unsealed.

Art. 18.011(d), C.C.P.

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13. The Capias Pro Fine

A capias pro fine is a post-judgment enforcement mechanism for unpaid fines and/or court costs. Article 45.045/45A.259 of the Code of Criminal Procedure requires judges to hold a show cause hearing to determine whether the judgment imposes an undue hardship on the defendant prior to issuing a capias pro fine. A court has discretion when making a determination of undue hardship, but Article 45.0491/45A.257 provides a list of criteria that courts are authorized to consider: Additionally, a court must recall a capias pro fine if, before the capias pro fine is executed, (1) the defendant provides notice to the justice or judge that they have difficulty paying in compliance with the judgment and a hearing is set, or (2) the defendant voluntarily appears and makes a good faith effort to resolve the capias pro fine.

The issuance of a capias pro fine authorizes an arrest, but it is neither an arrest warrant (see Checklist 2-1), nor is it a capias (see Checklist 2-2). Remember that converting a fine and/or court costs to a term of confinement when a defendant is unable to pay violates the defendant's constitutional rights. The 14th Amendment requires that defendants accused of fine-only offenses be provided "alternative means" of discharging the judgment to avoid incarceration (via time-payment plans or discharge through community service.) *Tate v. Short*, 401 U.S. 395 (1971). See "Pay or Lay: *Tate v. Short* Revisited," *The Recorder* (March 2003).

Checklist 2-13	Script/Notes
A capias pro fine is a writ: (1) issued by a court having jurisdiction of a case after judgment and sentence for unpaid fines and costs; and (2) directed to any peace officer of the State of Texas commanding the officer to arrest a person convicted of an offense and bring the arrested person before that court immediately or on a day or at a term stated in the writ.	Art. 43.015(2), C.C.P. Special rules apply to capias pro fines issued for offenses committed by those under age 17. See Checklist 13-20. See *TMCEC 2024 Forms Book*: Capias Pro Fine; *Municipal Courts and the Texas Judicial System*: Chapter 5.
❒ 1. Prior to issuing a capias pro fine for the defendant's failure to satisfy the judgment according to its terms the court must hold a hearing to determine whether the judgment imposes an undue hardship on the defendant.	Art. 45.045(a-2)/45A.259(d), C.C.P. See *TMCEC 2024 Forms Book*: Show Cause Prior to Issuing a Capias Pro Fine. Judges may allow a defendant to appear by telephone or videoconference if a personal appearance would impose an undue hardship. Arts. 45.0201/45A.260 and 45.0445/45A.258, C.C.P.
❒ 2. A court has discretion when making a determination of undue hardship, but is authorized to consider:	Art. 45.0491/45A.257, C.C.P.
❒ a. Significant physical or mental impairment or disability;	

	❒ b. Pregnancy and childbirth;	
	❒ c. Substantial family commitments or responsibilities, including child or dependent care;	
	❒ d. Work responsibilities and hours;	
	❒ e. Transportation limitations;	
	❒ f. Homelessness or housing insecurity; and	
	❒ g. Any other factor the court determines relevant.	
❒ 3.	At the hearing:	Art. 45.045(a-3)/45A.259(e), C.C.P.
	❒ a. If the judge finds the judgment to impose an undue hardship, the judge must determine how the fine and costs should be satisfied.	
	❒ b. If a justice or judge determines that the judgment does not impose an undue hardship, the judge must order the defendant to comply with the judgment not later than the 30th day after the determination is made.	Art. 45.045(a-4)/45A.259(f), C.C.P.
❒ 4.	The court may issue a capias pro fine only if the defendant fails to:	Art. 45.045(a-2)/45A.259(d), C.C.P. See *TMCEC 2024 Forms Book*: Clerk's Affidavit for Capias Pro Fine.
	❒ a. Appear at the show cause hearing; or	
	❒ b. Comply with an order issued at a show cause hearing.	
❒ 5.	A capias pro fine may be issued in electronic form.	Art. 43.021, C.C.P.
❒ 6.	A capias pro fine shall recite the judgment and sentence and command the peace officer to immediately bring the arrested person to court.	Arts. 43.05(a), C.C.P. and 43.045(a), C.C.P.
❒ 7.	A court must recall a capias pro fine if, before the capias pro fine is executed, the defendant:	Art. 45.045(a-5)/45A.259(g), C.C.P.

❒ a. Provides notice to the justice or judge that they have difficulty paying in compliance with the judgment and a reconsideration hearing is set, or

This reconsideration hearing was created by the Legislature in 2019, and judges may allow a defendant to appear by telephone or videoconference if a personal appearance would impose an undue hardship. Arts. 45.0201/45A.260 and 45.0445/45A.258, C.C.P.

❒ b. Voluntarily appears and makes a good faith effort to resolve the capias pro fine.

❒ 8. A capias pro fine authorizes a peace officer to place the defendant in jail until the business day following the date of the defendant's arrest if the defendant cannot be brought before the court immediately.

Art. 43.045(a), C.C.P.

❒ 9. If the court that issued the capias pro fine is unavailable, the arresting officer may take the defendant to one of the following locations in lieu of placing the defendant in jail:

Art. 45.045(a-1)/45A.259(c), C.C.P.

❒ a. if the court that issued the capias pro fine was a justice of the peace, to a justice of the peace or county criminal law magistrate court with jurisdiction over Class C misdemeanors that is located within the same county; or

❒ b. if the court that issued the capias pro fine was a municipal court, to a municipal court judge that is located within the same city.

Most municipal courts are unified, but state law does allow for the creation of multiple municipal courts. Capias pro fine commitment hearings may be heard at any court (or by any judge) in the city.

❒ 10. A capias pro fine may be issued to any county in the State and shall be executed as in other cases, but no bail shall be taken.

Art. 43.06, C.C.P.

❒ 11. A capias pro fine may issue simultaneously with civil enforcement of the judgment (i.e., execution).

Arts. 43.07 and 45.047/45A.263, C.C.P.

❒ 12. When a judgment and sentence have been entered against a defendant and the defendant defaults in the discharge of the judgment, the judge may order the defendant confined in jail until discharged by law if the judge at a hearing makes a written determination that either:

Art. 45.046(a)/45A.261(a), C.C.P. See *TMCEC 2024 Forms Book*: Order of Commitment; Judgment/ Jail Credit Addendum.

❒ a. The defendant is not indigent and has failed to make a good faith effort to discharge the fine or costs; or

❒ b. The defendant is indigent and:

❒ (1) has failed to make a good faith effort to discharge the fine or costs under Article 45.049/45A.254, C.C.P. (community service); and

Note: Article 45.0491/45A.257, C.C.P., authorizes the waiver of fines and costs if the defendant defaults in payment and the court determines that (1) the defendant is indigent and (2) the performance of community service would constitute an undue hardship on the defendant.

❒ (2) could have discharged the fine or costs under Article 45.049/45A.254, C.C.P., (community service) without experiencing any undue hardship.

❒ 13. A certified copy of the judgment, sentence, and order is sufficient to authorize confinement.

Art. 45.046(b)/45A.261(b), C.C.P.

❒ 14. The court should set out a period of time between eight and 24 hours as the period the defendant must remain in jail to satisfy not less than $150 of the fine and costs owed.

Art. 45.048/45A.262, C.C.P. Jail credit for time served before the judgment must be credited to each case concurrently. Post-judgment credit can be ordered to be served consecutively (or stacked) by the court if all cases with which the fine is to be treated consecutively are identified in the order. *Ex parte Hannington*, 832 S.W.2d 355 (Tex. Crim App. 1992); Tex. Atty. Gen. Op. JC-0393 (2001); *Ex parte Minjares*, 582 S.W.2d 105 (Tex. Crim. App. 1978).

CHAPTER 3 PRO SE DEFENDANTS AND DEFENDANTS REPRESENTED BY COUNSEL

Defendants in municipal court have constitutional and statutory rights to the assistance of counsel. However, in municipal court, even indigent defendants do not have the right to a court-appointed attorney, except where the "interests of justice" require, per Art. 1.051(c), C.C.P. (For more information on "interests of justice" appointments, see, "The Oversimplification of the Assistance of Counsel in Class C Misdemeanors in Texas," *The Recorder* (January 2009)). Most defendants accused of fine-only offenses appear in court pro se (unrepresented by counsel). This fact poses problems in ensuring that defendants are treated fairly. A court should have procedures for communicating with pro se defendants in two settings: (1) outside the courtroom; and (2) in the courtroom during hearings.

1. Communicating with Pro Se Defendants out of Court

Checklist 3-1	Script/Notes
❒ 1. Develop procedures and standing orders for the processing of walk-in defendants by support personnel.	For a more complete discussion of a criminal defendant's rights, see *Municipal Courts and the Texas Judicial System*: Chapter 4.
❒ a. Give walk-in defendants information on court proceedings:	
❒ (1) Pay special attention to the right to a jury trial and the right to counsel; and	See Chapter 4.
❒ (2) Be aware that special procedures apply when dealing with a juvenile.	See Chapter 13.
❒ 2. Instruct support personnel not to give legal advice. They may inform individuals of the procedures, but may not suggest or recommend a particular course of action.	Court support personnel may not engage in the unauthorized practice of law. Sec. 81.101, G.C.
❒ 3. When a guilty plea is processed or a fine is paid, the clerk should verify that it is being done by the defendant or person authorized to act for the defendant.	A guilty plea is void when it is not entered by or authorized by the defendant. *Ex parte Super*, 175 S.W. 697 (Tex. Crim. App. 1915).

CHAPTER 3 PRO SE DEFENDANTS AND DEFENDANTS REPRESENTED BY COUNSEL

The majority of defendants in municipal courts do not retain counsel, and instead represent themselves in court proceedings. Though pro se defendants maintain the right to litigate their own cases, they often lack a proper understanding of court procedures and decorum. A defendant who elects to represent himself or herself cannot complain of the lack of effective assistance of counsel. The rules of evidence, procedure, and substantive law will be applied the same to all parties in a criminal trial whether that party is represented by counsel or appearing pro se. *Williams v. State*, 549 S.W.2d 183 (Tex. Crim. App. 1977).

While no special treatment is required for pro se defendants, judges and court personnel can efficiently facilitate the court's docket by informing pro se defendants of their rights in court and by clearly explaining the court's expectations for maintaining order and decorum.

2. Communicating with Pro Se Defendants in Court Proceedings

Checklist 3-2	Script/Notes
❒ 1. Remind the defendant that conversations with the judge are "court" proceedings.	See Chapter 4 in this book for procedures regarding appearances.
❒ 2. Emphasize the right to retain counsel. Reasonable accommodations (by resetting appearance dates and/or granting continuances) should be provided to defendants who appear in court pro se but who after being advised of their right to counsel wish to seek the assistance of counsel.	A warning and waiver of the constitutional right to retain counsel is required. *Warr v. State*, 591 S.W.2d 832 (Tex. Crim. App. 1979).
❒ 3. If the defendant chooses to represent himself or herself, inquire whether the defendant understands the consequences of proceeding without counsel.	
❒ a. There is no right to lay representation (except self-representation).	*U.S. v. Wilhelm*, 570 F.2d 461 (3d Cir. 1978).
❒ b. Allowing a lay person to act as an attorney representing anyone other than himself or herself permits unauthorized practice of law. This includes allowing a parent to represent his or her child.	
❒ 4. The judge should be aware of the defendant's ignorance of legal procedure and rules of evidence in maintaining order and decorum.	See *Municipal Courts and the Texas Judicial System*: Chapter 1.
❒ 5. In the interests of fairness and order, the court may inform the defendant of:	
❒ a. General procedures and steps in the trial;	

❒ b. Voir dire and jury selection;

❒ c. Options concerning opening statements;

❒ d. Right to confront and examine prosecution witnesses;

❒ e. Right to present defenses and defense evidence;

❒ f. Right to testify on own behalf;

❒ g. Right to request jury instructions;

❒ h. Options concerning closing argument; and

❒ i. Right to appeal.

❒ 6. If the defendant wishes to testify, inform him or her of the privilege against self-incrimination and obtain waiver.

Warning to testifying defendant: "You have the constitutional right under the 5th Amendment not to testify and the fact that you do not testify cannot be held against you in any way. The prosecution is required to prove your guilt beyond a reasonable doubt, and you are not obliged to present any evidence. If you do testify, you may be cross-examined, that is, asked questions by the prosecution on any matter relevant to any issue in the case. Do you understand that?"

[If the defendant says "yes":] "Then, understanding that, it is your desire to testify on your own behalf?" See *Municipal Courts and the Texas Judicial System*: Chapter 4 for a more complete discussion of a defendant's 5th Amendment rights.

❒ 7. The judge must maintain control of proceedings.

❒ a. If the defendant is unruly and disruptive, consider warning, restraint, or threat of contempt.

Illinois v. Allen, 397 U.S. 337 (1970). See Checklists 14-1 and 16-5.

CHAPTER 3 PRO SE DEFENDANTS AND DEFENDANTS REPRESENTED BY COUNSEL

3. Defendants Represented by Counsel

While most defendants appear pro se in municipal court, the number of defendants retaining counsel continues to increase. Judges should welcome representation by counsel and foster an environment for conducting the business of the court in accordance with the legal and ethical guidelines applicable to both the bench and the bar. The following are basic guidelines that municipal judges should keep in mind in communicating with attorneys.

Checklist 3-3	Script/Notes
❒ 1. In municipal court, a defendant has the right to appear by counsel as in all other cases.	Art. 45.020/45A.160, C.C.P.
❒ 2. In order to represent a defendant in any Texas court, an attorney must be licensed to practice law.	Individuals who engage in the unauthorized practice of law may be sued civilly in an effort to prohibit future occurrences. For additional information visit the Texas Unauthorized Practice of Law Committee at www.txuplc.org.
❒ a. Upon proof of certain legal requirements and a motion by the Texas Board of Law Examiners, a person may be duly admitted and licensed by the Texas Supreme Court as an attorney and counselor at law and able to practice "in all Courts of the State of Texas."	To see if an attorney is licensed and active to practice law in Texas (and to determine whether the attorney has a disciplinary history) visit the State Bar of Texas at www.texasbar.com.
❒ b. Attorneys licensed to practice law in other states may seek *pro hac vice* admission to practice in Texas courts. This requires the attorney to complete an application provided by the Texas Board of Law Examiners, pay fees, and file a sworn motion pursuant to Rule XIX of the Rules Governing Admission to the Bar of Texas in the court where the attorney requests permission to participate in representation. The decision to grant or deny such a motion is not made by the court in which the application is filed–rather by the Board of Law Examiners.	For more information on *pro hac vice* admission, visit the Texas Board of Law Examiners at www.ble.texas.gov.

❒ 3. Judges should be just as familiar with the Texas Disciplinary Rules of Professional Conduct (setting ethical guidelines for lawyer) as they are with the Texas Code of Judicial Conduct. Lawyers are obligated to conduct themselves in a manner consistent with the Disciplinary Rules of Professional Conduct in all Texas courts.

For more information, visit the Texas Center for Legal Ethics and Professionalism at www.legalethicstexas.com.

❒ 4. Attorneys engaged in misconduct cast discredit on the legal profession. Judges have a special duty to maintain the integrity of the legal system. Hence judges also have a duty to prevent attorney misconduct. A judge who receives information clearly establishing that a lawyer has committed a violation of the Rules of Professional Disciplinary Conduct has an ethical obligation to "take appropriate action." "A judge having knowledge that a lawyer has committed a violation of the Rules of Professional Disciplinary Conduct that raises a substantial question as to a lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects shall inform the Office of the General Counsel of the State Bar of Texas or take other appropriate action."

Canon 3(D)(2), *Code of Judicial Conduct.*

❒ 5. Courts should consider requiring a letter of representation be on file with the court in every case where the defendant is represented by counsel. Such letters become part of the court's file. A letter of representation is important for the following reasons:

The act of an attorney standing for or acting on behalf of a client is called "representation." It is customary for defense attorneys to file a letter of representation informing both the court and the prosecution that a particular lawyer or law firm is representing the defendant in a specified matter. *Black's Law Dictionary*

- ❒ a. It tells the court the scope of representation;
- ❒ b. It provides the court with the attorney's contact information that will be used in all subsequent communications from the court;
- ❒ c. Prosecutors are not allowed to directly communicate with defendants represented by counsel. Rather, the prosecutor must communicate with the defendant through counsel; and

Rule 4.02, Texas Disciplinary Rules of Professional Conduct.

❒ d. It may become important documentary evidence in the event defendant counsel fails to appear in court or commits other violations of the Texas Disciplinary Rules of Professional Conduct.

❒ 6. The court may require the attorney to acknowledge the existence of any local rules (rules of decorum or guidelines for practicing before the court).

See, "An Introduction to Model Rules of Court Decorum" *Municipal Court Recorder* (Summer 2002) at 12.

CHAPTER 4 APPEARANCE AND PLEAS

1. Appearance

This checklist is a model for the court to follow during the first appearance by a defendant before the court. This process is often–though not quite properly–referred to as an "arraignment." The court must take a plea before conversation about the case or sentencing should take place. When the defendant pleads guilty or nolo contendere, this chapter must be read in connection with Chapter 5–Pleas and DSC. When the defendant pleads not guilty, the procedures in Chapters 6 and 7 follow. In either event, the procedures in Chapter 8 are necessary in entering a judgment of guilt or acquittal. Chapters 4 through 8 should be used together as a series of procedures used in resolving cases.

Checklist 4-1	Script/Notes
❒ 1. If the defendant is appearing before you after being issued a citation, you shall perform the magistrate duties imposed by Art. 15.17, C.C.P., in the same manner as if the person had been arrested and brought before you as a magistrate.	Art. 15.17(g), C.C.P. See Checklist 1-1.
❒ 2. A judge may not accept a plea of guilty or nolo contendere in open court unless it appears that the defendant is mentally competent, and the plea is free and voluntary.	Art.45.0241/45A.153, C.C.P. See also *Drope v. Missouri,* 420 U.S. 162 (1975). See TMCEC *Municipal Courts and the Texas Judicial System*: Chapter 8.
❒ 3. Ensure that the plea is made by the defendant or the defendant's attorney.	"Court Calls Case # _____, *State v.* (*Defendant*)."
❒ a. If the plea is made by any other person (parent, friend, spouse, etc.), do not accept the plea.	"Are you (*Defendant*)?"
❒ b. Because this is a criminal case, inform the person that the law only allows the defendant or his or her attorney to enter a plea.	See *TMCEC 2024 Forms Book*: Plea Form: In Person.
❒ c. If the correct person is not before you, reset the case for defendant to appear.	
❒ 4. The defendant is entitled to a copy of the complaint at least one day before any criminal proceeding, unless the defendant waives that right.	Art. 1.05, C.C.P. See *TMCEC 2024 Forms Book*: Waiver of Right to be Prosecuted by Complaint.

❒ a. Ask the defendant if he or she understands the charge.

"You are charged with _____, a misdemeanor punishable by a fine. Do you have a copy of the citation or complaint? Do you understand the nature of the charges against you?"

❒ b. Give the defendant a copy of the complaint at least one day before trial, unless the defendant waives that right.

Art. 45.018(b)/45A.101, C.C.P.

❒ 5. Admonishments:

For a greater discussion of an accused's rights, see TMCEC *Municipal Courts and the Texas Judicial System:* Chapter 4.

❒ a. Explain the range of punishment for the offenses before the court.

"_____, is a misdemeanor punishable by a fine of not more than $_____ and not less than $_____ (*if offense has a minimum fine*) and by _____ (*if offense bears sanctions in addition to a fine*)."

❒ b. Explain defendant's right to jury trial.

"You have the right to have a jury determine your guilt or innocence on this charge. Do you wish to have a jury trial, or do you waive a jury and wish to proceed before the court without a jury?"

❒ c. Explain defendant's right to counsel.

"You have a right to be represented by an attorney in this case. Since the maximum penalty in this case does not include time in jail, you do not have a right under the law—neither the Texas nor U.S. Constitutions—to have an attorney appointed. You have the right to hire legal counsel. An attorney could advise you and help you make important decisions concerning the consequences and alternatives in this case. An attorney would be familiar with trial procedures and rules of

	evidence. In this trial, you will be held to the same legal standards as if you were an attorney. Do you still wish to proceed representing yourself?"
❒ d. Despite the general rule that indigent defendants accused of fine-only offenses are not statutorily entitled to the appointment of counsel, the exception is if "the interests of justice require representation." This is a discretionary determination made by the judge.	Art. 1.051(c), C.C.P. Texas case law provides little guidance to such appointments. Criminal law scholars have opined, "Whether or not this is the case should be determined largely on the basis of whether the case presents defensive possibilities that are most likely to be adequately presented to the court only by an attorney. If this is the case, an attorney can and must be appointed regardless of the minor nature of the offense." 42 Dix & Schmolesky, *Texas Practice: Criminal Practice & Procedure*, Sec. 29.32 (3d ed. 2011).
❒ e. If represented by counsel, make sure the attorney's name, address, and telephone number are noted on the docket.	
❒ f. If the defendant is not represented by counsel, the defendant must waive the right to retain counsel.	A warning and waiver of the constitutional right to retain counsel is required. See Chapter 3 concerning lay representation.
❒ g. If the defendant wishes to retain counsel, reset the case for the defendant to have time to do so. If not, proceed.	See *TMCEC 2024 Forms Book*: Non-Jury Trial Setting Form: Defendant Appears by Mail; and Non-Jury Trial Setting Form: Defendant Appears in Person.
❒ h. Explain defendant's privilege against self-incrimination.	"You are not required to testify and no one may make you testify. If you decide not to testify, I will not use the fact that you did not testify as evidence against you. Choosing to remain silent cannot be used against you."

❒ i. Before accepting a plea of guilty or a plea of nolo contendere by a defendant charged with a misdemeanor involving family violence, the court shall admonish the defendant orally or in writing by using the statement to the right, verbatim.

"If you are convicted of a misdemeanor offense involving violence where you are or were a spouse, intimate partner, parent, or guardian of the victim or are or were involved in another, similar relationship with the victim, it may be unlawful for you to possess or purchase a firearm, including a handgun or long gun, or ammunition, pursuant to federal law under 18 U.S.C. Section 922(g)(9) or Section 46.04(b), Texas Penal Code. If you have any questions whether these laws make it illegal for you to possess or purchase a firearm, you should consult an attorney."

❒ 6. If the defendant pleads not guilty:

❒ a. Set the case for a pretrial hearing and/or trial; and

❒ b. Provide the defendant with a copy of the setting order and docket the case.

While bail is not required, a specific rule applies to bail set by municipal and justice courts after charges have been filed. Under that rule, judges may only require a personal bond, unless certain determinations have been made. Art. 45.016/45A.107, C.C.P. See Checklist 1-5 (steps 11-13).

CHAPTER 4 APPEARANCE AND PLEAS

2. Pleas Made by Mail

Under Art. 27.14(c), C.C.P., a payment received without a plea constitutes a finding of guilty in open court as though a plea of nolo contendere and a written waiver of jury trial had been received. Municipal court clerks usually collect and process these pleas and payments. If a plea and waiver of jury trial and a request for the amount of fine and/or appeal bond is received, the court must notify the defendant either in person or by regular mail of the amount of fine or costs; information regarding the alternatives to the full payment of any fine or costs assessed, if the defendant is unable to pay the full amount; and, if requested, the amount of an appeal bond that the court will accept. Defendants have up to 31 days from the date of receiving the notice to pay the fine and costs or file an appeal bond with the court. A defendant charged with a misdemeanor involving family violence may not mail or deliver in person a plea of guilty or nolo contendere; this plea must be made in open court. Art. 27.14(b), C.C.P.

Judges should instruct clerks to prepare judgments on all the pleas, waivers of jury trial, and payments offered to the courts. An offer to pay a fine and costs is not a conviction until the judge accepts the plea, waiver of jury trial, and/or payment of the fine, and enters judgment.

Checklist 4-2		Script/Notes
❒ 1.	If the court receives payment by mail, **without a plea**:	Art. 27.14(b) and (c), C.C.P.
❒ a.	Determine that the defendant is at least 17 years of age or is not a minor defendant charged with an Alcoholic Beverage Code offense or a tobacco offense under the Health and Safety Code.	Article 27.14, C.C.P., allows adult defendants charged in municipal and justice courts with fine-only offenses to mail or deliver in person to the court a plea of guilty or nolo contendere (no contest) and a written waiver of jury trial.
❒ b.	Determine that the offense is punishable by fine-only and that no other sanction (such as counseling, community service, or DL suspension) is mandatory.	
❒ c.	Determine that the amount received is sufficient to cover the minimum lawful fine, court costs, and any other fees.	Art. 27.14(c), C.C.P.
❒ d.	Determine that the amount received is not more than the maximum lawful fine plus court costs and any other fees.	
❒ e.	Determine that the payment is in an amount acceptable to you.	Art. 27.14(c), C.C.P.

❒ f. Determine that the payment is from the defendant, from defendant's attorney, or made with the defendant's agreement to be found guilty.

❒ g. If the above requirements are met, accept the plea, waiver of jury trial, and/or payment and sign a judgment of guilty.

See *TMCEC 2024 Forms Book*: Plea Form: By Mail or Delivery to Court; and Judgment: Jury Waived – Guilty.

A written acknowledgement of the disclosure, receipt, and list of any discovery provided to the defendant must be signed by each party before a plea of guilty or nolo contendre is accepted. It is unclear if an acknowledgment is necessary when no discovery was requested, ordered, or provided. Art. 39.14(j), C.C.P.

❒ h. If the above requirements are not met, return the payment to the defendant or defense attorney, inform them of the acceptable fine amount and of any other applicable sanctions, and set the case for trial.

❒ 2. If the defendant does not deliver a fine, but delivers a plea or request for bond amount, determine if defendant has:

Art. 27.14(b), C.C.P.

❒ a. Pled guilty or nolo contendere.

❒ b. Requested in writing that the court notify defendant of the amount of an appeal bond the court will approve.

❒ c. Waived a jury trial in writing.

Art. 45.025/45A.155, C.C.P.

❒ d. Provided the court with defendant's or defense attorney's address.

❒ e. Delivered the request, plea, jury waiver, and address by defendant's appearance date.

❒ f. Extended his or her time by the "Mailbox Rule." If the defendant mailed the plea and jury waiver on or before the due date of appearance, and these documents are received by the clerk not later than 10 days after the due date, the plea and waiver are properly filed. Make sure the clerk keeps the envelope with the postmark.	Art. 45.013/45A.053, C.C.P. "Day" does not include Saturday, Sunday, or legal holidays. This rule increases the amount of time allowed to file a document when the document is filed by mail.
❒ g. Determine that the offense is punishable by fine-only and that no other sanctions (such as counseling, community service, or DL suspension) are mandatory and that defendant is at least 17 years of age.	
❒ h. Determine that the defendant is not charged with a misdemeanor involving family violence, as defined by Sec. 71.004, F.C.	Any plea to a family violence case must be made in open court. Art. 27.14(b), C.C.P. Art. 66.252, C.C.P., requires family violence defendants to be fingerprinted. This fingerprinting could occur in open court at the time of the plea. The court clerk, on disposition, must report the person's citation or arrest and the disposition of the case to DPS using a uniform incident fingerprint card or an electronic methodology approved by DPS. The arresting law enforcement agency is charged with preparing the fingerprint card, but with Class C family violence cases, it is possible that a defendant was never arrested. In this situation, the judge may order a law enforcement officer to use a uniform incident fingerprint card to take the defendant's fingerprints.

❒ i. If the above are done, notify defendant/ defense attorney—either in person or by certified mail return receipt requested—of the amount of the fine assessed and the amount of the appeal bond.

See *TMCEC 2024 Forms Book*: Notice to Defendant Following Plea by Mail. Defendant must pay fine or post the appeal bond by the 31st day after receiving the notice. Remember that the bond is timely filed if postmarked before the 31st day and received within 10 days. Art. 45.013/45A.053, C.C.P.

❒ 3. If the defendant mails a plea of not guilty to the court, the plea should be processed in the same way as a plea of not guilty made in open court.

Article 27.16(b), C.C.P., allows a defendant charged with a misdemeanor for which the maximum possible punishment is by fine-only, in lieu of entering a plea in open court, to mail to the court a plea of not guilty.

CHAPTER 4 APPEARANCE AND PLEAS

3. Pleas in Open Court

Most of the requirements relating to acceptance of a plea are contained in Article 26.13, C.C.P. The Court of Criminal Appeals has held such statutory requirements inapplicable to misdemeanor cases. *Empy v. State*, 571 S.W.2d 526, 529 (Tex. Crim. App. 1978). Despite the increased number of direct and indirect consequences of being convicted of a Class C misdemeanor in Texas, federal due process only requires a plea of guilty in a misdemeanor be made knowingly and intelligently after being admonished as to the range of punishment. *Tatum v. State*, 861 S.W.2d 27 (Tex. App.—Houston [14th Dist.] 1993, pet. ref'd). A guilty plea is not rendered involuntary by lack of knowledge of collateral consequence (e.g., deportation), and defendants have no constitutional right to be admonished of such consequences. *State v. Jimenez*, 987 S.W.2d 886 (Tex. Crim. App. 1999).

Checklist 4-3	Script/Notes
If a defendant is charged with an offense involving family violence, the judge or justice must take the defendant's plea in open court.	Art. 45.0211/45A.151, C.C.P. Art. 66.252, C.C.P., requires family violence defendants to be fingerprinted. This fingerprinting could occur in open court at the time of the plea. The court clerk, on disposition, must report the person's citation or arrest and the disposition of the case to DPS using a uniform incident fingerprint card or an electronic methodology approved by DPS. The arresting law enforcement agency is charged with preparing the fingerprint card, but with Class C family violence cases, it is possible that a defendant was never arrested. In this situation, the judge may order a law enforcement officer to use a uniform incident fingerprint card to take the defendan't fingerprints.
"No contest" means that the defendant is neither admitting nor denying the charge but is choosing not to contest the charges in court. Within municipal court, a plea of no contest has the same legal effect as a plea of guilty.	Art. 27.02, C.C.P.
The defendant may waive a trial by jury in writing. Only when a written waiver is made can the court proceed. The decision to waive rests with the defendant. The manner, in writing, is controlled by statute.	Art. 45.025/45A.155, C.C.P.

❒ 1. Give the admonishments as required in Checklist 4-1 and request a plea.

❒ 2. If the defendant refuses to plead:

Arts. 27.16(a) and 45.024/45A.152, C.C.P. See TMCEC *Municipal Courts and the Texas Judicial System*: Chapter 8.

❒ a. Enter a plea of not guilty;

"If you will not plead, I am required by law to enter a plea of not guilty for you. I have done so. Do you want a jury trial? Or do you want to waive a jury trial and have a trial without a jury?"

❒ b. Note on docket that defendant would not plea and that a plea of not guilty was entered by the court;

❒ c. Note defendant's election of jury trial or jury waiver on docket;

❒ d. Set a case for trial, and

❒ d. Set a pretrial and trial date.

❒ e. Provide defendant with Setting Notice for Pretrial or Trial. Go to Chapters 6 and 7.

❒ 3. If defendant pleads not guilty:

"I accept a plea of not guilty. Do you wish to have a jury trial or to waive a jury trial and have a trial before the court?"

❒ a. Enter a plea of not guilty;

❒ b. Note on docket;

❒ c. Note defendant's election of jury trial or jury waiver on docket; set a pretrial and trial date; and

❒ d. Provide defendant with Setting Notice for Pretrial or Trial. Go to Chapters 6 and 7.

While bail is not required, a specific rule applies to bail set by municipal and justice courts after charges have been filed. Under that rule, judges may only require a personal bond, unless certain determinations have been made. Art. 45.016/45A.107, C.C.P. See Checklist 1-5 (steps 11-13).

❒ 4. If the defendant will not elect jury or bench trial, set case for jury trial.	"Since you will not tell me whether you want a trial with or without a jury, I am setting your case for a jury trial."
❒ 5. If the defendant is charged with an offense that is eligible for dismissal for a Driving Safety Course (DSC) pursuant to Article 45.0511/Subchapter H, Chapter 45A, C.C.P., the court must inform the defendant that DSC may be an option.	See Checklist 5-1 for DSC eligibility. Art. 45.0511(p) /45A.353, C.C.P. "You may have the right to elect to have your case dismissed for taking a Driving Safety Course or Motorcycle Operator Training Course under Article 45.0511/ Subchapter H, Chapter 45A, C.C.P. Do you wish me to further explain that option, or do you wish to elect to take a Driving Safety Course?"
❒ 6. If defendant pleads guilty or no contest without conditions, go to Step 9.	
❒ a. The most common conditional plea is a plea of guilty or no contest made with an election to take DSC. If the defendant elects DSC, go to Checklists 5-2 and 5-3.	
❒ b. Another conditional plea is a plea pursuant to a plea bargaining with the prosecutor.	
❒ (1) Advise the defendant that you, the judge, are not bound by the plea offer.	"I am not bound by the plea agreement you made with the State."
❒ (2) Inform the defendant that if you reject the offer, the plea may be withdrawn.	"If I reject the agreement, I will permit you to withdraw your plea of guilty or no contest."
❒ (3) Accept or deny the offer.	"I accept the plea agreement."
❒ (4) If rejected, permit the defendant to withdraw the plea of guilty or no contest.	"I reject the plea agreement. Do you wish to withdraw the plea of guilty or no contest and enter a plea of not guilty?"

❒ c. If the conditions are denied, inform the defendant or his or her attorney that defense must enter an unconditional plea of not guilty, guilty, or no contest.

❒ 7. If the conditions are accepted, determine if other procedures are necessary.

See Checklist 5-1 for DSC; Checklist 8-2 for deferred disposition; and Checklist 8-3 for community service and indigence.

❒ 8. Determine whether it is a plea of guilty or a plea of no contest and enter it on the court's docket.

"Do you understand that by your plea of guilty or no contest, you give up the right to contest these charges and that your plea is all of the evidence I will need to find you guilty?"

"Are you pleading guilty or no contest of your own free will? No one has threatened you or promised you anything we have not already discussed?"

A written acknowledgement of the disclosure, receipt, and list of any discovery provided to the defendant must be signed by each party before a plea of guilty or nolo contendre is accepted. It is unclear if an acknowledgment is necessary when no discovery was requested, ordered, or provided. Art. 39.14(j), C.C.P.

❒ 9. Go to Checklist 8-1 for sentencing.

CHAPTER 4 APPEARANCE AND PLEAS

4. Pleas in Jail

Accepting a plea from an arrested person who is detained in jail for an unadjudicated fine-only offense has been widely practiced in jurisdictions across Texas for some time, as this method was convenient for both the court and the defendant. However, until the passage of H.B. 2679 in 2013, the practice was neither expressly sanctioned nor prohibited.

The topic of "jail house pleas" generated a lot of discussion in recent years, and the focus intensified after the holding in *Lilly v. State*, 365 S.W.3d 321 (Tex. Crim. App. 2012). *Lilly* provided insight into how the Court of Criminal Appeals might handle an appeal challenging a jail house plea as violative of the constitutional and statutory requirements that criminal defendants, even those who are imprisoned, be afforded access to a courtroom open to the public.

Article 45.023(b)/45A.151(c), C.C.P., authorizes a justice or judge of a justice or municipal court to permit a defendant who is detained in jail for a fine-only misdemeanor to enter a plea, bringing a measure of resolution to the matter by providing a procedural glide path that balances the interests of convenience and the Sixth Amendment rights guaranteed to all criminal defendants by the U.S. Constitution.

Checklist 4-4	Script/Notes
❒ 1. If a defendant, charged with a fine-only offense, is detained in jail before trial, the judge may permit the defendant to:	Art. 45.023(b)/45A.151(c), C.C.P.
❒ a. Plead guilty or not guilty;	
❒ b. Enter a plea of nolo contendere; or	
❒ c. Enter the special plea of double jeopardy as described by Art. 27.05, C.C.P.	
❒ 2. If a defendant who is detained in jail enters a plea of guilty or nolo contendere, the justice or judge may, after complying with Article 15.17, C.C.P., and advising the defendant of the defendant's right to trial by jury, as appropriate:	Art. 45.023(c)/45A.154(a), C.C.P.
❒ a. Accept the defendant's plea;	
❒ b. Assess a fine, determine costs, and accept payment of the fine and costs;	
❒ c. Give the defendant credit for time served;	
❒ d. Determine whether the defendant is indigent; or	

❒ e. Discharge the defendant.

A written acknowledgement of the disclosure, receipt, and list of any discovery provided to the defendant must be signed by each party before a plea of guilty or nolo contendre is accepted. It is unclear if an acknowledgment is necessary when no discovery was requested, ordered, or provided. Art. 39.14(j), C.C.P.

❒ 3. Following a plea of guilty or nolo contendere entered while detained in jail, the judge shall grant a motion for new trial made not later than 10 days after the rendition of judgment and sentence, and not afterward.

Remember that the motion is timely filed if postmarked on or before the 10th day and received within 10 days. Art. 45.013 /45A.154(b), C.C.P.

CHAPTER 5 DRIVING SAFETY COURSES (DSC)

1. Eligibility for Mandatory DSC

Checklist 5-1	Script/Notes
❒ 1. To be entitled to mandatory DSC (where the court must grant DSC according to limited terms), the defendant must meet a four-point test. The elements of that test are:	The defendant must plead guilty or nolo contendere before the court orders the defendant to take DSC under Article 45.0511/45A.351, C.C.P.
❒ a. The defendant must elect DSC;	See Step 2 below.
❒ b. The election must be timely;	See Step 3 below.
❒ c. The defendant must be charged with a qualified offense; and	See Steps 4 and 5 below.
❒ d. The defendant must be qualified**.**	See Step 6 below.
❒ 2. The defendant must elect to take DSC. No special form or language appears to be necessary. That election should be coupled with a plea of guilty or nolo contendere. The defendant may make that election:	Art. 45.0511(b)(1) and (3)/ 45A.352(a)(1) and (4), C.C.P. A defendant under the age of 17 must appear and enter a plea in open court. Art. 45.0215/45A.452, C.C.P.
❒ a. In person;	
❒ b. By attorney; or	
❒ c. By certified mail.	
❒ 3. Determine whether defendant has made the election and plea in Step 2 by the answer date on the citation.	Art. 45.0511(b)(3)/45A.352(a)(4), C.C.P.
❒ a. Amount of time increased by the "Mailbox Rule."	Art. 45.013/45A.054, C.C.P. If the request for a DSC is mailed first class on or before the appearance date on the citation and received by the clerk not later than 10 business days after the due date for appearance, the request is timely filed. Make sure the clerk keeps the envelope with the postmark. "Day" does not include Saturday, Sunday, or legal holidays.

❒ b. If the defendant has not pled and elected to take a DSC by the answer date on citation, determine that the defendant was advised of his or her right to take a driving safety course.

Art. 45.0511(p) and (q)/45A.353 and 45A.354, C.C.P. Printing notice of DSC eligibility on the defendant's copy of the citation should satisfy this requirement.

❒ c. If the defendant was not advised of his or her right to a DSC, advise the defendant now and allow the defendant to enter a plea of guilty or no contest and request a DSC as if it had been timely made.

Art 45.0511(r)/45A.354(b), C.C.P.

❒ 4. A defendant age 25 or older may elect DSC for an alleged offense that

Art. 45.0511(a)/45A.351(a), C.C.P.

❒ a. Is within the jurisdiction of the municipal or justice court;

❒ b. Involves the operation of a motor vehicle; and

❒ c. Is defined by:

❒ (1) Section 472.022, T.C. (Obeying Warning Signs);

❒ (2) Subtitle C, Title 7, T.C. (Rules of the Road); or

❒ (3) Section 729.001(a)(3), T.C. (Operation of Motor Vehicle by Minor).

❒ 5. A defendant under the age of 25 may elect DSC for an alleged offense that:

Art. 45.0511(a-1)/45A.351(b), C.C.P.

❒ a. Is within the jurisdiction of the municipal or justice court;

❒ b. Involves the operation of a motor vehicle; and

❒ c. Is classified as a moving violation.

❒ 6. Article 45.0511/45A.351 does not apply to a person who holds a commercial driver's license or held a commercial driver's license when the offense was committed.

Art. 45.0511(s)/45A.351(c), C.C.P.

❒ 7. DSC is not available for certain excepted offenses:	
❒ a. Speeding 95 mph or more;	Art. 45.0511(b)(5)(A)/45A.352(a)(5)(A), C.C.P.
❒ b. Speeding 25 mph or more over the posted speed limit;	Art. 45.0511(b)(5)(B)/45A.352(a)(5)(B), C.C.P.
❒ c. Fail to remain at collision scene;	Art. 45.0511(p)(1)/45A.353(1), C.C.P.
❒ d. Duty to give information and aid;	Art. 45.0511(p)(1)/45A.353(1), C.C.P.
❒ e. Overtaking and passing a school bus;	Art. 45.0511(p)(1)/45A.353(1) C.C.P.
❒ f. Offenses committed in a construction or maintenance work zone while workers are present, except:	Art. 45.0511(p)(3)/45A.353(3), C.C.P.
❒ (1) Inspection Offenses;	Sec. 542.404(a), T.C.
❒ (2) Pedestrian Offenses; and	Sec. 542.404(a), T.C.
❒ (3) Safety Belt and Child Safety Seat Offenses.	Sec. 542.404(a), T.C.
❒ g. Serious traffic violations defined in Section 522.003(25), T.C. Serious traffic violations are convictions committed while operating a commercial motor vehicle for:	Art. 45.0511(p)(2)/45A.353(2), C.C.P.
❒ (1) Excessive speeding 15 mph or more over the posted speed limit;	Sec. 522.003(25)(A)(i), T.C.
❒ (2) Reckless driving (Class B misdemeanor);	Sec. 522.003(25)(A)(ii), T.C.
❒ (3) Violations of state and local traffic laws other than parking, weight, or vehicle defect violations, arising in connection with a fatal accident;	Sec. 522.003(25)(A)(iii), T.C.
❒ (4) Improper or erratic lane change;	Sec. 522.003(25)(A)(iv), T.C.
❒ (5) Following too closely; or	Sec. 522.003(25)(A)(v), T.C.

❒ (6) Operating a commercial motor vehicle without a proper commercial driver's license or permit.	Sec. 522.003(25(A)(vi) and (B), T.C.
❒ 8. The court may dismiss only one charge for each course.	Art. 45.0511(m)/45A.352(b), C.C.P.
❒ 9. The defendant must be qualified for Mandatory DSC.	Art. 45.0511(b)(2)/45A.352(a), C.C.P.
❒ a. The defendant must not have completed DSC under Article 45.0511/45A.351, C.C.P., in the 12 months preceding the offense.	A defendant without a Texas driver's license who is an active member or spouse or dependent child of an active member of the U.S. military must not have completed a DSC in the 12 months preceding the offense in any state. Art. 45.051(b)(2)(B)/45A.352(a)(3), C.C.P.
❒ (1) The 12 month period begins with completion of the course.	
❒ (2) The 12 month period ends on the date of the current citation.	
❒ b. The defendant must produce evidence of financial responsibility under the Texas Motor Vehicle Responsibility Act. This is most commonly done by presenting a motor vehicle insurance card.	Art. 45.0511(b)(6)/45A.352(a)(6), C.C.P.; Ch. 601, T.C.
❒ c. The defendant must produce a valid Texas driver's license or permit or be a member, spouse, or dependent child of a member of the U.S. military forces serving on active duty:	Art. 45.0511(b)(4)/45A.352(a)(2), C.C.P.
❒ (1) Requiring a Texas driver's license or permit is likely to violate the "Full Faith and Credit" provision of the U.S. Constitution. This may be remedied by the court providing a similar relief to out-of-state drivers under Article 45.051/Subchapter G, Chapter 45A, C.C.P. (deferred disposition).	Art. IV, U.S. Constitution. See Checklist 8-2.

❒ 10. Alternatives to Mandatory DSC:

❒ a. Discretionary DSC — Art. 45.0511(d)/45A.352(c), C.C.P.

❒ (1) If the defendant is not eligible for Mandatory DSC because they took a course in the 12 months preceding the citation or they failed to make a timely election, the court may still grant DSC.

❒ (2) If the court grants discretionary DSC, the procedures in Checklist 5-2 are followed, except:

❒ (3) The court may assess a fine not to exceed the maximum possible fine for the offense. — Although S.B. 346 (2019) changed the term "special expense fee" to "fine," the administrative DSC fine in this article is separate from the punitive fine that could be assessed on conviction. Art. 45.0511(f)(2) /45A.358(a)(2), C.C.P.

❒ b. The court may consider deferred disposition under Article 45.051/45A.302, C.C.P., even if a defendant is not qualified for DSC under Article 45.0511/45A.351, C.C.P. — See Checklist 8-2. The defendant may not be granted deferred disposition for a traffic offense committed in a work zone while workers are present (Sec. 472.022, T.C.) or an offense involving motor vehicle control committed by the holder of a commercial driver's license.

CHAPTER 5 DRIVING SAFETY COURSE (DSC)

2. Procedure for Granting DSC

Checklist 5-2			Script/Notes
❒ 1.	When the court accepts the conditional plea of guilty and determines that the defendant is eligible, the court should enter judgment on the plea and defer imposition of judgment.		See *TMCEC 2024 Forms Book:* Judgment: Driving Safety Course Granted; and Request for a Driving Safety Course. Art. 45.0511(c) /45A.356(a), C.C.P.
❒ 2.	Court must assess and collect all state and local court costs.		Art. 45.0511(f)/45A.358(a), C.C.P.; Sec. 133.101, L.G.C.
❒ 3.	The court must impose the following conditions:		
	❒ a.	Defer imposition of sentence for 90 days;	Art. 45.0511(c)/45A.356(a), C.C.P. Note: An order of deferral terminates any liability under a bond given for the charge. Art. 45.051(a)/45A.302(e), C.C.P.
	❒ b.	During the deferral period, require the defendant to successfully complete a driving safety course approved by the Texas Department of Licensing and Regulation or a course under the motorcycle operator training and safety program approved under Chapter 662, T.C.	Art. 45.0511(b)/45A.352(a), C.C.P.
	❒ c.	During the deferral period, present the court with a uniform certificate of completion of the driving safety course or verification of completion of the motorcycle operator training course.	Art. 45.0511(c)(1)/45A.356(a)(1), C.C.P.
	❒ d.	During the deferral period, present to the court the defendant's DPS driving record showing that the defendant had not completed an approved driving safety course or motorcycle operator training course in the 12 months preceding the date of the citation.	Art. 45.0511(c)(2)/45A.356(a)(2), C.C.P.

A judge, as an alternative to receiving the defendant's driving record, may, at the time the defendant requests a driving safety course or motorcycle operator training course, require the defendant to pay a reimbursement fee equal to the sum of the fee as established by Sec. 521.048, T.C., and the state electronic Internet portal fee for obtaining the defendant's driving record by using the state electronic Internet portal, and require DPS to provide by means of the state electronic Internet portal a copy of the defendant's driving record on request to the court "as soon as practicable." The custodian of a municipal or county treasury who receives reimbursement fees collected under this subsection is required to keep a record of the fees and, without deduction or prorating, forward the fees to the Comptroller of Public Accounts.

Art. 45.0511(c-1)/45A.359(b), C.C.P.

❒ e. During the deferral period, present to the court an affidavit stating the defendant is not taking a course and did not take a course not reflected on the driving record.

See *TMCEC 2024 Forms Book*: Affidavit for a Driving Safety Course.

❒ f. If the defendant did not have a valid Texas driver's license or permit and is a member, spouse, or dependent child of a member, of the U.S. military serving in active duty, the affidavit must state that the defendant was not taking a driving safety course or motorcycle operator course in another state on the date of request and had not completed one in the preceding 12 months from the current offense.

Art. 45.0511(c)(4)/45A.356(a)(4), C.C.P.

❒ 4. The court may require the payment of a reimbursement fee in an amount of not more than $10.

Art. 45.0511(f)(1)/45A.358(a)(1), C.C.P.

❒ a. See Step 11 of Checklist 5-1 for special instructions on discretionary DSC.

Art. 45.0511(f)(2)/45A.358(a)(2), C.C.P.

❒ b. This fee is not refundable.

Art. 45.0511(g)/45A.358(b), C.C.P.

❒ 5. If the defendant completes all of these terms during the 90 day deferral period and presents the court the required evidence, the court shall:

❒ a. Remove the judgment; — Art. 45.0511(l)/45A.356(c), C.C.P. See *TMCEC 2024 Forms Book*: Judgment: Driving Safety Course Program Granted.

❒ b. Dismiss the charge; and

❒ c. Report the date the DSC was completed to DPS. — Art. 45.0511(l)(2)/45A.356(c), C.C.P.

❒ d. That report cannot be used for any purpose including increasing insurance rates. — Art. 45.0511(n)-(o)/45A.357, C.C.P.

❒ 6. If the defendant fails to complete the terms during the 90 day deferral period, the court shall: — Art. 45.0511(i)-(k)/45A.356(e)(1) and (2), C.C.P.

❒ a. Notify the defendant in writing: — Art. 45.0511(i)/45A.356(e), C.C.P. See *TMCEC 2024 Forms Book*: Driving Safety Course: Notice to Defendant to Show Cause.

❒ (1) Mailed to the address on file with the court;

❒ (2) That the defendant failed to fulfill the orders of the court; and

❒ (3) That the defendant is required to appear at a particular place and time to show good cause why the defendant did not timely comply.

❒ b. If the defendant does not appear, enter an adjudication of guilt and impose a fine. — Art. 45.0511(j)/45A.356(f), C.C.P. See Checklist 8-1.

❒ c. If the defendant appears and does not show good cause for non-compliance, enter an adjudication of guilt and impose a fine. — Art. 45.0511(j)/45A.356(f), C.C.P.; See Checklist 8-1.

❒ d. If the defendant appears and shows good cause for non-compliance, the court may allow an extension to allow the defendant to present proof of compliance. — Art. 45.0511(k)/45A.355, C.C.P.

CHAPTER 6 PRETRIAL PROCEEDINGS

Chapter 45/45A, C.C.P., is silent on pretrial matters; accordingly, Article 28.01, C.C.P., governs pretrial matters in municipal court. Article 28.01 provides that the court may set the case for a pretrial hearing before the case is set for a trial on the merits. The court may direct the prosecutor and the defendant (and his or her attorney of record) to appear. The defendant must be present at a pretrial proceeding. In municipal courts, pretrial hearings may be held on matters regarding any pleadings of the defendant, special pleas, motions to quash, motions for continuance, motions to suppress, motions for change of venue, discovery, entrapment, and motions for the appointment of an interpreter. See Article 28.01, Sec. 1, C.C.P.

Although Article 45.031/45A.158, C.C.P., requires a prosecutor to be present to represent the State at trial, a prosecutor is not always required at pretrial proceedings. If a pretrial proceeding is held to inform the defendant about procedures, such as his or her right to have an attorney (not appointed by the court), then the prosecutor need not appear. If, however, the pretrial proceeding is held to resolve a contested issue, or when the judge will be required to hear evidence the prosecutor should be present to represent the State. The judge cannot serve as the State's attorney.

Although the court is not required to set a matter for a pretrial hearing, it is the local rule in many courts to require that the parties attend a pretrial hearing when the case has been set for a jury trial. It is also a common local rule to set cases for pretrial to allow the parties to reach a plea bargain agreement.

For more discussion on pretrial proceedings, see TMCEC *Municipal Courts and the Texas Judicial System*: Chapter 8.

1. Conducting a Hearing

Checklist 6-1		Script/Notes
❒ 1.	If a pretrial hearing has been requested by the State or the defendant or local rules require that pretrial hearing be set, the Court will set the matter for pretrial hearing.	Art. 28.01, C.C.P.
❒ 2.	If a hearing is set, notice must be given to both the municipal prosecutor and the defendant. The following matters should be heard:	Art. 28.01, Sec. 2, C.C.P.
	❒ a. Arraignment, if necessary;	See Checklist 6-2.
	❒ b. Appointment of counsel, if necessary;	See TMCEC *Municipal Courts and the Texas Judicial System*: Chapter 4 and Art.1.051(c), C.C.P.
	❒ c. Pleadings of the defendant;	
	❒ d. Special pleas, if any (such as double jeopardy);	See TMCEC *Municipal Courts and the Texas Judicial System*: Chapter 8.

❒ e. Exceptions to form or substance of the complaint (Motions to Quash);

❒ f. Motions for continuance;

❒ g. Motions to suppress evidence;

❒ h. Motions for change of venue do not apply to municipal court, unless teen court has been granted;

❒ i. Discovery;

❒ j. Entrapment; and

❒ k. Motions for appointment of interpreter.

❒ 3. Other motions (including but not limited to the election of jury punishment).

For a detailed discussion of election and jury punishment, see *The Recorder* (August 2000).

❒ 4. Notice can be made in open court if the defendant or attorney of record is present, by personal service, or in writing depending on the order of the court.

Art. 28.01, Sec. 3, C.C.P.

❒ 5. The defense must have 10 days notice of trials or pretrials in which to file motions.

Art. 28.01, Sec. 2, C.C.P.

❒ 6. Matters not raised within seven days of the pretrial hearing are waived, except by permission of the court for good cause shown.

Art. 28.01, Sec. 2, C.C.P.

❒ 7. The defendant has the right to open and close the argument on all defense pleadings presented to the court.

Art. 28.02, C.C.P.

❒ 8. Testimony should be limited to the issue contained in the motion.

❒ 9. The Rules of Evidence may not apply in all pretrial proceedings.

Arraignments are not required in misdemeanor cases punishable by fine only. See Checklist 16-2.

❒ a. The parties should be provided the opportunity to cross-examine, rebut, or argue if the other side is permitted to present evidence or argue.

❒ 10. After the judge makes a decision on the motions presented, the judge announces:

❒ a. Granted; or

❒ b. Denied.

Rulings are discussed in *Municipal Courts and the Texas Judicial System*: Chapter 2, Section I, Part C.

CHAPTER 6 PRETRIAL PROCEEDINGS

2. Arraignment

Arraignments are not required in misdemeanor cases punishable by fine only. This has historically caused confusion in municipal and justice courts because the Code of Criminal Procedure provides no proper name for a defendant's initial appearance to enter a plea in municipal or justice court. While in the most general sense of the word, the defendant's first appearance in municipal court is an arraignment, the lack of a proper name has resulted in cities using various descriptive labels (i.e., "initial appearance" and "appearance docket"). Presumably, Texas law does not classify what occurs in municipal court as an arraignment because most defendants accused of fine-only offenses have the option of entering a plea without making a physical appearance in court (i.e., entering a plea by mail pursuant to Article 27.14 or 27.16, C.C.P.) and because municipal courts are not required to comply with all of the other provisions in Chapter 26, C.C.P.

Checklist 6-2	Script/Notes
❒ 1. If the court has followed the procedures in Checklist 4-1 concerning appearance, a formal arraignment is not necessary.	Arraignments in municipal courts are not specifically required or prohibited.
❒ 2. The purpose of an arraignment is twofold:	Arts. 26.01-26.03, C.C.P.
❒ a. Fix identity of the accused; and	
❒ b. Take the plea of the accused.	
❒ 3. Arraignments are required in all felonies and misdemeanors punishable by confinement.	
❒ 4. Only a court having jurisdiction over a particular offense may arraign the defendant. For instance, a municipal judge is permitted only to arraign defendants charged with fine-only misdemeanors filed in the court where the judge presides.	If the court orders an arraignment, the court cannot refuse to accept a waiver of arraignment from an attorney representing the defendant in order to require the defendant to appear. Art. 26.011, C.C.P.
❒ a. When a magistrate administers the warnings required by Article 15.17, C.C.P., it is not an arraignment although it is sometimes improperly referred to as such.	See Checklist 1-1.

CHAPTER 6 PRETRIAL PROCEEDINGS

3. Motions for Continuance

Checklist 6-3	Script/Notes
❒ 1. The court must keep a docket in each case showing whether the trial was by bench or jury. The exact method of maintaining and storing the docket is left to the discretion of the court.	Art. 45.017/45A.053, C.C.P.
❒ 2. Motions for continuance are used by the prosecutor or defendant to postpone or continue the trial at a later setting.	Chapter 29, C.C.P., governs continuances.
❒ 3. The court may continue the case upon the written motion of either party, upon "sufficient cause shown," but only for as long as is necessary.	Art. 29.02, C.C.P.
❒ 4. The court may continue the trial on its own motion; however,	Art. 29.01, C.C.P.
❒ a. The court must continue the trial as a matter of law where the defendant has neither been arrested nor served with summons, or when insufficient time for trial exists in the term of court (an unlikely event); or	
❒ b. If a jury panel is not available, the whole docket may be continued or reset.	
❒ 5. In municipal courts of record, all motions for continuance must be in writing to be appealed.	Arts. 29.01 and 29.02, C.C.P.; see Art. 29.011, C.C.P., for religious continuance.
❒ a. Motions must be sworn to by the moving party and affidavits should be attached showing sufficient facts to justify the continuance.	Arts. 29.02 and 29.08, C.C.P., and *Montoya v. State*, 810 S.W.2d 160 (Tex. Crim. App. 1989).
❒ b. All motions for continuance must be "for sufficient cause." The motion must be in writing and state cause for continuance.	Art. 29.03, C.C.P.

❒ c. The State's first motion for continuance based on a missing witness must contain the witness's name and address, allegations of the efforts made to obtain the witness, and an assertion that the testimony is material.	Art. 29.04, C.C.P.
❒ d. Subsequent motions by the State, in addition to requirements above, must also show the facts to be established by the missing witness, that those facts are material, that the witness will be available at the next term of court, and that no other witness can testify to the same matter.	Art. 29.05, C.C.P.
❒ e. The defendant has similar requirements for both first and subsequent motions. The defendant must also show that the defendant did not cause the witness's absence and that the motion is not made for the sole purpose of a delay of trial.	Art. 29.06, C.C.P.
❒ 6. Motions may be by agreement or unopposed, subject to the court's approval. Agreed motions do not need to be argued, unless the court believes it is necessary.	Art. 29.02, C.C.P. These motions are presented in open court.
❒ a. When a hearing is conducted:	
❒ (1) The court is granted broad discretion in determining "sufficient cause."	Art. 29.02, C.C.P., and *Taylor v. State,* 612 S.W.2d 566 (Tex. Crim. App. 1981).
❒ (2) Opposing affidavits can be filed.	Art. 29.09, C.C.P.
❒ (3) The court may rule on affidavits or hear evidence or argument within its discretion.	
❒ 7. The court has broad discretion in granting or denying motions for continuance and in resetting the case once a motion is granted.	A continuance may be only for as long as is necessary. Arts. 29.02 and 29.03, C.C.P.
❒ 8. Motions for continuance during trial can only be granted if:	Art. 29.13, C.C.P.
❒ a. A surprise occurs;	

❒ b. Due diligence would not have prevented the surprise; and

❒ c. The surprise prevents a fair trial.

CHAPTER 6 PRETRIAL PROCEEDINGS

4. Motions to Dismiss the Case

Checklist 6-4	Notes
❒ 1. Ascertain that a legal issue is raised and not a defense to prosecution.	
❒ a. Pretrial motions asserting innocence or a legal defense should be considered a plea of not guilty.	
❒ 2. Motions to dismiss must be based on statutory or constitutional grounds.	
❒ a. Statutory grounds:	
❒ (1) The only statutory special plea is based on prior trial (double jeopardy).	Arts. 45.023 45.023/45A.151 and 27.05, C.C.P. A defendant who is detained in jail before trial for a fine-only offense may enter the special plea of double jeopardy while in jail.
❒ (2) A prior conviction, acquittal, mistrial, or reversal on appeal are statutory and constitutional grounds for dismissal.	
❒ (3) A prior trial finding requires that a previous trial prosecuting the same offense took place.	
❒ (4) Dismissal for statute of limitations; the charging instrument shows it was filed more than two years after the date of the commission of the offense (or three years for assault under Section 22.01 of the Penal Code).	Arts. 12.02 and 12.04, C.C.P. The day on which the offense was committed and the day on which the complaint is filed are excluded from the computation of time. Sec. 311.014, G.C.
❒ (5) The offense charged in the complaint must also be under the jurisdiction of the municipal court as set forth in Article 4.14, C.C.P., or Section 29.003, G.C.	Art. 4.14, C.C.P.; Sec. 29.003, G.C.

❒ (6) No such violation exists in statute, code, or ordinance. This kind of motion should be based on the complaint alone.

❒ b. Constitutional grounds:

U.S. Constitution, 14th Amendment. See *Municipal Courts and the Texas Judicial System*: Chapter 4 for a more complete discussion of constitutional issues.

❒ (1) The defendant's constitutional right to a speedy trial has been violated leading to a denial of due process so great as to require dismissal based on demonstrable harm to the defendant. Evaluate legal issues presented regarding speedy trial issues with care.

Speedy trial motions are not available under Article 32A.02, C.C.P., as it was declared unconstitutional and repealed by the Legislature in 2005. *Meshell v. State*, 739 S.W.2d 246 (Tex. Crim. App. 1987).

❒ 3. The State's attorney may, by permission of the court, dismiss a criminal action at any time upon filing a written statement with the setting out reasons for such dismissal, which shall be incorporated in the judgment of dismissal. No case shall be dismissed without the consent of the presiding judge.

Art. 32.02, C.C.P.

❒ 4. Dismissal is not the appropriate remedy to dispose of a case because the defendant is not competent.

See *Municipal Courts and the Texas Judicial System*: Chapter 4 for a discussion of competency.

❒ a. A judge may not accept a plea of guilty or a plea of nolo contendere from a defendant in open court unless it appears to the judge that the defendant is mentally competent and the plea is free and voluntary.

Art. 45.0241/45A.153, C.C.P.

❒ b. The conviction of an accused person while he is legally incompetent violates due process. To protect a criminal defendant's constitutional rights, a trial court must inquire into the accused's mental competence once the issue is sufficiently raised.

See *Drope v. Missouri*, 420 U.S. 162, 171-72 (1975) and *McDaniel v. State*, 98 S.W.3d 704, 709 (Tex. Crim. App. 2003).

❒ 5. Dismissal is not an appropriate remedy for motions alleging:

❒ a. Statute or ordinance is void for vagueness in violation of the due process provisions of the 14th Amendment.	See Checklist 11-1. Relief for defendants making such constitutional attacks when deemed valid by the judge is acquittal (judgment of not guilty) at trial.
❒ b. Statute or ordinance in the instant case denies the defendant equal protection in violation of the Constitution.	
❒ c. Prosecutorial misconduct.	*State v. Johnson*, 821 S.W.2d 609 (Tex. Crim. App. 1991).

CHAPTER 6 PRETRIAL PROCEEDINGS

5. Motions to Quash the Complaint

Checklist 6-5	Script/Notes
❒ 1. A complaint vests the municipal court with jurisdiction to try a case. Motions objecting to the complaint are called motions to quash the complaint. These motions are properly made to the allegations of the complaint on its face; they are not properly related to the evidence that would prove the allegations, or the sufficiency of that evidence.	Arts. 45.018/45A.101 and 45.019 /45A.101 and 45A.102, C.C.P.
❒ 2. The complaint shall commence:	Art. 45.019/45A.101(a), C.C.P.
❒ a. "In the name and by the authority of the State of Texas."	
❒ 3. The complaint must state:	Art. 45.019/45A.101(a), C.C.P. See *Municipal Courts and the Texas Judicial System*: Chapter 4 for a discussion on complaints.
❒ a. The name or description of the defendant;	
❒ b. That the accused committed an offense;	
❒ c. A venue allegation that the offense was committed in the territorial limits of the municipality; and	
❒ d. The date on which the offense was committed and the date the complaint is signed (these dates generally must be within two years of each other).	Art. 12.02, C.C.P. For assault under Section 22.01 of the Penal Code, the dates must be within three years of each other.
❒ 4. The complaint shall conclude:	
❒ a. "Against the peace and dignity of the State" (penal statutes) and it must, when appropriate, also conclude "Contrary to said ordinance" (municipal ordinances).	
❒ 5. Complaints must be sworn.	Art. 45.018/45A.002(1), C.C.P.

❒ 6. The offense alleged in "plain and intelligible words" should include:

Kindley v. State, 879 S.W.2d 261 (Tex. App.—Houston [14th Dist.] 1994, no pet.).

- ❒ a. Every element of the offense;
- ❒ b. The facts sufficient to identify a particular offense to be defended against and sufficient facts to enable the defendant to plead the judgment in bar of further prosecution;
- ❒ c. The intent required under the statute or ordinance, if any;
- ❒ d. The name of the owner of property if that is an element of the offense;
- ❒ e. A specific description of property if that is an element of the offense;
- ❒ f. Language used in the allegation should be clear and concise; and
- ❒ g. The exact language of the statute or ordinance is usually most appropriate, but not required.

❒ 7. If the defendant does not object to a defect, error, or irregularity of form or substance in a complaint before the day trial commences, the defendant waives the right to object to the complaint.

Art. 45.019(f)/45A.102, C.C.P.

Article 45.019(f), C.C.P., does not mean that a defendant must make a motion to quash before the date on which the case is set for trial.

Sanchez v. State, 138 S.W.3d 324 (Tex. Crim. App. 2004).

The trial court is not prohibited from requiring that each objection to a complaint be made at an earlier time (e.g., pretrial hearing).

See Checklist 6-1.

❒ 8. Granting the motion to quash does not bar re-prosecution with a proper complaint if the new complaint is filed within the statute of limitations.

Art. 28.04, C.C.P.

❒ 9. The error can be cured if the complaint is dismissed and refiled with appropriate corrections. This must be done:

❒ a. In writing;

❒ b. Before the date of trial; or

❒ c. On the date of trial or during trial if the defense does not object.

This method of dismissal and refiling is recommended over the process of amendment. It is not clear if a complaint can be amended, nor in what manner it can be done.

CHAPTER 6 PRETRIAL PROCEEDINGS

One of the guiding principles of the American legal system is the idea of an independent and neutral judiciary. In order to ensure the aims of justice and to protect the integrity of the judicial system, all judges must understand the law governing (1) disqualification and (2) recusal. While the terms disqualification and recusal are used interchangeably, such use is a grievous error. If a judge is disqualified under the constitution, he or she is absolutely without jurisdiction in the case, and any judgment rendered by him or her is void, without effect, and subject to collateral attack. The failure of a judge to recuse when recusal is appropriate can constitute a violation of the Code of Judicial Conduct. Failure to recuse may rise to the level of disqualification when it impacts a litigant's right to due process.

Article V, Section 11 of the Texas Constitution provides grounds for disqualifying a judge from sitting in any case. Similarly, Article 30.01, C.C.P., provides instances in which the judge is disqualified regardless of the judge's application of discretion. The defendant cannot waive the judge's disqualification.

While disqualification is mandatory, recusal lies in a judge's appraisal of the individual situation. While this determination can only be made in light of the specifics of a situation, the Texas Rule of Civil Procedure 18b provide grounds for when a judge shall recuse. Remember, however that judges are obligated to decide issues presented in cases and must not unnecessarily recuse themselves even when the judges might prefer not to decide the issues. *Ex parte Ellis*, 275 S.W.3d 109 (Tex. App.—Austin 2008, no pet.).

While disqualification and recusal are very different, the procedures following a judge's disqualification or recusal are the same. In the 82nd Legislative Session (2011), a comprehensive series of procedures was created in Subchapter A-1 of Chapter 29, G.C. These rules, derived from Texas Rule of Civil Procedure 18A, are designed to accommodate all sizes of municipal courts, and strike a balance between uniformity in application of the law and judicial efficiency. They can be used in any kind of criminal or civil case in which a municipal court has jurisdiction.

6. Recusal and Disqualification

Checklist 6-6	Script/Notes
Recusal	
❒ 1. A judge must recuse in any proceeding in which:	T.R.C.P. 18b sets out the law concerning recusal and includes instances in which a judge must step down from hearing a case for reasons other than the disqualifying grounds listed in the constitution. *Gaal v. State*, 332 S.W.3d 448 (Tex. Crim. App. 2011).
❒ a. The judge's impartiality might reasonably be questioned;	
❒ b. The judge has a personal bias or prejudice concerning the subject matter or a party;	

❒ c. The judge has personal knowledge of disputed evidentiary facts concerning the proceeding;

❒ d. The judge or a lawyer with whom the judge previously practiced law has been a material witness concerning the proceeding;

❒ e. The judge participated as counsel, adviser, or material witness in the matter in controversy, or expressed an opinion concerning the merits of it, while acting as an attorney in government service;

❒ f. The judge knows that the judge, individually or as a fiduciary, or the judge's spouse or minor child residing in the judge's household has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

❒ g. The judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

❒ (1) Is a party to the proceeding or an officer, director, or trustee of a party;

❒ (2) Is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;

❒ (3) Is to the judge's knowledge likely to be a material witness in the proceeding; or

❒ h. The judge or the judge's spouse, or a person within the first degree of relationship to either of them, is acting as a lawyer in the proceeding.

Disqualification:

❒ 2. No justice or judge shall sit in any case where: — Art. 30.01, C.C.P.

- ❒ a. The judge may be the party injured;
- ❒ b. The judge has been of counsel for the State or the accused; or
- ❒ c. The accused may be connected with the judge by consanguinity or affinity within the third degree. — An individual's relatives within the third degree by consanguinity are the individual's parent, child, brother, sister, grandparent, grandchild, great-grandparent, great-grandchild, aunt, uncle, nephew, or niece. Sec. 573.023, G.C. Two individuals are related to each other by affinity if they are married to each other or the spouse of one of the individuals is related by consanguinity to the other individual. Sec. 573.024, G.C.

Recusal or Disqualification Without a Motion: — Sec. 29.055, G.C.

❒ 3. If you choose to recuse or disqualify yourself, you are recused or disqualified. Go to step 5. — See *TMCEC 2024 Forms Book*: Order of Recusal or Disqualification.

Recusal or Disqualification Upon Party Motion: — Sec. 29.052, G.C.

❒ 4. If a motion has been filed to recuse or disqualify you from presiding over the case, you may do one of the following:

- ❒ a. Recuse or disqualify yourself (go to step 3); or — Sec. 29.055, G.C. See *TMCEC 2024 Forms Book*: Order of Recusal or Disqualification.
- ❒ b. Decline to recuse or disqualify yourself and request the Regional Presiding Judge of the Administrative Judicial Region to assign a judge to hear the motion; and — See *TMCEC 2024 Forms Book*: Order of Referral upon Motion for Recusal or Disqualification.
  - ❒ (1) Forward a referral order, the motion, and statements to the Regional Presiding Judge.

❒ 5. If you are recused or disqualified, a determination must be made as to who will sit for you in the case.

Sec. 29.057, G.C.

❒ a. If you are the only municipal judge in the municipality, you must request the Presiding Judge of the Administrative Judicial Region to assign another judge.

❒ b. If you are the presiding municipal judge in the municipality, you must request the Presiding Judge of the Administrative Judicial Region to assign another judge.

❒ c. If you are not the presiding municipal judge in the municipality, you must request the presiding municipal judge of the municipality to assign another judge of the city to hear the case.

CHAPTER 6 PRETRIAL PROCEEDINGS

7. Requests for Discovery

Michael Morton was wrongfully convicted in 1987 for the murder of his wife, Christine. In 2011, after serving nearly 25 years in prison, he was exonerated. His case brought needed attention to the issues of discovery in criminal cases and prosecutorial misconduct. The Michael Morton Act, passed by the 83rd Legislature (2013), amended the Code of Criminal Procedure to revise provisions relating to discovery in a criminal case. The changes were made in an effort to uphold a defendant's constitutional right to a defense, minimize the likelihood of wrongful convictions, save thousands in taxpayer dollars, promote an efficient justice system, and improve public safety, all while increasing the public's confidence in the criminal justice system.

Checklist 6-7	Script/Notes
❒ 1. Requests for discovery are governed by Article 39.14, C.C.P.	
❒ 2. Depositions are generally not allowed in criminal proceedings. Depositions for the defendant may be ordered on application and the filing of affidavits "stating facts necessary to constitute a good reason for taking same." Merely wishing to discover adverse testimony has been held not to constitute "good reason" for deposition of a witness.	*James v. State*, 563 S.W.2d 599 (Tex. Crim. App. 1978); Art. 39.02, C.C.P.
❒ 3. For defendants represented by counsel, discovery of papers and physical items should:	Art. 39.14, C.C.P. As amended by the Michael Morton Act, Article 39.14, C.C.P. distinguishes defendants from pro se defendants with regard to discovery.
❒ a. Be produced by the state on timely request by the defendant;	No order from the court is needed. The State must produce discovery upon a timely request from the defendant. Art. 39.14(a), C.C.P.
❒ b. Be limited to production for examination, electronic duplication, copying, and photographing;	
❒ c. Not be removed from the possession of the State or inspected outside the presence of the State; and	
❒ d. Not include work products of the State.	
❒ 4. For pro se defendants, discovery of papers and physical items should:	Art. 39.14(d), C.C.P.

❒ a. Be produced by the State upon an order from the court;	The State is not required to produce discovery without an order from the court as is the case for defendants represented by counsel. Art. 39.14(d), C.C.P.
❒ b. Be limited to production for inspection and review;	The State is not required to allow electronic duplication as is the case for defendants represented by counsel. Art. 39.14(d), C.C.P.
❒ c. Not be removed from the possession of the State or inspected outside the presence of the State; and	Art. 39.14(a), C.C.P.
❒ 5. If only a portion of a document, item, or information is subject to discovery, the State is not required to produce or permit the inspection of the portion that is not subject to discovery may withhold or redact that portion. On request of the defendant, the court shall conduct a hearing to determine whether withholding or redaction is justified under this article or other law.	Art. 39.14(c), C.C.P.
❒ a. The State shall inform the defendant that a portion of the document, item, or information has been withheld or redacted;	Art. 39.14(c), C.C.P.
❒ b. On request of the defendant, the court shall conduct a hearing to determine whether withholding or redaction is justified under this article or other law.	Art. 39.14(c), C.C.P.
❒ 6. The defendant, the defense attorney, or any agent of the defense attorney may not disclose to a third party any documents, evidence, materials, or witness statements received from the State unless:	Art. 39.14(e), C.C.P.
❒ a. The court orders disclosure upon a showing of good cause after notice and hearing after considering the security and privacy interests of any victim or witness; or	Art. 39.14(e), C.C.P.
❒ b. The documents, evidence, materials, or witness statements have already been disclosed.	Art. 39.14(e), C.C.P.

❒ 7. The defense attorney or any agent of the defense attorney may allow a defendant, witness, or prospective witness to view information acquired through discovery, but may not allow that person to have copies of the information, other than a copy of the witness's own statement.

Art. 39.14(f), C.C.P.

❒ a. Before allowing a person to view a document or witness statement of another, the person possessing the information shall redact the address, telephone number, driver's license number, social security number, date of birth, and any bank acount or other identifying information in the document or statement.

Art. 39.14(f), C.C.P.

❒ 8. No general right to discovery of inculpatory evidence exists. However, the defendant has the constitutional right to discover "*Brady*" evidence, or exculpatory evidence, that shows the defendant may not be guilty.

Quinones v. State, 592 S.W.2d 933 (Tex. Crim. App. 1980); *Brady v. Maryland*, 373 U.S. 83 (1963).

❒ a. Prosecutors are statutorily required to promptly provide the defense with any exculpatory, impeachment, or mitigating document, item, or information in the possession, custody, or control of the State that tends to negate the guilt of the defendant or would tend to reduce the punishment for the offense charged. This requirement applies upon discovery of such evidence at any time before, during, or after trial. A defendant need not request this information.

Art. 39.14(h) and (k), C.C.P.

❒ b. Prosecutors also have an ethical duty to provide the defense with both exculpatory and mitigating evidence. A defendant need not request this information.

Rule 3.09, Texas Disciplinary Rules of Professional Conduct.

❒ 9. If either party so requests, the court may order the parties to disclose the name and address of each person the party may call as a witness at trial. This is generally referred to as a "witness list." The judge shall specify when witness lists must be disclosed, no later than 20 days before trial.

Art. 39.14(b), C.C.P.

❒ 10. A court may order the defendant to pay costs related to discovery, but the costs may not exceed the charges prescribed by Subchapter F, Chapter 552, G.C.	Subchapter F, Chapter 552, G.C., deals with charges for providing copies of public information.
❒ 11. If a conflict exists between the rules of discovery in criminal cases under Art. 39.14, C.C.P., and the rules pertaining to public information under Chapter 552, G.C., the rules of discovery prevail.	Art. 39.14(m), C.C.P.
❒ 12. Parties may agree to discovery and documentation requirements equal to or greater than those required under Art. 39.14, C.C.P.	Art. 39.14(n), C.C.P.

CHAPTER 6 PRETRIAL PROCEEDINGS

Two motions specifically affect the admission of evidence at trial. The motion to suppress evidence is generally based on constitutional or statutory grounds. On the other hand, the motion in limine is advisory in nature only. This motion provides a way to pre-judge the admissibility of evidence at trial.

8. Motions to Suppress

Checklist 6-8	Script/Notes
❒ 1. The motion to suppress can be used to exclude:	See *Municipal Courts and the Texas Judicial System*: Chapter 4 for a discussion on the 4th Amendment.
❒ a. Physical evidence based on police violation of the 4th Amendment of the U.S. Constitution, Art. 38.23, C.C.P., and Art. I, Sec. 10 of the Texas Constitution prohibiting "unreasonable searches or seizures."	
❒ b. The court must determine:	
❒ (1) Did a search or seizure occur? To be a search, police conduct must intrude upon the defendant's "reasonable expectation of privacy." A seizure occurs if a reasonable person would have believed that he was not free to leave;	*Katz v. United States*, 389 U.S. 347 (1967); *Brendlin v. California*, 551 U.S. 249 (2007).
❒ (2) Did the defendant have an interest in the items or area searched? If not, then the defendant does not have "standing" to complain of the search or seizure; and	*Rakas v. Illinois*, 439 U.S. 128 (1978).
❒ (3) Is the area private as opposed to open to the public or exposed to the public by the defendant? Open fields, overheard conversations, and items abandoned or relinquished to others may not be protected by the 4th Amendment.	
❒ 2. Was seizure pursuant to a warrant?	See Checklist 2-4

❒ a. Was the warrant valid?

❒ b. Was the item seized within the scope of the warrant?

❒ 3. Was there an exception to the requirement of a warrant?

❒ a. Was the seizure in "plain view?"

❒ (1) The court must find that the officer was properly in the place where the discovery was made and it was immediately apparent the item was, in fact, evidence.

❒ b. Was the search made with consent of the defendant or another person with the right to consent to the search?

❒ c. Was the search or seizure only a temporary detention or "frisk" based on reasonable suspicion?

Terry v. Ohio, 392 U.S. 1 (1968).

❒ d. Was the search of the person or the area within his or her reach incident to a proper arrest?

❒ e. Was the search based on an inventory policy of searching a properly seized vehicle?

❒ f. Was the seizure or stop based on a valid roadblock or traffic stop?

Mich. Dept. of State Police v. Sitz, 496 U.S. 444 (1990).

❒ g. Was the search based on emergency or exigent circumstances?

❒ 4. Has the defendant properly supported the motion to suppress with law and evidence? If so, the court grants the motion to suppress illegally obtained evidence.

❒ 5. If an illegal search or arrest leads to other evidence it too must be suppressed as "fruit of the poisonous tree."

Wong Sun v. U.S., 371 U.S. 471 (1963).

❒ 6. Statements of the accused must be suppressed as violating the defendant's 5th Amendment right against self-incrimination if:

See *Municipal Courts and the Texas Judicial System*: Chapter 4.

- ❒ a. The statements were involuntarily made;
- ❒ b. The statements were involuntary due to promises or threats made by the police;
- ❒ c. The statements were made subject to "custodial interrogation" (the defendant must be in legal custody and the statements must be the result of questioning) and the police failed to "Mirandize" the defendant; or

Miranda v. Arizona, 384 U.S. 436 (1966).

- ❒ d. The statements were made subject to "custodial interrogation" that does not comply with the requirement in Article 38.22, C.C.P., that the entire statement be recorded or in writing with the statutory warnings of that section included in the recording or writing.
- ❒ e. Exceptions to this section include:

Art. 38.22, C.C.P.

  - ❒ (1) Any statements that contain any assertions of fact or circumstances which are later found to be true;
  - ❒ (2) Prior testimony of the defendant;
  - ❒ (3) Statements introduced for the purposes of impeaching the defendant's testimony at trial; or
  - ❒ (4) Statements obtained by federal law enforcement in compliance with federal law or obtained in another state and in compliance with the laws of that state.

Art. 38.22, Sec. 8, C.C.P.

- ❒ f. If the defendant raises the issue of voluntariness as stated above, the court must hold a hearing outside the presence of the jury and make findings concerning the voluntariness of the statement.

❒ 7. An in-court identification of a defendant by a witness must be suppressed if the court finds that the identification was based on an improperly suggestive police identification procedure.

❒ a. Police misconduct in this situation must be of such an improper nature that it causes the court to believe that there is a substantial likelihood of irreparable misidentification by the witness.

❒ b. Factors to consider include:

❒ (1) The witness's opportunity to observe the defendant;

❒ (2) Nature of the suggestion;

❒ (3) Whether the in-court identification is based in any way on the improper procedure;

❒ (4) Accuracy of prior description;

❒ (5) Time between the offense and the identification; and

❒ (6) Totality of the circumstances.

❒ 8. In the hearing on a motion to suppress, the initial burden of establishing standing (or the right to complain) is upon the defendant. Once standing is established, the burden to show evidence was properly obtained shifts to the State.

❒ 9. Hearings on motions to suppress can often turn into a trial of the entire case. The court can and should limit pretrial testimony to only those legal and factual matters that must be developed for a proper ruling on the motion.

❒ a. After entry of judgment and if there is no appeal, the court may proceed to use available collection tools.

See Chapter 10 in this book for appeals information. See Checklist 8-3.

CHAPTER 6 PRETRIAL PROCEEDINGS

The motion in limine is a mechanism by which either the prosecutor or defendant may raise issues of the admissibility of evidence prior to trial.

Motions About Evidence

9. Motions in Limine

Checklist 6-9		Script/Notes
❒ 1.	The motion in limine is simply a judicial order that certain evidence be brought before the court outside of the jury's presence so that it can be ruled on at the proper point in trial.	
❒ 2.	This motion is used by counsel and the court to avoid mistrials and trial by ambush.	
❒ 3.	The court as a practical matter should not make final rulings on matters of evidence until those matters are brought before the court in trial.	
❒ 4.	The court should, in appropriate circumstances, order that the attorneys not go into certain areas of evidence in front of the jury until opposing counsel has had an opportunity to make objections and the court has had the opportunity to hear arguments and make a proper ruling.	
❒ 5.	Granting or denying a motion in limine is not a final ruling by the court.	A judge can reconsider a ruling on a motion in limine if facts change and evidence becomes admissible.
❒ 6.	Regardless of the ruling on the motion in limine, counsel must still tender or object to the evidence at trial to preserve an issue for appeal in a court of record.	

CHAPTER 7 TRIAL PROCEEDINGS

Defendants in municipal courts have a right to appear by counsel as in other cases. Art. 45.020/45A.163, C.C.P. When the defendant appears, the court can require the defendant to enter a plea in writing. Art. 45.021/45A.151, C.C.P. A defendant who wants the judge to hear the evidence and decide his or her case must waive the right to a jury trial in writing. Art. 45.025/45A.155, C.C.P. Unless good cause is shown by the defendant, a municipal court may order a defendant who does not waive a jury trial and who fails to appear for the trial to pay the costs incurred for impaneling the jury. This order is enforced by contempt as prescribed by Section 21.002(c), G.C. See Art. 45.026/45A.157, C.C.P.

If the prosecutor is not present at trial—both bench and jury—the court may: (1) postpone the trial to another date; (2) appoint any competent attorney as attorney pro tem; or (3) proceed to trial. Art. 45.031/45A.158, C.C.P. If the judge opts to proceed to trial, the State's failure to present a prima facie case of the offense alleged in the complaint entitles the defendant to a directed verdict of "not guilty." Art. 45.032/45A.162, C.C.P. In this instance, State's witnesses, such as the peace officer, may be present at the trial but unable to testify for the State unless called by the prosecutor.

Because procedures for conducting a bench trial differ from a jury trial, there are separate checklists for these procedures.

For more discussion of trial proceedings, see TMCEC *Municipal Courts and the Texas Judicial System*: Chapter 8.

1. The Non-Jury Trial (Bench Trial)

Checklist 7-1	Script/Notes
❒ 1. Opening Ceremony and Remarks:	
❒ a. Opening announcement given by bailiff or court clerk.	"All rise! The Municipal Court of the City of _____ is now in session. The Honorable _____ , judge presiding."
❒ b. Judge's opening statements:	
❒ (1) Explain court procedures.	
❒ (2) The court may want to repeat the admonishments made on first appearance.	See Checklist 4-1.
❒ c. Call the case for trial:	"I call the case of the State of Texas vs. (*Defendant's name*)."
❒ (1) Prosecution and defense announce ready for trial, make motions for continuance, or present pretrial motions (e.g., motion to suppress).	

❒ 2. The prosecutor reads the complaint:

❒ a. The defendant is entitled to a copy of the complaint at least one day before trial, but the defendant can waive that right.

Art. 45.018(b)/45A.101, C.C.P.

❒ b. Ask the defendant if he or she understands the charge and the rights explained earlier. The defendant must be provided a reasonable amount of time to secure counsel. If the defendant does not waive a jury trial in writing, the case must be docketed as a jury trial.

Art. 45.025/45A.155, C.C.P.

❒ 3. Defendant enters a plea:

❒ a. A judge may not accept a plea of guilty or nolo contendere from a defendant in open court unless it appears to the judge that the defendant is mentally competent and the plea is free and voluntary.

Art. 45.0241/ 45A.153, C.C.P.

❒ b. Ask the defendant if he or she waives his or her right to a jury trial, and have the defendant sign a written waiver.

See *TMCEC 2024 Forms Book:* Plea Form: In Person.

❒ c. The defendant then enters a plea of:

❒ (1) Guilty;

❒ (2) Nolo contendere (no contest);

❒ (3) Not guilty; or

❒ (4) Special plea (double jeopardy).

❒ d. If the defendant refuses to enter a plea, the court must enter a plea of not guilty for the defendant.

Art. 45.024/45A.152, C.C.P.

❒ e. If the defendant pleads guilty or nolo contendere, then the only remaining issue is the amount of the fine, and the court determines the punishment.

Art. 45.022/45A.153, C.C.P.
See Checklist 8-1.

❒ 4. Place witnesses under "The Rule."

❒ a. At the request of either the defense or prosecution, or on your own motion, the court may prevent witnesses from hearing the testimony of other witnesses.

❒ (1) Determine all possible witnesses.

❒ (2) Give oath to witnesses.

❒ (3) Admonish witnesses as to "The Rule."

❒ b. Before a victim, close relative of a victim, or a guardian of a victim can be excluded under "The Rule," the moving party must show, and the court must determine that:

❒ (1) The victim (or relative or guardian) will testify; and

❒ (2) The testimony of the witness/victim would be materially affected if the witness/victim is not excluded under The Rule.

❒ c. If either side asks the judge to make an exception for a particular witness (for example, the crime victim or an expert witness), the judge may grant the exception if it is determined that the testimony of the witness will not be tainted or influenced if that person is allowed to remain in the courtroom during the trial and to hear the testimony of the other witnesses in the case.

Rule 614, T.R.E.

"All those of you who may be witnesses in this case who are now in the courtroom, please stand and raise your right hand."

"Do you solemnly swear or affirm that the testimony that you are about to give in the case now on trial is the truth, the whole truth, and nothing but the truth (so help you God)?"

"Members of the jury, 'The Rule' has been invoked. 'The Rule' means that the witnesses, except the defendant, must remain outside the hearing of the courtroom at all times while testimony is being heard, except when testifying or until discharged. If you are a witness, you must stay close enough so that you may be reached when needed."

"You must not converse with each other or with any other person about the case, and you are not to read any report of or comment upon the testimony in the case while under 'The Rule.' You may, however, discuss the case with attorneys in the case outside the presence of other witnesses. Please remain outside until called."

For a violation of "The Rule," contempt may be an option. See *Municipal Courts and the Texas Judicial System*: Chapter 6.

❒ 5. Opening Statements:

Art. 36.01(b), C.C.P.

❒ a. Prosecution first.

❒ b. Defense second. (Defense may reserve opening statement until after the State rests its case-in-chief, as long as the defense presents a case.)

❒ c. Should the prosecution waive its opening statement, the defense may not make an opening statement until the defense presents its case-in-chief.

❒ 6. Presentation of Evidence:

"Do you solemnly swear or affirm that the testimony that you are about to give in the case now on trial is the truth, the whole truth, and nothing but the truth (so help you God)?"

❒ a. All testimony must be presented under oath.

❒ b. Prosecution's Case:

❒ (1) State's direct evidence.

❒ (2) Defendant's cross-examination.

❒ (3) State's redirect examination.

❒ (4) Defendant's recross-examination.

❒ 7. Prosecution rests.

❒ 8. Motion for directed verdict:

Art. 45.032/45A.162, C.C.P.

❒ a. At this point, the defense is permitted to request a motion for directed verdict of acquittal. The motion is based upon the belief of the defense that the State has failed to present evidence proving each and every element of the offense.

❒ b. If the judge believes that the defense is correct, then the judge should return a verdict of not guilty.

❒ c. Granting the motion has the same practical effect of ending the trial in an acquittal. Overruling the motion results in a continuation of the trial, and the defense would then be allowed to present its case.

❒ 9. Defendant's case:

❒ a. Defendant's direct examination.

❒ b. State's cross-examination.

❒ c. Defendant's redirect examination.

❒ d. State's recross-examination.

❒ 10. Rebuttal evidence, if any. The prosecution may present rebuttal evidence in the same manner as the prosecution's case-in-chief.

❒ 11. Prosecution closes. If the prosecution presents more evidence, the defense may present more evidence if it chooses.

❒ 12. Defense closes.

❒ 13. Closing arguments:

❒ a. Prosecution argues first (may waive).

❒ b. Defense makes its arguments.

❒ c. Prosecution has right to argue last.

❒ d. Equal time should be given to each side.

❒ 14. Decide whether the State proved its case, render judgment orally in open court, and enter the judgment in the docket.

Art. 45.041(d)/45A.251(f), C.C.P.
See the *TMCEC 2024 Forms Book* for a variety of judgment forms.

❒ a. All persons are presumed to be innocent, and no person may be convicted of an offense unless each element of the offense is proven beyond a reasonable doubt.

❒ b. If you return a finding of guilty, render judgment by assessing a specific fine amount within the range permitted under the statute or ordinance under which the defendant was prosecuted.

See Chapter 8 in this book for more information on sentencing.

❒ c. If the defendant is found guilty, inform the defendant of the right to appeal.

"You have the right to appeal my decision. Appeal is to the county court. In order to appeal this case, you must give notice of appeal and file a bond with this court in the amount of (*calculate and state the amount of twice the fine and costs*) within 10 days of tomorrow's date."

The procedure may vary for courts of record.

See Art. 45.013/45A.054, C.C.P., for enlargement of time period if bond filed by mail.

See Chapter 10 in this book.

CHAPTER 7 TRIAL PROCEEDINGS

2. The Jury Trial – Before Trial

For courts that conduct jury trials infrequently, it is recommended that a pretrial hearing be conducted to ensure that the parties are in agreement on all possible issues and to minimize the risk for procedural surprises during the trial. This is especially important for jury trials involving pro se defendants that may not understand trial processes.

Although courts can carry out many of the following procedures on the day of trial, handling them in advance will achieve a smoother and more efficient trial experience. Under no circumstances should the pretrial process be used as a tool to thwart or discourage defendants from exercising their constitutional right to a trial.

Coordination and agreement (or the court's ruling) before the day of trial on trial-related issues may assist in eliminating unnecessarily long delays for the jury panel.

Some judges prefer to prepare the jury charge in advance and allow both sides to comment and recommend revisions. The judge, however, has the final decision on the wording. Both sides have a final opportunity to make recommendations or state objections to the charge on the day of trial, but are less likely to do so if given a previous opportunity to respond. The court may not flatly prohibit motions made on the day of trial and after the deadline date, but the court may require the movant to show good cause for not complying with the deadline. Some motions must be ruled upon on the trial day, but some can be decided in advance.

Checklist 7-2	Script/Notes
❒ 1. If a pretrial hearing was not held, the court may send a "trial packet" to the prosecution and defense containing:	
❒ a. Copy of complaint;	
❒ b. Copy of draft jury charge;	
❒ c. Date and time of trial; and	
❒ d. Notice setting the deadline for:	
❒ (1) Filing motions;	
❒ (2) Filing subpoena lists;	Both sides shall be notified if a witness on the subpoena list cannot be located or if documents are not available.

❒ (3) Filing objections to the complaint;

Challenges to the complaint need not be considered unless good cause is shown for violating the court's order to file them timely.

❒ (4) Filing recommendations, or exceptions to the jury charge;

❒ (5) Requests for interpreter; or

❒ (6) Other motions.

❒ 2. Sign an order for the clerk to summon a sufficient number of jurors for the type of case.

See *TMCEC 2024 Forms Book*: Order to Summon Venire.

❒ a. Consider summoning 30 to 40 persons for a misdemeanor trial.

Practice Tip: For consistency and transparency, a written policy can be developed and adopted by the court that details the procedure for jury selection (preparing the jury candidate list, summoning the prospective jurors, etc.).

❒ b. Prospective jurors may be randomly selected from:

❒ (1) Driver's license records, if available;

❒ (2) Utility records;

❒ (3) Tax rolls; and

❒ (4) Voter registration rolls.

❒ c. Prospective jurors must live within the city.

Sec. 62.501, G.C.

❒ 3. Court may reschedule prospective jurors to a later date. Clerk may postpone juror's service if:

Tex. Atty. Gen. Op. GA-0161 (2004).
See *TMCEC 2024 Forms Book*: Official Model Jury Summons and Questionnaire; Jury Service Cover Letter.

❒ a. The person summoned has not been granted a postponement in the county for one year prior to the date on which the juror is summoned to appear; and	Sec. 62.0143, G.C.
❒ b. The person and the clerk determine a substitute date on which the person will appear for jury service that is not later than six months after the date on which the person was originally summoned to appear.	
❒ 4. Unless the court's criminal case records are accessible on the internet, the clerk of the court must post in a designated public place in the courthouse notice of a criminal docket setting as soon as the court notifies the clerk of the setting.	Art. 17.085, C.C.P.

CHAPTER 7 TRIAL PROCEEDINGS

3. The Jury Trial –Trial Day

Checklist 7-3 begins with calling the jury. Please remember that the court must receive announcements and explain procedures to the pro se defendant, even in a jury trial. Please review Chapters 3 and 4. These actions should not take place in front of the jury. If the defendant waives a jury in writing or pleads guilty and waives a jury in writing, the jury is not necessary.

Checklist 7-3	Script/Notes
❒ 1. Instruct the clerk of the court to prepare a jury list containing the name of each juror in the order in which he or she was chosen.	See *TMCEC 2024 Forms Book*: Jury Panel List (Venire Panel).
❒ 2. Seat jurors in the order in which they were selected.	
❒ 3. Distribute a copy of the numbered list of jurors to the prosecutor and the defendant or defense counsel.	Art. 35.11, C.C.P.
❒ a. The judge may, at his or her discretion, ask each attorney to read and sign an admonishment against distributing juror information contained on the juror information cards to the media.	Generally, juror information may not be disclosed unless permitted by the court after a showing of good cause on application by a party in the trial or a bona fide member of the news media. Art. 35.29, C.C.P.
❒ 4. Verify that an absent juror has not established his or her exemption by filing a signed statement with the clerk of the court prior to the appearance date or been given a postponement by the clerk.	Art. 35.04, C.C.P.; Secs. 62.0142 and 62.0143, G.C.
❒ a. If desired, set contempt hearings and issue attachments for missing jurors not exempt.	Art. 45.027/45A.156, C.C.P. See Chapter 14 in this book, concerning Contempt. See *TMCEC 2024 Forms Book*: Show Cause Notice: Juror Contempt. See *Municipal Courts and the Texas Judicial System*: Chapter 6.
❒ 5. Opening Ceremony and Remarks:	
❒ a. Opening announcements may be given by the bailiff or court clerk.	"All rise! The Municipal Court of the City of _____ is now in session. The Honorable _____, judge presiding."

❒ 6. Judge's opening remarks.

"Members of the jury, I want to welcome you to the _____ Municipal Court. You have been called for jury duty for this (*day/week*). You will be examined for inclusion on a jury hearing a criminal case. Courtroom hours vary, but are normally from 9:00 a.m. until 5:00 p.m."

"Whether you are selected as a juror today or not, you are performing a significant service that only free people can perform. If you are selected, the case will be tried as expediently as possible consistent with justice that requires a careful and correct trial."

"If selected on the jury, unless instructed otherwise, you will be permitted to separate at recess, for meals, and at night."

❒ 7. The judge should administer the first jury oath to the array.

Art. 35.02, C.C.P.

"Do each of you solemnly swear that you will make true answers to such questions as may be propounded to you by the court, or under its directions, touching your service and qualifications as a juror (so help you God)."

"The law requires that each of you must possess certain qualifications before you may be considered for service as a juror."

"There are also certain excuses and exemptions that some of you may wish to claim."

❒ 8. Ask the array the questions shown to the right.	"Except for a failure to register, are you a qualified voter in this city, county, and state under the Constitution and laws of the state?" "Have you ever been convicted of theft or any felony?" "Are you under indictment or legal accusation, or on deferred adjudication for theft or any felony?" "Are you presently insane?" Arts. 35.19 and 35.16(a)(4), C.C.P. "Are you 18 years of age or older?" "Are you a resident of the city where this court is located?" "Are you of sound mind and good moral character?" "Are you able to read and write the English language?" "Have you served as a petit juror for six days in the preceding three months in a county court, or six days in the preceding six months in a district court?" Sec. 62.102(6), G.C.
❒ 9. Immediately excuse any person whose answer to any one of the above questions is inconsistent with the statutory requirements.	Arts. 35.12, 35.16, and 35.19, C.C.P.
❒ 10. Determine if anyone who is otherwise qualified to be a juror wishes to claim one of the following legal exemptions:	Sec. 62.106, G.C. "You may claim any of the following exemptions if you choose to, but you are not required to claim them." "If one of these applies to you, but you still desire to be considered as a juror, please continue to remain seated."
❒ a. The person is over 75 years of age;	"Are you over 75 years of age?"

❒ b. The person has legal custody of a child under the age of 12 years, and jury service would leave the child or children without adequate supervision;	"Do you have legal custody of a child under the age of 12 years and service on a jury at this time would result in the child not receiving adequate supervision?"
❒ c. The person is a student in a public or private secondary school;	"Are you a student in a public or private high school or secondary school?"
❒ d. The person is enrolled and in actual attendance at an institution of higher education;	"Are you enrolled and in actual attendance at a college or community college?"
❒ e. The person is an officer or employee of the Senate, the House of Representatives, or any department, commission, board, office, or other agency in the legislative branch of State government;	"Are you an officer or employee of the Senate, the House of Representatives, or any department, commission, board, office, or other agency in the legislative branch of State government?"
❒ f. The person is the primary caretaker of a person who is unable to care for himself or herself;	"Are any of you a primary caretaker for a person who is unable to care for himself or herself?"
❒ g. In counties with populations over 200,000, the person has served on a petit jury in the county in the last 24 month period preceding the currently scheduled date for service, unless the county uses a jury plan under Section 62.011, G.C., and the period authorized under Section 62.011(b)(6), G.C., exceeds two years;	Sec. 62.106(a)(6), G.C. "Have you served on a petit jury in this county in the last 24 to 36 months immediately preceding today?"
❒ h. Unless the jury wheel in the county has been reconstituted after the date the person served as a petit juror, people in counties with a population of at least 250,000 who have served as a petit juror in the county during the 36 month period preceding the date the person is to appear for jury service may claim an exemption; or	Secs. 62.106(a)(8) and 62.106(b), G.C.

❒ i. The person is a member of the U.S. military on active duty deployed away from the person's home station and county of residence.

Sec. 62.106(a)(9), G.C.

"If any of these apply to you and you do not desire to serve as a juror, please come up to the bench at this time."

❒ 11. Hear the exemption and rule accordingly.

❒ 12. An exemption must be claimed in person on the date of service, or before the date of service by filing a signed statement of the ground for exemption with the clerk of the court.

Art. 35.04, C.C.P.

❒ 13. Call forward any juror who wishes to be excused.

Art. 35.03, Sec. 1, C.C.P.

"If any of you feel there is a reason why you cannot sit as a juror today, please come up to the bench now and I will hear your excuse."

❒ 14. The judge may accept or reject any "reasonable" or "sufficient" excuse.

Art. 35.03, Sec. 1, C.C.P.
Sec. 62.110(a), G.C.

❒ a. If an excuse is deemed sufficient, the juror may be released, or his or her service may be postponed to another date.

Art. 35.03, Sec. 1, C.C.P.

❒ b. A juror may be excused for observance of a religious holiday upon completing an affidavit as required by Article 29.012(c), C.C.P.

Art. 35.03, Sec. 3, C.C.P.

❒ 15. A juror may not be excused for economic reasons without the consent of the parties.

Sec. 62.110(c), G.C.

❒ a. A juror who, without prompting, articulates an inability to listen to testimony and be fair and impartial may be excused.

Butler v. State, 830 S.W.2d 125 (Tex. Crim. App. 1992).

❒ 16. Hear without delay any challenges to the array from either party.

Art. 35.07, C.C.P.
"Array" is a term meaning the jury panel as a whole.

❒ a. The only ground for challenge is that the summoning officer has willfully summoned jurors with a view to securing a conviction or an acquittal.

❒ b. The challenge must be in writing and must set forth the grounds for challenging.

❒ c. When made by the defendant, it must be supported by the defendant's affidavit or the affidavit of any credible person.

❒ 17. If the challenge is sustained: Art. 35.08, C.C.P.

❒ a. Discharge the array;

❒ b. Order a new array summoned;

❒ c. Prohibit the person who summoned or composed the array to bring another array in the case; and

❒ d. Have another array brought to the courtroom.

It may be prudent to reschedule the trial to allow sufficient time to summon another array in an orderly manner. Discuss the new trial date with both parties and seek consensus for the new date.

❒ 18. After the array is qualified, the prosecutor and defendant or defendant's attorney should be permitted to view them for purposes of requesting a jury shuffle.

Put simply, a "jury shuffle" occurs when one of the parties does not like the order in which the jury is seated and wants the panel reseated in a new order.

A simple way to do this is to write each juror's name on a card, place the cards in a container and mix them up (shuffle) and randomly draw out each card in sequence. The first name drawn is now juror number one; the second name is juror number two, etc., until all names are drawn. The clerk will prepare the new juror list and they will be re-seated in the order drawn.

❒ 19. The trial judge, on motion of the defendant or his or her attorney, or of the State's attorney shall cause the names of the jurors to be randomly shuffled. The clerk shall deliver a copy of the new juror list to the State's attorney and to the defendant or his or her attorney.

Only one shuffle is permissible by law.

❒ 20. The motion must be made before the State's voir dire begins.

Williams v. State, 719 S.W.2d 573 (Tex. Crim. App. 1986).

❒ 21. After a jury shuffle, seat the panel in the order their names were drawn.

❒ 22. Seating the Panel:

❒ a. After considering and determining qualifications, exemptions, and excuses, the remaining jurors should be seated. The panel at this stage should consist of no fewer than 12 persons. This will allow the prosecution and the defense to exercise three strikes each and still have at least six persons available to serve on the jury.

Arts 33.01, C.C.P. and 45.029/ 45A.159, C.C.P.

❒ b. There is no authority for the selection of alternate jurors in municipal court cases.

Art. 33.011, C.C.P.

❒ 23. Announcement of the Case and Introductions:

"Good morning. My name is _____, and I am the Judge of the _____ Municipal Court. I will be presiding over this trial."

❒ a. Introduce yourself.

❒ b. Call the case.

"At this time, I call the *State of Texas vs.* _____. What says the State? And the Defense? Members of the jury, allow me to introduce the lawyers in this case."

❒ c. Introduce lawyers.

"Representing the State in this matter is (*title of state's attorney)*, Mr(s). _____; representing the defendant is Mr(s). _____." If the defendant is representing himself or herself, see Chapter 3 in this book.

❒ d. Introduce defendant.

"This is a criminal case. It will be tried before six of you selected as the jury. As jurors, it is your exclusive duty to decide all questions of fact in this case, and, for that purpose, to determine the effect, the value, and the weight of the evidence. The evidence in this case will be the testimony you receive and hear from the witness stand and from that place only."

"You will not be called upon to decide questions of law. It is my duty as judge to rule upon legal matters and to see that this case is tried in accordance with the rules of law."

"Both the defendant and the people of this state have a right to expect that you will conscientiously consider and weigh the evidence, apply the law given you to that evidence, and that you will reach a just verdict."

"In this case, as in all cases, the actions of us all—the judge, the attorneys, the witnesses, parties, and jurors—must be according to law: You must therefore follow all instructions given you, as well as others received as the case progresses."

❒ 24. Preliminary instructions:

"Do not mingle with, nor talk to, the lawyers, the witnesses, the parties, or any other person who might be connected with or interested in this case, except of course, for casual greetings. They must follow these same instructions, and you will understand it when they do."

❒ a. These are the court's instructions to each juror to follow throughout the trial.

"Do not accept from, nor give to, any of those persons any favors, however slight, such as food, refreshments, or cigarettes."

"Do not discuss anything about this case, nor mention it to anyone, nor permit anyone to mention it in your presence, until you are discharged as jurors or excused from this case. If anyone attempts to discuss the case with you, report it to me immediately."

"The parties, through their attorneys, have the right to direct questions to each of you concerning your qualifications, background, attitudes, and experiences."

"In so questioning, they are not prying into your personal affairs, but are trying to select fair and impartial jurors who will be free from bias or prejudice in this case. If you are selected to serve as a juror, you will be permitted to separate at recesses, unless otherwise instructed by me. Consistent with justice, we will try this case as expediently as possible, but justice requires a careful and correct trial."

❒ 25. The judge directs the prosecutor and the defense to voir dire. The prosecutor has the right to conduct voir dire first, the defense second.

The court will proceed into what is called voir dire (questioning under oath). Art. 35.17, C.C.P.

❒ 26. Opening voir dire remarks.

"Members of the jury panel: The case about to be tried is Cause Number _____, styled *The State of Texas vs.* (*Defendant*), who is charged by complaint with the offense of (*name of offense*). The range of punishment provided for by law for this offense is a fine between $____ and $____." [In addition, identify other sanctions, if any, that apply upon conviction, such as: community service hours, attendance at an education course, etc.]

"As the jury panel, you have been seated in the order in which your names were selected using a purely random process. This is done purposely so that no one can "stack" or in any way manipulate who may sit as a juror on any particular case."

"Some of you may be eliminated because of disqualification."

"For those that remain, each side will have three peremptory challenges. Peremptory strikes may be exercised for any lawful reason. A peremptory strike removes a name from the list of potential jurors. Each side also has an unlimited number of strikes based upon a variety of legal reasons. The first six names remaining after all the strikes have been made will form the jury for this case."

❒ 27. Explain the jury's function and the role of the judge.

"It is the function of the jury to determine the facts. In doing so, you are the sole and exclusive judge of the credibility of the witnesses and the weight to be given their testimony. Even I, as the judge, am not permitted to influence your evaluation through words or actions during the trial. My job is to decide the law and to be certain that both sides receive a fair trial. When I rule on the admissibility of evidence, or hear other objections, I am not indicating my personal feelings for one side or the other, but simply applying rules of law established by the legislature that govern this trial."

"There are a few general principles of law that I would like to review with you at this time."

❒ 28. Explain who has the burden of proof in a criminal trial.	"The burden of proof in this case rests solely upon the State. The prosecutor must prove each and every element of the offense beyond a reasonable doubt."
❒ 29. Explain the presumption of innocence and touch upon the concept of beyond a reasonable doubt.	"The defendant is presumed to be innocent until guilt is established by legal evidence, received before you in the trial of this case, beyond a reasonable doubt. If, after you retire to deliberate, each of you believes beyond a reasonable doubt that the defendant is guilty of the offense charged, it will be your duty to return a verdict of 'Guilty.' If you have a reasonable doubt as to the guilt of the defendant, it will be your duty to return a verdict of 'Not Guilty.'"
❒ 30. Explain that the defendant is not required to testify in a criminal trial.	"The defendant in any criminal case is not required to prove innocence. If the defendant does not choose to testify, you may not consider that fact as evidence of guilt, nor may you, in your deliberations, comment or in any way allude to that fact."
❒ 31. Explain the purpose of a complaint in a criminal trial.	"The complaint in this case is not an indication of the guilt of the defendant. It is simply the legal means by which a person in Texas is brought to trial in municipal court."
❒ 32. Emphasize the importance of a fair trial.	"The defendant, the prosecutor, the public, and our system of justice, all require that a fair jury, one without bias or prejudice, and free of opinion as to the guilt or innocence of the defendant, be chosen here today. A fair jury is one that, not having heard any of the evidence, is not committed to either side. A fair jury is one that is impartial to both sides and that can and will follow the law as given to it by this court."

❒ 33. Explain why the attorneys for each side, or the defendant, if pro se, will question them.

"In a moment, the attorneys for each side are going to ask each of you some questions. These questions are not meant to pry into your personal affairs, or those of your family. The questions are designed to determine if you can be a fair juror, or whether any bias or prejudice you may have about the law in this case or the facts as they may be presented to you, will prevent you from following your oath as a juror."

❒ 34. Allow prosecutor to proceed with his or her voir dire. After prosecutor has finished with voir dire, allow defense to proceed with voir dire.

❒ 35. After voir dire is completed, allow prosecutor and defense to exercise their peremptory challenges.

Art. 35.25, C.C.P.

❒ a. The prosecutor and the defense may each exercise as many as three strikes (that is, ask that a potential juror be excused) without having to explain why the strikes were made unless a *Batson* challenge is raised.

Art. 45.029/45A.159, C.C.P. See Checklist 7-4.

❒ b. Each side takes its jury list supplied by the court and marks through as many as three names.

❒ c. The two lists are returned to the clerk, who makes a list of the first six names that have not been marked through. Those six persons then take their position in the jury box. The clerk delivers the original list to the judge and gives a copy of the list of six jurors to both the prosecutor and the defendant or the defendant's attorney.

Art. 33.01, C.C.P.

It is good practice for the judge to compare the attorney's strikes with the juror list prepared by the clerk to assure accuracy. The judge will then direct the clerk to prepare the juror list and make a copy for each side.

For instructions for a "pickup jury," see Art. 45.028/45A.156, C.C.P., and *TMCEC 2024 Forms Book*: Other Jurors Summoned ("Pickup Jury").

❒ 36. Seat and administer oath to jury at the conclusion of the voir dire proceedings.

If there is a *Batson* challenge, see Checklist 7-4.

❒ 37. Give oath and preliminary instructions to jury at conclusion of voir dire.

"Members of the jury, will you please stand, raise your right hand, and be sworn."

❒ a. Oath.

Art. 35.22, C.C.P.

"Each of you do solemnly swear that in the case of the State of Texas against the defendant, you will a true verdict render according to the law and the evidence (so help you God)."

❒ b. Preliminary instructions.

"You may be seated. Members of the jury, by that oath which you took as jurors, you have become officials of this court and active participants in the public administration of justice. It is your duty to listen to and consider the evidence and law in this case and to obey all instructions given you."

"As an additional instruction, I now instruct you not to discuss this case among yourselves until after you have heard all the evidence and the attorney's arguments, and until I have sent you to the jury room to deliberate and consider your verdict."

"We are now ready to proceed."

❒ 38. Explain how the trial will proceed.

"The trial will proceed as follows:"

"The prosecutor may make an opening statement;"

"The defense attorney/ defendant may do so as well, or at a later time;"

"The prosecutor will then offer evidence through witnesses;" and

"The defense attorney/ defendant may cross-examine each witness."

"When the prosecutor has finished presenting the State's case, the defense attorney/defendant may or may not present his or her evidence."

"The defendant is never required to prove his or her innocence."

"The prosecutor may cross-examine each defense witness, if any."

"When the defense is finished presenting its witnesses, the prosecutor may put on rebuttal witnesses, and the defense may then do the same."

"After the prosecution and the defense have presented their cases, we will hear closing arguments."

❒ 39. Have prosecutor read complaint; take defendant's plea.

❒ a. Prosecutor reads complaint, unless defendant waives the right to have the complaint read aloud. — Art. 36.01, C.C.P.

❒ b. A judge may not accept a plea of guilty or nolo contendere from a defendant in open court unless it appears to the judge that the defendant is mentally competent and the plea is free and voluntary. — Art. 45.0241/45A.153, C.C.P.

❒ c. The defendant then enters a plea of: — Art. 45.023/45A.151, C.C.P.

❒ (1) Guilty;

❒ (2) Nolo contendere (no contest); or

❒ (3) Not guilty.

❒ d. If the defendant refuses to enter a plea, the court must enter a plea of not guilty for the defendant. — Art. 45.024/45A.152, C.C.P.

❒ (1) If the defendant pleads guilty or nolo contendere, then the court determines the punishment.

Art. 45.022/45A.153, C.C.P.

❒ (2) The defendant in a misdemeanor case may be absent and appear by counsel with the consent of the State.

Art. 33.04, C.C.P.

The prosecuting attorney has unrestricted discretion in consenting to defendant's absence in a jury trial.

❒ 40. Place witnesses under "The Rule."

❒ a. At the request of either the defense or prosecution, or on the judge's own motion, the judge may prevent witnesses from hearing the testimony of other witnesses.

❒ b. Determine all witnesses.

❒ c. Give oath to witnesses.

"All those of you who may be witnesses in this case who are in the courtroom, please stand and raise your right hand."

"Do you solemnly swear or affirm that the testimony that you are about to give in the case now on trial is the truth, the whole truth, and nothing but the truth (so help you God)?"

❒ d. Instruct the witness in the language of "The Rule."

Rule 613 of the Rules of Evidence.

❒ e. Before a victim, close relative of a victim, or a guardian of a victim can be excluded under "The Rule," the moving party must show, and the court must determine that:

❒ (1) The victim (or relative or guardian) will testify; and

❒ (2) The testimony of the witness/ victim would be materially affected if the witness/victim is not excluded under "The Rule."

"'The Rule' has been invoked.' The Rule' means that the witnesses who are not parties to this case must remain outside the hearing of the courtroom at all times while testimony is being heard, except when testifying or until discharged. If you are a witness, you must stay close enough so that you may be reached when needed. You must not discuss this case among yourselves or allow it to be discussed in your presence except in the presence of your attorney and under the orders of the court. You must not read any report, newspaper article, correspondence, or comment on the testimony in the case while you are under 'The Rule.' Please remain outside until called."

❒ f. If either side asks the judge to make an exception for a particular witness (for example, an expert witness), the judge may grant the exception if determining that the witness' testimony will not be tainted or influenced if that person is allowed to remain in the courtroom during the trial and to hear the testimony of the other witnesses in the case.

❒ 41. Opening statements:

Art. 36.01, C.C.P.

❒ a. Prosecution opens first.

❒ b. Defense opens second or may reserve opening statement until after the State rests its case-in-chief.

❒ c. Should the prosecution waive its opening statement, the defense may not make an opening statement until the prosecution concludes its case-in-chief.

❒ 42. Presentation of evidence.

Art. 36.01, C.C.P.

❒ a. Prosecution's case-in-chief.

❒ (1) State's direct evidence.

❒ (2) Defendant's cross-examination.

❒ (3) State's redirect examination, if any.

❒ (4) Defendant's recross-examination, if any.

❒ b. State rests.

❒ 43. Motion for directed verdict:

Art. 45.032/45A.162, C.C.P.

❒ a. At this point, the defense is permitted to bring a motion for directed verdict of acquittal. The motion is based upon the belief of the defense that the State has failed to bring up some evidence on an element of the offense.

It may prove necessary to clear the jury from the courtroom. Motions for directed verdict are often made and argued outside the presence of the jury.

❒ b. If the court believes that the defense is correct, the judge should instruct the jury to return a verdict of not guilty.

❒ (1) Granting the motion has the same practical effect of ending the trial in an acquittal. Overruling the motion results in a continuation of the trial, and the defense would then be allowed to present its case.

❒ 44. Defendant's case:

Art. 36.01, C.C.P.

❒ a. Defendant's direct examination.

❒ b. State's cross-examination.

❒ c. Defendant's redirect examination, if any.

❒ d. State's recross-examination, if any.

❒ 45. Rebuttal evidence:

❒ a. The prosecution may present rebuttal evidence in the same manner as the prosecution's case-in-chief.

❒ 46. Prosecution closes:

❒ a. If the State presents more evidence, the defense may present more evidence if it chooses.

❒ 47. Defense closes.

❒ 48. You must give the jury a charge on the law that applies to the case. The charges may be made orally or in writing, except that the charge must be in writing if required by law. Municipal courts of record are required to have a written jury charge. The jury charge must be given before closing arguments.

Art. 45.033/45A.163, C.C.P.

A written charge is preferred by most judges to avoid objections to the oral charge being made in front of the jury. Some judges prepare the charge in advance and provide a copy to the defense and the prosecution for review and objection prior to the trial. This avoids having to review and possibly revise the charge at trial while the jury and others wait. The final version is provided to the prosecution and defense at the trial. See Checklist 7-5.

❒ 49. Read the charge to the jury. Do not comment or communicate your views regarding the instructions given by changes in your voice or facial expressions.

Art. 36.14, C.C.P.

"At this time, ladies and gentlemen, I will read to you the charge of the court containing the law applicable to this case. In continuing to discharge your responsibilities as jurors, you will continue to observe all the instructions that have previously been given to you. These instructions are given to you because your conduct is subject to review the same as that of the witnesses, parties, attorneys, and myself. If it should be found that you have disregarded any of these instructions, it will be jury misconduct and it may require another trial by another jury."

"If any of you observe one or more of your group violating any of my instructions, you shall immediately warn the violator and caution him or her not to do so again."

"Please listen carefully as I read the charge to you. The original will be placed on the table in the jury room when you retire to begin your deliberations."

See Checklist 7-5 on preparing a jury charge.

❒ 50. Closing arguments:

Arts. 36.07 and 36.08, C.C.P.

❒ a. Prosecution argues first (may waive).

Both sides are allotted equal time for closing arguments. If the prosecution chooses to divide their argument, they do not receive additional time.

❒ b. Defense makes its argument.

❒ c. Prosecution has the right to argue last.

❒ 51. Before submitting the case to the jury, determine whether the defendant elected jury sentencing:

It is unclear whether the law allows a defendant in a municipal court who exercised the right to a jury trial to elect, in the event of conviction, whether the fine will be set by the jury or judge. The Court of Criminal Appeals says that Art. 37.07, C.C.P. can be read to support both a negative and positive answer to that question. See *In re Yeager*, 601 S.W.3d 356 (Tex. Crim. App. 2020). The checklists below assume the jury is determining punishment. If the jury is not determining punishment, adjust the checklists accordingly.

❒ a. If the defendant elected to have the jury determine punishment, instruct the jury to assess a fine if they find the defendant guilty of the offense.

"If you find the defendant guilty, you must assess a fine. In setting a fine, you must not compromise or set the fine by chance. It must be an amount set by the free opinion of each individual juror within the range allowed by law."

❒ b. If the defendant did not elect the jury to determine punishment, instruct the jury to only render a verdict of "Not Guilty" or "Guilty. If the verdict is "Guilty," the judge will assess a fine.

❒ 52. Submit the case to the jury for deliberations:

❒ a. Instruct the jury.

"You must appoint a presiding juror."

"The verdict must be unanimous."

"If you find the State did not prove each element of its case and the guilt of the defendant beyond a reasonable doubt, you must return a verdict of 'Not Guilty'."

"You will be provided forms to reflect a verdict of either not guilty or guilty. After you have reached your verdict, the presiding juror will complete the appropriate form, sign the form, and notify the bailiff a verdict has been reached."

"Any communication between the jury and court must be in writing and transmitted by the bailiff."

"If you cannot reach a verdict within a reasonable time, notify the bailiff of your difficulty or problem."

See *TMCEC 2024 Forms Book*: After Jury Verdict and After Jury Verdict (Juvenile). Art. 45.036/45A.166, C.C.P

❒ b. Provide the jury with copies of:

❒ (1) Jury charge;	
❒ (2) Jury instructions; and	
❒ (3) Verdict Forms	
❒ 53. The verdict.	Art. 45.036/45A.166, C.C.P.
❒ a. The judge should see that the verdict is in the proper form (if guilty, the verdict should include assessment of punishment).	
❒ b. Read the verdict in open court.	
❒ c. Enter the verdict on your docket.	Art. 45.017/45A.053, C.C.P.
❒ (1) If the jury is deadlocked, give an *Allen* Charge.	See Checklist 7-6(5).
❒ (2) If a verdict cannot be reached and it is improbable that an agreement can be reached, the jury should be discharged and the case tried again.	
❒ 54. Poll jury on request of prosecution or defense.	Art. 37.05, C.C.P.
❒ 55. Discharge jury.	See Chapter 8 in this book.

CHAPTER 7 TRIAL PROCEEDINGS

Parties use peremptory challenges to remove from the jury panel jurors they believe will have an unfavorable bias as a factfinder. Though a party need not state a reason for rejecting jurors when using peremptory challenges, the U.S. Supreme Court held in *Batson v. Kentucky*, 476 U.S. 79 (1986), and *J.E.B. v. Alabama ex rel. T.B.*, 511 U.S. 127 (1994), that these challenges cannot be used to strike a juror in a criminal case based solely on his or her race or gender, respectively.

4. The Jury Trial – *Batson* Challenges

Checklist 7-4	Notes
❒ 1. Hold a hearing upon a timely, specific objection or motion, written or oral, by either the State or the defendant, that the opposing party made a peremptory strike based upon:	The C.C.P. provides relief only to the defendant, but federal courts have expanded the right to challenge to the State.
❒ a. Race; or	Art. 35.261(a), C.C.P.; *Batson v. Kentucky*, 476 U.S. 79 (1986); *Georgia v. McCollum*, 505 U.S. 42 (1993).
❒ b. Gender.	*J.E.B. v. Alabama ex rel T.B.*, 511 U.S. 127 (1994).
❒ 2. The motion is timely so long as it is made **before** the jury is impaneled and sworn.	*Hill v. State*, 827 S.W.2d 860 (Tex. Crim. App. 1992).
❒ 3. Subsequent proceedings are public and should be held in the courtroom.	*Salazar v. State*, 795 S.W.2d 187 (Tex. Crim. App. 1990).
❒ 4. Administer the witness oath to both the prosecutor and defense attorney.	
❒ 5. A *prima facie* case of racial or gender-based discrimination consists of a showing that the opposing party:	
❒ a. Struck all venire members of the same race or gender; or	*Salazar v. State*, 795 S.W.2d 187 (Tex. Crim. App. 1990).
❒ b. Struck a disproportionate number of venire members of one race or gender.	*Linscomb v. State*, 829 S.W.2d 164 (Tex. Crim. App. 1992).
❒ 6. The party against whom the objection or motion is made is then permitted to offer a reasonable race or gender-neutral explanation for the strike(s).	

❒ 7. If the party against whom the objection or motion is made fails to offer a reasonable race or gender-neutral reason, the objecting party's burden is met.

Williams v. State, 767 S.W.2d 872 (Tex. App.—Dallas 1989, no pet.).

❒ 8. If the party against whom the objection or motion is made offers a reasonable race or gender-neutral explanation, the objecting party has the burden of persuading the judge by a preponderance of the evidence that the allegations of purposeful discrimination are true.

Tompkins v. State, 774 S.W.2d 195 (Tex. Crim. App. 1987).

❒ a. The objecting party may call witnesses, including opposing counsel.

Williams v. State, 767 S.W.2d 872 (Tex. App.—Dallas 1989, no pet.).

❒ b. The objecting party's counsel is entitled to examine opposing counsel's notes for purposes of cross-examination.

Salazar v. State, 795 S.W.2d 187 (Tex. Crim. App. 1990).

❒ c. Objecting counsel may also testify as to what occurred during voir dire.

Prosper v. State, 788 S.W.2d 625 (Tex. App.—Houston [14th] 1990, no pet.).

❒ 9. The trial judge must evaluate the reasons given in light of the circumstances of the trial and decide whether the explanations are valid or a pretext:

❒ a. In reviewing the rationale for strikes, the judge should look at:

❒ (1) Reasons given not related to facts given;

❒ (2) Lack of questions or meaningful questions;

❒ (3) Disparate treatment of prospective jurors;

❒ (4) Disparate questioning to exclude jurors; and

❒ (5) Bias toward a group or profession where the trait is not shown to apply.

❒ b. Reasons held to be racially neutral include but are not limited to:

❒ (1) Juror has family members with criminal problems;

❒ (2) Juror has family member in the penitentiary;

❒ (3) Juror has a criminal history;

❒ (4) Juror previously served on a hung jury; and

❒ (5) Juror previously served on a jury that acquitted.

❒ 10. The judge should, but is not required to, make findings of fact and conclusions of law.

Lewis v. State, 779 S.W.2d 449 (Tex. App.—Tyler 1989, pet. ref'd).

❒ 11. If purposeful discrimination is found, the judge is not required to dismiss the venire, call another, and begin jury selection again. The judge may fashion any remedy the judge deems appropriate consistent with *Batson* and its progeny:

State ex rel Curry v. Bowman, 885 S.W.2d. 421 (Tex. Crim. App. 1993).

❒ a. Consider for example:

❒ (1) Calling a new jury array under Art. 35.261, C.C.P.; or

❒ (2) Seating the struck venire person.

CHAPTER 7 TRIAL PROCEEDINGS

In a jury trial, the jury determines questions of fact while the judge determines questions of law. Despite having such an important role in deciding a defendant's criminal liability, jurors often do not fully understand what they are to properly consider in determining fact questions. Jury charges narrow the scope of considerations to be made by the jury to relevant and nonprejudicial matters.

5. The Jury Trial – Jury Charge

Checklist 7-5	Script/Notes
❒ 1. The judge must charge the jury before either the defense or prosecution presents closing arguments. The charge may be made orally or in writing. However, the charge must be in writing if required by law:	Art. 45.033/45A.162, C.C.P. A written jury charge is specifically required in municipal courts of record. Art. 36.14, C.C.P.
❒ a. Delete any allegations of alternative means of committing the offense for which no evidence was presented.	
❒ b. Obtain a copy of the complaint and statute or ordinance alleged to be violated.	
❒ c. Request submission of any specially requested charges by the parties and make a ruling on each.	Art. 36.14, C.C.P.
❒ d. Give each party a reasonable time to inspect and object to the charge intended to be given.	Art. 36.14, C.C.P.
❒ 2. Caption:	CAUSE NUMBER _____ THE STATE OF TEXAS § IN THE MUNICIPAL § COURT OF § *(City)* § *(County)* , TEXAS CHARGE TO THE JURY
❒ a. Insert the:	
❒ (1) Cause number;	
❒ (2) Court; and	
❒ (3) Defendant's name.	

❒ 3. Commencement:

MEMBERS OF THE JURY:

The defendant, (*name as appearing on the complaint*), is charged with the offense of _____ alleged to have been committed in the City of (*municipality*), (*county*), Texas, on or about the ____ day of _____, 20__. To this charge the defendant has pled not guilty. You are instructed that the law applicable to this case is as follows:

❒ a. Insert the:

❒ (1) Name of the offense;

❒ (2) Name of the city;

❒ (3) Date of the offense; and

❒ (4) Defendant's plea.

❒ 4. Abstract Charge:

❒ a. Describe the offense as specifically as possible from the statute and complaint.

❒ b. Consider quoting verbatim actual statutory language applicable.

E.g., a person commits the offense of assault if the person intentionally or knowingly causes physical contact with another when the person knows or should reasonably believe that the other will regard the contact as offensive or provocative.

❒ 5. Definitions:

❒ a. Define the culpable mental state, if any.

E.g., a person acts intentionally or with intent, with respect to the nature of his or her conduct or to a result of his or her conduct, when it is his or her conscious objective or desire to engage in the conduct or cause the result.

❒ b. Define any terms which are defined in the code or statute.

❒ c. Reasonable Doubt.

The six paragraphs previously required by *Geesa v. State*, 820 S.W.2d 154 (Tex. Crim. App. 1991) are no longer required under the holding of *Paulson v. State*, 28 S.W.3d 570 (Tex. Crim. App. 2000).

❒ 6. Application Paragraph:

E.g., if you believe from the evidence beyond a reasonable doubt that the defendant, (*name of defendant*), on or about (*date alleged in the complaint*), in the City of _____, Texas, did then and there intentionally or knowingly cause physical contact with (*name of victim/complainant*), by (*set out facts alleged in complaint*), when the defendant knew or should have reasonably believed that the said (*name of victim/ complainant*) would regard the contact as offensive or provocative, you will find the defendant guilty of the offense of assault by contact.

❒ a. Incorporate complaint or statutory language to include all elements of offense.

❒ b. Delete any manner or means of committing the offense not supported by evidence.

❒ c. Change conjunctive pleadings ("and") to disjunctive ("or") where applicable.

❒ d. Apply law without commenting on weight of evidence.

❒ 7. Converse charge:

But if you do not so believe or if you have a reasonable doubt thereof, you will acquit the defendant and say by your verdict not guilty.

❒ a. Insert the converse charge.

❒ 8. Evidentiary instructions:

E.g., You are instructed that certain evidence was admitted before you in regard to the defendant having been charged and convicted of an offense or offenses, other than the one for which the defendant is now on trial. Such evidence cannot be considered by you against the defendant as any evidence of guilt in this case. The evidence was admitted for the purpose of aiding you, if it does, in passing upon the credibility of the defendant as a witness in this case, and to aid you, if it does, in deciding on the weight you will give to the defendant's testimony, and you will not consider it for any other purpose. Arts. 38.22 and 38.23, C.C.P.

❒ a. If evidence has been admitted for a limited purpose such as to impeach a witness, add an instruction to limit the jury's consideration to the purpose for which it was offered.

❒ b. If there is a fact issue as to admissibility of evidence or a confession because of illegality in the way it was obtained, submit it to the jury if requested by the defendant.

❒ 9. Defenses:

❒ a. If evidence from any source establishes a defense, instruct the jury on the law and the requirement to acquit if the State fails to disprove the defense evidence beyond a reasonable doubt.

❒ b. If evidence from any source establishes an affirmative defense, instruct the jury on the law and the requirement to acquit if defendant proves the defense by a preponderance of the evidence.

❒ 10. Presumptions:

❒ a. Add any evidentiary presumption authorized by law.	The jury is instructed relative to this presumption:
❒ b. Include the general instructions relating to presumptions found in Section 2.05, P.C.	(1) that the facts giving rise to the presumption must be proven beyond a reasonable doubt; (2) that if such facts are proven beyond a reasonable doubt the jury may find that the element of the offense sought to be presumed exists, but it is not bound to so find; (3) that even though the jury may find the existence of such element, the State must prove beyond a reasonable doubt each of the other elements of the offense charged; and (4) that if the jury has a reasonable doubt as to the existence of a fact or facts giving rise to the presumption, the presumption fails and the jury shall not consider the presumption for any purpose.
❒ 11. Range of punishment:	An individual adjudged guilty of _____ shall be punished by a fine not to exceed _____ dollars [or] by a fine of not less than $_____ nor more than $_____. Therefore, if you find the defendant guilty you shall access punishment by a fine not to exceed _____ dollars [and not less than $_____].
❒ a. Instruct on the range of punishment for every offense if defendant elected jury to assess punishment.	

❒ 12. General instructions:

❒ a. Add general instructions.

"You are instructed that the criminal complaint is not evidence of guilt. It is the means whereby a defendant is brought to trial in a misdemeanor prosecution. It is not evidence, nor can it be considered by you in passing upon the innocence or guilt of this defendant."

"During your deliberations in this case, you must not consider, discuss or relate any matters not in evidence before you. You should not consider or mention any personal knowledge or information you may have about any fact or person connected with this case which is not shown by the evidence."

"After you have retired to your jury room, you should select one of your members as your presiding juror. It is the presiding juror's duty to preside at your deliberations, vote with you, and when you have unanimously agreed upon a verdict, to certify to your verdict by signing the same as presiding juror."

"You are the exclusive judges of the facts proved, of the credibility of the witnesses, and of the weight to be given to the evidence, but you are bound to receive the law from the court, which is herein given to you, and be governed thereby."

❒ b. If the defendant elected that the jury assess punishment, explain how to arrive at punishment.

"A form for your verdict is attached; your verdict must be in writing and signed by your presiding juror. In deliberating on the punishment in this case, you must not refer to or discuss any matter not in evidence before you. You must not arrive at the punishment to be assessed by any lot or chance, or by putting down any figures or doing any dividing."

"Your verdict must be unanimous.

"You are the exclusive judges of the facts proved, of the credibility of the witnesses and of the weight to be given to their testimony, but you are bound to receive the law from the court which is herein given you, and be governed thereby."

❒ 13. Verdict Form:

CAUSE NUMBER _____

THE STATE OF TEXAS

§ IN THE MUNICIPAL COURT OF
§ (*City*)
§ (*County*), TEXAS

VERDICT

❒ a. Prepare the verdict form on a separate page and include it with the charge.

(Choose one of the following)

We, the Jury, find the defendant not guilty.

_____
Presiding Juror

❒ b. If defendant elected to have the jury assess punishment, include a punishment section on verdict form.

We, the Jury, find the defendant guilty, and assess a fine of $ _____.

_____
Presiding Juror

❒ 14. Objections to the main charge:

❒ a. Allow each party to make objections to the charge.

❒ 15. Make any needed changes to the charge:

❒ a. Do not indicate in the charge which party requested the instruction.

❒ 16. Read the charge to the jury.

CHAPTER 7 TRIAL PROCEEDINGS

6. The Jury Trial – Jury Deliberation

Checklist 7-6	Script/Notes
❒ 1. Have the bailiff ensure that the jury room is ready and equipped with chairs, pencils, writing pads, etc.	
❒ 2. Remand jurors to the bailiff and instruct jurors that they are to follow the bailiff's instructions when not in the jury room.	
❒ 3. The jury should be advised by the bailiff where he or she will be stationed should he or she be needed.	
❒ 4. Jury questions during deliberation:	
❒ a. If jury communicates with court in writing, use reasonable diligence to secure presence of defendant, defense counsel, and prosecutor.	Art. 36.27, C.C.P.
❒ b. Show question and proposed answer to defendant and both counsel for objections or exceptions.	
❒ c. If unable to secure presence of defendant and both counsel, answer appropriately.	
❒ d. Read written answer in open court unless defendant expressly waives.	
❒ e. If the jury disagrees as to the testimony of a witness, have read back to them the specific portion in dispute.	
❒ f. If there are no court reporter notes, the witness may be recalled to repeat testimony only as to the point in dispute.	*Brown v. State*, 870 S.W.2d 53 (Tex. Crim. App. 1994). The jury must disagree about the testimony before the statement of a witness may be read to them; a simple request for testimony does not, by itself, reflect disagreement. *Moore v. State*, 874 S.W.2d 671 (Tex. Crim. App. 1994); Art. 36.28, C.C.P.

❒ 5. If the jury is deadlocked and cannot reach a verdict, the court may give an "*Allen* Charge" or "Dynamite Charge:"

An "*Allen*" charge is one given to a deadlocked jury which indicates to a juror that some deference is owed to the opinion of the majority of the other jurors. *Allen v. United States,* 164 U.S. 492 (1896).

❒ a. Read the charge to the jury and give the charge to them in writing to take to the jury room along with the original instructions.

"While undoubtedly, members of the jury, the verdict of a jury should represent the opinion of each individual juror, it by no means follows that opinions may not be changed by conference in the jury room. The very object of the jury system is to secure unanimity by comparison of views and by arguments among the jurors themselves. Every juror should listen with deference to the arguments of the other jurors, and with a distrust of the juror's judgment if the juror finds the larger majority of the jury takes a different view of the case than that which the juror takes. No juror should go to the jury room with a blind determination that the verdict should represent the juror's opinion of the case at that moment or that the juror should close the juror's eyes to the arguments of the other jurors, who are equally honest and intelligent."

"So I charge that although the law requires the considered verdict of each individual juror and not a mere acquiescence in the conclusion of the juror's fellows, you should examine the questions submitted with candor and with a proper regard and deference to the opinions of each other."

"Now, it is your duty to decide this case, if you can conscientiously do so. No juror is expected to do violence to the juror's own conscience. You should listen with a disposition to be convinced of each other's arguments. If a much larger number are for conviction, a dissenting juror should consider whether the juror's doubt is a reasonable doubt, which made no impression upon the minds of so many people equally honest and intelligent."

"If, on the other hand, a majority of you are for acquittal, the minority ought to ask themselves whether they might not reasonably doubt the correctness of a judgment which was not concurred in by the majority."

"Having given you these additional instructions, it is my hope that you will return to the jury room and endeavor to reach a verdict. And with these instructions in mind, I am now going to ask you to return to the jury room and consider further your verdict."

❒ 6. If a verdict is returned, read it in open court.

❒ 7. Poll the jury on request of the prosecution or defense.

Art. 37.05, C.C.P.

❒ 8. If jury cannot agree, it may be discharged:

Art. 36.31, C.C.P.

- ❒ a. When both parties consent to its discharge; or
- ❒ b. When the court believes that the jury has been kept together for such time as to render it altogether improbable that it can agree.

CHAPTER 7 TRIAL PROCEEDINGS

7. The Jury Trial - Master Checklist

Checklist 7-7	Script/Notes
❒ 1. Defendant requests trial by jury (or refuses to waive right to trial by jury in writing).	
❒ 2. Set pretrial hearing date or trial date if no pretrial hearing.	See Chapter 6 in this book.
❒ 3. Issue orders to summon jury panel.	
❒ 4. Call case for announcements and admonishments to defendant.	
❒ 5. Qualify and swear the central jury panel, if a central jury panel system is used.	
❒ 6. Swear the jury panel.	
❒ 7. Qualify the jury panel.	
❒ 8. Seat the panel in the courtroom:	
❒ a. Shuffle the panel if either side requests it. Only one shuffle is permitted.	
❒ 9. If requested by either party, order the official court reporter to transcribe the voir dire. (Only applicable for courts of record.)	
❒ 10. Introductions and administration of the juror oath.	
❒ 11. Opening remarks by the court.	
❒ 12. Permit the prosecutor to voir dire the panel.	
❒ 13. Permit the defendant or, if represented by counsel, the defendant's attorney to voir dire the panel.	
❒ 14. Direct the parties to make their peremptory strikes (rule on challenges for cause, if any).	
❒ 15. The jury is the first six of those left.	

❒ 16. If requested, hold a hearing on the discriminatory use of peremptory challenges.

❒ 17. Seat the jury and administer the oath.

❒ 18. Take defendant's plea.

❒ 19. At the request of either the defense or prosecution, or on your own motion, you should determine all possible witnesses.

- ❒ a. Invoke "The Rule" if requested.

❒ 20. Opening statements:

- ❒ a. Prosecution first.
- ❒ b. Defense second, but may reserve opening statement until after the State rests its case-in-chief.
- ❒ c. Should the prosecution waive its opening statement, the defense may not make an opening statement until the prosecution concludes its case-in-chief.

❒ 21. Prosecution's case-in-chief:

- ❒ a. State's direct evidence.
- ❒ b. Defendant's cross-examination.
- ❒ c. State's redirect examination, if any.
- ❒ d. Defendant's recross-examination, if any.
- ❒ e. State rests.

❒ 22. Motion for directed verdict. Art. 45.032/45A.162, C.C.P.

- ❒ a. If the state fails to prove a prima facie case of the offense alleged in the complaint, the defendant is entitled to a directed verdict of "not guilty."

❒ 23. Defendant's case:

- ❒ a. Defendant's direct examination.
- ❒ b. State's cross-examination.
- ❒ c. Defendant's redirect examination, if any.
- ❒ d. State's recross-examination, if any.
- ❒ e. Defendant rests.

❒ 24. Rebuttal evidence: The prosecution may present rebuttal evidence in the same manner as the prosecution's case-in-chief.

❒ 25. Prosecution closes. The defense may present rebuttal evidence if the prosecution did so.

❒ 26. Defense closes.

❒ 27. Provide a charge to the jury and a copy to prosecution and defense.

❒ 28. Read the charge to the jury.

❒ 29. Closing arguments:

- ❒ a. Prosecution argues first (may waive).
- ❒ b. Defense makes its argument.
- ❒ c. Prosecution has the right to argue last.
- ❒ d. Both sides are given equal time.

❒ 30. Submit case to the jury for deliberations.

❒ 31. Verdict:

- ❒ a. You should see that the verdict is in the proper form (if guilty, the verdict should include assessment of punishment) and read it in open court.
- ❒ b. Enter the verdict on your docket.

❒ c. If a verdict cannot be reached and it is improbable that an agreement can be reached, the jury should be discharged and the case tried again.

❒ 32. Motion for new trial.

See Chapter 10 in this book.

❒ 33. Appeal

If the defendant is found guilty, the judge should inform the defendant of the right to appeal. The defendant is not required to give notice in open court. However, the notice of appeal and appeal bond must be filed within 10 days of rendition of judgment.

Procedures for appeal differ for municipal courts of record and non-record municipal courts. See Chapter 10 in this book.

CHAPTER 8 SENTENCING, DEFERRED DISPOSITION, AND INDIGENCE

1. Sentencing

Municipal courts have jurisdiction over Class C misdemeanors. Under Sections 12.23 and 12.41(3) of the Penal Code, Class C misdemeanors are criminal offenses for which the sentence entails the imposition of a fine as punishment. After a finding of guilt, municipal judges impose the fine in the judgment as a sentence.

Checklist 8-1	Script/Notes
❒ 1. After entry of a guilty or nolo contendere plea or a determination of guilt at a bench trial or jury trial:	You may not accept a plea of guilty or nolo contendere in open court unless it appears that the defendant is mentally competent, and the plea is free and voluntary. Art. 45.0241 /45A.152, C.C.P.
❒ a. Find defendant guilty.	"You are found guilty of the offense of _____."
❒ 2. The judge may take testimony or evidence, but is not required to do so:	
❒ a. This proceeding may be ex parte. The State may be heard, but the presence of a prosecutor is not required after a plea of guilty.	
❒ b. If the court accepts evidence or testimony, it should be under oath.	
❒ c. The court should not deviate from its obligations to remain fair and impartial.	Canon 3, *Code of Judicial Conduct*
❒ 3. Judge should consult the controlling statute or ordinance to determine the range of punishment.	.
❒ 4. Judge should set a fine within the range of punishment. The judge is required to consider the entire range of punishment and is prohibited from imposing a pre-determined sentence. This is rendering sentence.	Art. 45.041(a)/45A.251(a), C.C.P. "I am setting your fine in the amount of $_____."

❒ a. If the defendant entered a plea in open court, the judge shall inquire either during or immediately after the imposition of the sentence whether the defendant has sufficient resources or income to immediately pay all or part of the fine and costs.	Art. 45.041(a-1)/45A.252, C.C.P. This includes when a defendant enters a plea prior to the commencement of trial. See HB 80 amendment to 45.041.
❒ 5. Make any determination necessary to court costs.	"Your court costs are a total of $_____."
❒ 6. If the court believes deferred disposition is appropriate, go to Checklist 8-2 and skip the rest of this list.	Art. 45.051/Subchapter G, Chapter 45A, C.C.P.
❒ 7. If the defendant is under the conservatorship of the Department of Family and Protective Services or in extended foster care, the judge may not require the defendant to pay any amount of fine and costs. In lieu of payment, the judge may require the defendant to perform community service under Arts. 45.049/45A.254 and 45.0492/45A.459-45A.460, C.C.P.	Art. 45.041(b-6)/45A.253(d), C.C.P.
❒ 8. If the judge determines that the defendant does not have sufficient recources or income to immediately pay all or part of the fine and costs, determine whether the fine and costs should be:	Art. 45.041(a-1)/45A.252(b), C.C.P. See Checklist 8-3 for determining sufficient resources or income to pay.
❒ a. Paid at some later date or in a specified portion at designated intervals;	
❒ b. Discharged by performing community service;	
❒ c. Waived in full or in part; or	
❒ d. Satisfied through any combination of a-c above.	
❒ 9. The court may order the fine and costs paid in the following manners:	Art. 45.041(b)/45A.251, C.C.P.

❒ a. The entire fine and costs when sentence is pronounced;

If you determine that the defendant is unable to immediately pay the fine and costs, you must allow the defendant to pay in specified portions at designated intervals. Art. 45.041(b-2)/45A.253, C.C.P.

This does not preclude community service per Article 45.049/45A.254, C.C.P., or waiver of fines and costs per Article 45.0491/45A.257, C.C.P.

See *TMCEC 2024 Forms Book*: Installment Agreement; and Schedule of Payments for Installment Agreement.

❒ b. The entire fine and costs at some later date; or

"You will pay the total amount of $(*fine and costs*) immediately."
"You will pay the total amount of $(*fine and costs*) on or before (*date*)."

❒ c. A specified portion of the fine and costs at designated intervals.

"You will pay the amount of $(*payment*) on or before (*date*) and payments of $(*installment*) each (*installment period*) until the total amount of $(*fine and costs*) is paid."

A time payment fee must be paid if the total fine and costs are not paid before the 31st day after judgment. Sec. 133.103, L.G.C.

For more information on payment plans, see Checklist 8-3.

❒ 10. The court should impose orders authorized or required by law.

Art. 45.041(b)(3)/45A.251(b(3), C.C.P. For special sanctions allowed and required in juvenile cases, see Chapter 13.

❒ 11. The court, if applicable, may direct the defendant to pay restitution to any **victim** of the offense. In instances involving passing a bad check, restitution is limited to $5,000.

Art. 45.041(b)(2) and (b-1) /45A.251(b)(2) and (c), C.C.P. A victim is any person who suffers loss as a direct result of the criminal offense. *Hanna v. State*, 426 S.W.3d 87 (Tex. Crim. App. 2014).

❒ 12. If the defendant has been placed in jail on the charge, the court must calculate jail credit:

Arts. 42.03, Sec. 2; 45.041(c) /45A.251(d), and 45.048/45A.262 C.C.P.

❒ a. Court must determine the period of time that must be served to get credit. The period can be no less than eight hours nor more than 24 hours.

Art. 45.048(b)/45A.262(b), C.C.P.

❒ b. Each period earns not less than $150 in credit against the fine and costs for each period served.

Art. 45.048(a)(2)/45A.262(a)(2), C.C.P. The credit amount of $150 per period served applies to a defendant who is placed in jail for failure to pay.

❒ c. Credit must be given for all time in jail in said cause prior to sentence in each cause even when the effect is the defendant receives multiple jail credits.

Ex parte Hannington, 832 S.W.2d 355 (Tex. Crim. App. 1992).

❒ 13. In addition to jail credit above, the judge shall credit the defendant $150 each day for any time the defendant was confined in jail or prison while serving a sentence for another offense if the confinement occurred after the commission of the misdemeanor for which the defendant is now being sentenced.

Art. 45.041(c-1)/45A.251(e), C.C.P.

Note that this credit is required for time served as part of a sentence. Jail credit is not required for time spent in jail for a Class C misdemeanor, as a defendant can never be sentenced to jail as a result of a Class C misdemeanor.

❒ 14. The court must enter a written judgment signed by the trial judge reflecting the sentence and terms rendered above.

Art. 42.01, Sec. 1, C.C.P.

❒ 15. A copy of the judgment should be provided to the defendant.

❒ 16. Advise of right to appeal.

CHAPTER 8 SENTENCING, DEFERRED DISPOSITION, AND INDIGENCE

2. Deferred Disposition, Art. 45.051/Subchapter G, Chapter 45A, C.C.P.

Deferred disposition is a form of probation used by municipal and justice courts that can last up to 180 days. Granting deferred disposition is within the court's discretion. It is not mandatory. For more information about deferred disposition, *see* "Deferred Disposition is Not Deferred Adjudication," *The Recorder*, (August 2002).

Checklist 8-2	Script/Notes
❒ 1. Determine that deferred disposition is available for the alleged offense. It is not available for:	
❒ a. Traffic offenses committed in a work-construction zone while workers are present;	Art. 45.051(f)(1)/45A.301(1), C.C.P.
❒ b. Violation of a state law or local ordinance relating to "motor vehicle control," other than a parking violation committed by a person who holds a commercial driver's license or held a commercial driver's license at the time of the offense; or	Art. 45.051(f)(2)/45A.301(2), C.C.P.
❒ c. A minor with two prior convictions for either Consumption of Alcohol by a Minor (Sec. 106.04, A.B.C.) or Driving or Operating Watercraft Under the Influence of Alcohol by a Minor (Sec. 106.041, A.B.C.).	If there are two prior convictions, the municipal court must waive jurisdiction of the third or subsequent offenses unless the court has a juvenile case manager. Sec. 51.08, F.C.
❒ 2. Deferred disposition may be granted:	See *TMCEC 2024 Forms Book*: Deferred Disposition Order.
❒ a. After defendant pleads guilty or no contest; or	The plea may be oral or written.
❒ b. After a finding of guilt by judge or jury.	Deferred may be granted at the defendant's request, the prosecutor's suggestion, or the court's own motion.
❒ 3. Set a fine.	The court must set a fine when granting deferred disposition, even though the case may be dismissed later.

❒ 4. Defendant must pay court costs:

Art. 45.051(a)/45A.302(a), C.C.P.; Sec. 133.101, L.G.C.

❒ a. At the time the deferred disposition is granted or ordered; or,

❒ b. Alternatively, notwithstanding any other provision of law;

Art. 45.051(a-1)/45A.303(a), C.C.P.

❒ (1) in installments during the probation period;

Alternatives should be incorporated as conditions of the deferred disposition order. See Checkbox 6 below.

❒ (2) by performing community service, if eligible, under Article 45.049/45A.254 C.C.P., if:

❒ (A) Defendant failed to pay previously assessed fine or cost; or

❒ (B) Defendant is determined by the court to have insufficient resources or income to pay fine or costs;

❒ (i) by performing community service, if defendant is younger than 17 years, under Article 45.0492/45A.459, C.C.P.;

❒ (ii) by performing tutoring, if defendant is younger than 17 years of age and the offense occurred in a building or on the grounds of the primary or secondary school at which the defendant was enrolled at the time of the offense, under Article 45.0492/45A.460, C.C.P.; or

❒ (iii) through a combination of the alternatives described above.

❒ 5. Defer the proceedings for a period of time not to exceed 180 days.

❒ 6. Set any or all of the following conditions to be performed by the defendant during the deferral period, which may include:

- ❒ a. Post bond in amount of the fine to secure payment of the fine;
- ❒ b. Require payment of restitution to victim;
- ❒ c. Go to professional counseling;
- ❒ d. Submit to alcohol or drug testing;
- ❒ e. Submit to psychosocial assessment;
- ❒ f. Successfully complete an alcohol awareness or substance misuse treatment or education program, such as:
  - ❒ (1) A substance misuse education program approved by the Department of State Health Services in accordance with Sec. 521.374(a)(1), T.C., that is regulated by the Texas Department of Licensing and Regulation under Chapter 171, G.C.; or
  - ❒ (2) An alcohol awareness program described by Sec. 106.115, A.B.C., that is regulated by the Texas Department of Licensing and Regulation under Chapter 171, G.C.
- ❒ g. Pay as reimbursement fees the costs of any diagnostic testing, psychosocial assessment, or participation in a treatment or education program either directly or through the court;

Restitution under the deferred statute may not be more than the fine assessed.

❒ h. Complete a driving safety course or other course;	If the offense is a "traffic offense classified as a moving violation" and the defendant is younger than age 25, the judge shall require as a condition of deferred disposition that the defendant complete a driving safety course. See Checkbox "m" below.
❒ i. Present the court with proof of compliance with any required conditions;	
❒ j. Comply with any other reasonable conditions;	Community service and committing no further offenses are examples of "other reasonable conditions."
❒ k. If the offense is Purchase, Attempt to Purchase, Consumption, or Possession of Alcohol by a Minor; Misrepresentation of Age by a Minor; or Driving or Operating Watercraft Under the Influence of Alcohol by a Minor, the court must require as a condition of deferred disposition that the minor successfully complete an alcohol awareness program approved by the Texas Department of Licensing and Regulation, or a substance misuse education program under Section 521.374, T.C.	Sec. 106.115(a), A.B.C. Two different bills amended Sec. 106.115, A.B.C. in 2021. Drug and Alcohol Driving Awareness Programs are still mentioned in one version of Sec. 106.115, A.B.C., but Sec. 1001.103, E.C., is to be repealed effective June 1, 2023.
❒ l. If the offense is Purchase, Attempt to Purchase, Consumption, or Possession of Alcohol by a Minor; Misrepresentation of Age by a Minor; or Public Intoxication the court must require as a condition of deferred disposition that the minor performs eight to 12 hours of community service for a first offense and 20 to 40 hours of community service for a subsequent offense; and/or	Mandatory community service must be related to education about or prevention of misuse of alcohol or drugs, as applicable. If programs or services providing the education are not available, the court may order community service that it considers appropriate for rehabilitative purposes. Sec. 106.071(e), A.B.C.

❒ m. If the offense is a "traffic offense classified as a moving violation" and the defendant is younger than age 25:

Art. 45.051(b-1)/45A.304(b), C.C.P.

❒ (1) The judge shall require as a condition of deferred disposition that the defendant complete a driving safety course; and

❒ (2) If the defendant holds a provisional license, during the deferral period, the judge shall require that the defendant be examined by the DPS.

Sec. 521.161(b)(2), T.C. Persons under age 18 hold provisional licenses under Sec. 521.123, T.C.

❒ 7. Inform the defendant:

❒ a. When all the conditions are met, the case will be dismissed at the end of the deferral period. Otherwise the court will enter a judgment, and the fine will be due; and

Give the defendant a written copy of the order deferring disposition, listing all the conditions, and the consequences of both successful and unsuccessful compliance.

❒ b. Whether a fine is imposed.

Art. 45.051(a)/45A.302(b), C.C.P. This is the fine formerly called a "special expense fee." Although the passage of S.B. 346 (2019) changed the term "special expense fee" to "fine," this administrative deferred disposition fine is separate from the punitive fine.

❒ (1) The judge may impose a fine on the defendant not to exceed the amount of the fine that could be imposed as punishment for the offense.

❒ (2) The fine may be collected at any time before the end of the probation period.

❒ (3) The judge may elect not to impose the fine for good cause shown.

❒ (4) If the judge orders collection of a fine, it must be credited in the event of default by the defendant toward the payment of the amount of the fine imposed by the judge as punishment for offense on conviction.

❒ 8. At the end of the deferral period:

❒ a. If the defendant presents satisfactory evidence of compliance with the requirements, then dismiss the case.

❒ b. If the defendant fails to provide proof of compliance within the deferred period:

❒ (1) The court must set the matter for a show cause hearing. — Art. 45.051(c-1)/45A.306, C.C.P.

❒ (2) The court must provide notice in writing of the defendant's opportunity to show cause. The notice shall be mailed to either the address on file with the court or the address that appeared on the citation.

❒ (3) The court shall require the defendant to appear at the time and place stated in the notice and show cause why the deferral should not be revoked.

❒ (4) At the show cause hearing on the defendant's showing of good cause for failure to present satisfactory evidence of compliance with the requirements of the deferred order, the court may allow an additional period during which the defendant may present evidence of the defendant's compliance with the order's requirements. — Art. 45.051(c-2)/45A.307(a), C.C.P.

❒ (5) After a show cause hearing the judge may either: — Art. 45.051(d)-(d-1)/45A.307(b), C.C.P.

❒ (A) impose the fine originally suspended pending the deferral period; or

❒ (B) impose a lesser fine (except in instances involving defendants younger than 25 years of age involving traffic offenses classified as moving violations; court shall impose the original fine assessed.).

CHAPTER 8 SENTENCING, DEFERRED DISPOSITION, AND INDIGENCE

3. Indigence

In certain instances, judges are required to determine whether a defendant is able to pay the fine and costs assessed in a case. In Class C misdemeanor cases, this determination is required (1) at the time of judgment, (2) upon a default in the discharge of the judgment, and (3) before commitment to jail. The 85th Legislature made significant changes requiring judges to make an inquiry regarding the ability to pay fine and court costs for defendants who enter a plea in open court during or immediately after sentencing. This new inquiry is outlined in Checklist 8-1.

Whether or not a particular defendant is able to pay the fine and costs is a complex determination involving numerous factors that widely vary depending on where a defendant lives, especially in a state as large and diverse as Texas. The U.S. Supreme Court has made no attempt to define indigence, leaving that duty to state legislatures. Texas statutes like Articles 45.041/45A.252, 45.046/45A.261, and 45.049/45A.254-45A.255 of the Code of Criminal Procedure provide judicial discretion in determining whether a defendant is indigent without defining indigence.

The 78th Legislature defined "indigent" to mean "an individual who earns not more than 125 percent of the income standard established by applicable federal poverty guidelines" under Sec. 133.002, L.G.C. The TMCEC application form for time payment, extensions, or community service asks that the defendant note any federal programs that he or she is eligible for and is receiving assistance from. The court should consider this information in combination with all relevant facts regarding the defendant's ability to pay a fine and costs.

Checklist 8-3	Script/Notes
❒ 1. Defendant enters plea in open court or raises indigence or inability to pay.	A person who is unable to pay a fine must be provided an alternative means of discharging the fine other than incarceration under the equal protection clause. The policy of "pay or lay" was found to violate the 14th Amendment of the U.S. Constitution. *Tate v. Short*, 401 U.S. 395 (1971). See Chapter 5, *Municipal Courts and the Texas Judicial System* for more information on Judgments, Indigence, and Enforcement.

❒ 2. Give the defendant a financial information sheet.

See *TMCEC 2024 Forms Book*: Application for Time Payment, Extension, Community Service, or Waiver.

"Please complete a financial information form."

❒ 3. Have the defendant swear to or affirm information on the sheet:

After defendant completes form, have defendant sign under oath.

"Do you swear (affirm) that the information that you have provided in this document is true and correct?"

❒ a. Place the defendant under oath to present testimony about financial condition.

"I'm going to place you under oath before conducting this indigence hearing and reviewing your financial information sheet. Please raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth in this matter pending before the court?"

❒ 4. Consider the defendant's income and resources:

Except as otherwise specifically provided, in determining a defendant's ability to pay for any purpose, the court shall consider only the defendant's present ability to pay. Art. 1.053, C.C.P.

❒ a. Amount of income;

❒ b. Source of income:

❒ (1) Wages, investment income, checking/savings, child support, social security/disability/welfare income, selling assets/non-exempt property, etc.

❒ (2) Loans and ability to borrow money.

❒ 5. Consider the defendant's expenses:

- ❒ a. Number and ages of dependents;
- ❒ b. Rent/mortgage payment;
- ❒ c. Debts and obligations (car notes, credit cards, etc.);
- ❒ d. Personal expenses; and
- ❒ e. Illness/incapacity of defendant or spouse.

❒ 6. Consider other evidence:

- ❒ a. Ability to work; and
- ❒ b. Spouse's financial condition.

❒ 7. Factors not to be considered:

- ❒ a. Future ability to pay; — Art. 1.053, C.C.P.
- ❒ b. Financial resources of parents and other relatives;
- ❒ c. Exempt property including homestead and vehicles (see Chapters 41 and 42, Texas Property Code); and
- ❒ d. Attitude.

❒ 8. Review financial information sheet with the defendant, if necessary.

❒ 9. Review any federal assistance program(s) that the defendant is participating in.

❒ 10. Procedural issues:

- ❒ a. Consider the truthfulness of indigent affidavit and defendant's testimony;
- ❒ b. Examine court records — payment history and/or prior indigence hearing;
- ❒ c. Documentation:

❒ (1) Note date and time of hearing or ruling; and

❒ (2) Attach or secure all documentation with ruling and place in file.

❒ 11. Upon determination that defendant is unable to immediately pay the fine and costs:

❒ a. Consider ordering payment: — Art. 45.041(b)/45A.251, C.C.P.

❒ (1) All at a later date; — Explain that upon conviction, the defendant must pay a $15 time payment reimbursement fee if any part of the fine or court costs is paid on or after the 31st day after judgment is entered. Art. 102.030, C.C.P.

❒ (2) In periodic installments;

❒ b. Consider ordering community service: — Art. 45.049/45A.254-45A.255, C.C.P.
See *TMCEC 2024 Forms Book*: Community Service Order; and Community Service Time Sheet.

❒ (1) Each eight hours of service discharges not less than $100 of the fine and costs.

❒ (2) No more than 16 hours per week, unless the court finds that a greater period would not work a hardship.

❒ (3) Court must specify the number of hours to be performed and the day by which the defendant must submit documentation to the court verifying completion.

❒ (4) Can be used in conjunction with partial payment.

❒ (5) Defendants charged with a traffic offense or possession of alcohol by a minor who are residents of Texas and ordered to perform community service as a condition of deferred disposition may elect to perform the required community service in the county in which the court is located, or the county in which the defendant resides; but only if the entity or organization agrees to supervise the defendant in the performance of the defendant's community service work and report to the court on the defendant's community service work.

Art. 45.049(h)/45A.255, C.C.P.

❒ c. Consider the waiver of all or part of a fine imposed. You may waive if you determine:

Art. 45.0491/45A.257, C.C.P.

❒ (1) Defendant is indigent or does not have sufficient income to pay all or part of the fine, or was a child (under 17) at the time the offense was committed; and

See Step 12 below.

❒ (2) Discharging the fine through community service or tutoring (for a school offense) would impose an undue hardship on the defendant.

See Step 13 below.

❒ d. Consider the waiver of all part or part of the costs imposed. You may waive if you determine:

Art. 45.0491(b) /45A.257(b),C.C.P.

❒ (1) Defendant is indigent or does not have sufficient income to pay all or part of the fine; or

See Step 12 below.

❒ (2) Defendant was a child (under 17) at the time of offense was committed; and

❒ 12. A defendant is presumed to be indigent or to not have sufficient resources to pay all or part of the fine or costs if the defendant:

Art. 45.0491(b)/45A.257(c),C.C.P.

❒ (1) Is in the conservatorship of the Department of Family and Protective Services (or was at the time of the offense); or

❒ (2) Is designated as a homeless child or youth, as defined by 42 U.S.C. 11434a (or was at the time of the offense).

❒ 13. A determination of undue hardship is in the court's discretion. In making that determination, the court may consider, as applicable, the defendant's:

Art. 45.0491(c)/45A.257(d),C.C.P.

❒ (1) significant physical or mental impairment or disability;

❒ (2) pregnancy and childbirth;

❒ (3) substantial family commitments or responsibilities, including child or dependent care;

❒ (4) work responsibilities and hours;

❒ (5) transportation limitations;

❒ (6) homelessness or housing insecurity; and

❒ (7) any other factors the court determines relevant.

❒ 14. If the defendant notifies the judge that the defendant has difficulty paying the fine and costs in compliance with judgment, the judge shall hold a reconsideration hearing to determine whether the judgment imposes an undue hardship on the defendant.

Art. 45.0445/45A.258, C.C.P. This reconsideration hearing was created by the Legislature in 2019, and judges may allow a defendant to appear by telephone or videoconference if a personal appearance would impose an undue hardship. Art. 45.0201/45A.260, C.C.P.

❒ a. A defendant may notify the judge by:

❒ (1) voluntarily appearing and informing the judge or the clerk of the court in the manner established by the justice or judge for the purpose;

❒ (2) filling a motion with the judge;

❒ (3) mailing a letter to the judge; or

❒ (4) any other method established by the judge for that purpose.

❒ b. If the judge determines at the hearing that the judgment imposes an undue hardship on the defendant, the judge shall consider whether to allow time payment, community service, full or partial waiver, or some combination of those methods.

❒ c. The judge may decline to hold a reconsideration hearing if the judge:

❒ (1) previously held a reconsideration hearing with respect to the case and is able to determine without holding a hearing that the judgment does not impose an undue hardship on the defendant; or

❒ (2) is able to determine without holding a hearing that the judgment imposes an undue hardship on the defendant; and the fine and costs should be satisfied through time payment, community service, full or partial waiver, or some combination of those methods.

❒ d. The judge retains jurisdiction of the case for the purpose of making a determination at a reconsideration hearing.

CHAPTER 9 BOND FORFEITURES

Municipal judges are empowered to admit persons to bail and to forfeit bail in the same manner as provided for county courts. The failure to perform the condition on the bond causes the court to declare forfeiture of the bail. Therefore, a defendant's failure to appear in court after posting bail and the judicial declaration of the forfeiture initiates bond forfeiture procedures.

Generally, Chapter 22, C.C.P., governs bond forfeiture proceedings. The exception to using the bond forfeiture procedures in Chapter 22 is found in Art. 45.044/45A.256, C.C.P. This statute provides an additional method of forfeiting a cash bond in certain instances.

1. Cash Bond Forfeitures in Satisfaction of Fine Under Article 45.044/45A.256, C.C.P.

Checklist 9-1		Script/Notes
❒ 1.	Ask the defendant to acknowledge his or her presence when the defendant's name is called.	
❒ 2.	When the defendant fails to answer, order the bailiff or another to call the defendant's name distinctly at the courthouse door.	Art. 22.02, C.C.P. Calling name distinctly from the courtroom door is substantial compliance. *Green v. State*, 670 S.W.3d 633 (Tex. Crim. App. 2023). See *TMCEC 2024 Forms Book*: Bailiff's/Clerk's Affidavit of Defendant's Failure to Appear.
❒ 3.	If the defendant has posted a cash bond and has signed a conditional plea of nolo contendere and waiver of jury trial, the judge may forfeit the bond for fine and court costs when the defendant fails to appear. Otherwise, skip remaining steps and proceed to judgment.	Art. 45.044/45A.256, C.C.P.
❒ 4.	Notify the defendant immediately by regular mail of the court action and the right to request a new trial.	

❒ 5. If the defendant makes a request for a new trial within 10 days after the forfeiture, the court shall grant the motion and allow the defendant to withdraw his or her conditional plea of nolo contendere and waiver of jury trial. The bond is reinstated and the case is set for trial.

To count, start the day after the forfeiture and count 10 calendar days. If the 10th day falls on a weekend or holiday, go to the next working day of the court for the 10th day.

Sec. 311.014, G.C.

❒ a. Amount of time increased by the "Mailbox Rule."

If the request for new trial is mailed first class mail on or before the due date of filing of the request for new trial and received by the clerk not later than 10 days after the due date, the motion is properly filed. ("Day" does not include Saturday, Sunday, or legal holiday.) Make sure the clerk keeps the envelope showing the postmark.

Art. 45.013/45A.054, C.C.P. Defendants filing documents by mail have additional time (10 days) in which to present the document to the court. This rule, commonly called the "Mail Box Rule," increases the time for filing documents.

❒ 6. If the defendant does not make a timely motion for a new trial, the judgment and forfeiture become final. Court costs are paid to the State and the fine is deposited in the general revenue fund. If the offense is a traffic offense, the court reports the conviction to the Department of Public Safety:

If a defendant initially entered a plea in open court, the judge must inquire into the defendant's ability to pay. Art. 45.041/45A.252, C.C.P. See Checklist 8-1.

❒ a. If the defendant has been in jail, jail time credit is required to be given at a rate of not less than $150 for a period of time specified in the judgment. The court should determine the period of time between eight and 24 hours.

Arts. 42.03, Sec. 2, 45.041/45A.251, and 45.048./45A.261, C.C.P.

❒ b. Depending on the credit and amount of fine imposed, the court may have to refund all or part of the bond.

CHAPTER 9 BOND FORFEITURES

2. Cash, Surety, or Personal Bond Forfeiture Procedures Under Chapter 22, C.C.P.

Before a judgment nisi is issued initiating a bond forfeiture, a surety can be released from the responsibility on the bond by filing an affidavit of intention to surrender the defendant. A surety may not be released from responsibility if the accused is in federal custody to determine whether the accused is lawfully present in the United States under Art. 17.16, C.C.P. The affidavit must include a statement that notice to the principal's attorney has been given as required by Art. 17.19, C.C.P. See Arts. 17.16 and 17.19, C.C.P., for rules regarding discharge of liability on bond.

An action by the State to forfeit a bail bond must be brought not later than the fourth anniversary of the date the principal fails to appear in court. Art. 22.18, C.C.P.

Checklist 9-2	Script/Notes
Definitions: "Agreed judgment" is a judgment entered on agreement of the parties, which receives the sanction of the court. When the court gives the agreement its sanction, it becomes the judgment of the court. An "answer" is the formal written statement made by a defendant setting forth grounds for his or her defense. In some instances the answer may need to be verified (sworn to). A "citation" is a writ (written order) issued by the clerk of the court. The citation notifies a person of a lawsuit filed against him or her and directs the person to file an answer to the suit within a certain number of days. "Defendant" is a term used to describe the surety or the principal. "Forfeiture" means the signing of the judgment nisi. "Judgment nisi" is a temporary order which will become final unless the defendant in the criminal case and/or the surety show good cause why the judgment should be set aside. "Judicial notice" is an act by which a court, in conducting a trial, will, without the production of evidence, recognize the existence and truth of certain facts or documents because the court already is aware of the facts or documents. A "movant" is one who makes a motion before a court.	

"Pleadings" are formal documents filed by parties, stating their respective claims and defenses.

A "principal" is the defendant in the criminal case.

"*Scire Facias*" is a special docket required by law to handle all cases and proceedings involved in the forfeiture of bail bonds. This docket may also be called the civil docket.

Art. 22.10, C.C.P.

"Summary proceeding" is any proceeding by which a controversy (lawsuit) is settled, case disposed of, or trial conducted in a prompt and simple manner, without a jury. The court may grant a summary judgment when it believes that there is no genuine issue of material fact and that the party is entitled to prevail as a matter of law. Any party to a civil action may move for a summary judgment.

"Surrender" means that a surety may relieve himself or herself of liability before forfeiture by surrendering the accused into custody or by filing an affidavit stating that the accused is in federal, state, or county custody. A surety may not be released from responsibility if the accused is in federal custody to determine whether the accused is lawfully present in the United States.

Art. 17.16 *et. seq.*, C.C.P.

A "waiver" is a sworn statement that intentionally and voluntarily relinquishes the right of being served by citation.

❒ 1. Ask the defendant to acknowledge his or her presence when the defendant's name is called.

❒ 2. When the defendant fails to answer, order the bailiff or another to call the name distinctly at the courthouse door.

Art. 22.02, C.C.P.
Calling the defendant's name distinctly at the courtroom door is substantial compliance. *Green v. State*, 670 S.W.3d 633 (Tex. Crim. App. 2023).
See *TMCEC 2024 Forms Book*: Bailiff's/Clerk's Affidavit of Defendant's Failure to Appear.

❒ 3. Note the time the call was made and who made the call.

❒ 4. If the defendant does not appear within a reasonable time after the call, enter judgment nisi against the defendant and his or her sureties. (The judgment nisi is usually prepared by the clerk for the judge's signature.)	Arts. 22.02 and 23.05, C.C.P. State's Motion for Bond Forfeiture of (*Defendant's name*)'s bond is granted. A capias for the defendant's arrest is hereby issued with a new bond set at $_____. See *TMCEC 2024 Forms Book*: Judgment Nisi Declaring Forfeiture: Cash or Personal Recognizance Bond and Judgment Nisi Declaring Forfeiture: Surety Bond.
❒ 5. Issue a capias for the defendant's arrest.	Art. 23.05, C.C.P. See *TMCEC 2024 Forms Book*: Capias: After Forfeiture or Upon Surrender of Principal.
❒ 6. Set the new bond. (May require a cash bond.)	Art. 23.05, C.C.P.
❒ 7. Set the forfeiture case on the *scire facias* or civil docket:	Art. 22.10, C.C.P. See *TMCEC 2024 Forms Book*: Scire Facias Docket.
❒ a. List "The State of Texas" as plaintiff.	
❒ b. List the principal and any sureties as defendants.	
❒ 8. On request of the prosecutor, order clerk to issue citation(s) to surety, if any, and principal:	Art. 22.03, C.C.P. See *TMCEC 2024 Forms Book:* Citation.
❒ a. Citation shall be in the form provided for citations in civil cases. Prosecutor may request multiple citations be issued.	Art. 22.04, C.C.P.; Tex. R. Civ. P. 99.
❒ b. If prosecutor presents a motion supported by an affidavit showing specific facts why personal service or service by mail has not been successful, grant substitute service (someone over 16 years of age at location specified in affidavit may accept service).	Tex. R. Civ. P. 106(b).

❒ c. If substitute service is unsuccessful and prosecutor under oath states the residence of surety is unknown and, though diligence has been used to serve the citation, the defendant surety cannot be located, grant publication.	Tex. R. Civ. P. 109.
❒ 9. The defendant/principal's citation is served by regular mail if the address appears on the bond. If no address, court is not required to notify principal of bond forfeiture.	Art. 22.05, C.C.P.
❒ 10. Answers are due as in civil cases: by 10 a.m. on the Monday next after the expiration of 20 days from the date of service.	Art 22.11, C.C.P. Tex. R. Civ. P. 92, 15.
❒ a. Maximum of 27 days after proper service of citation to answer.	
❒ b. Amount of time increased—10 additional days are allowed if the answer is mailed by first class mail, properly addressed and mailed on or before the last day for filing an answer. (Make sure the court clerk keeps the envelope in which answer is received.)	Tex. R. Civ. P. 5.
❒ 11. If the surety and principal fail to answer within the time limit, the court shall enter a judgment by default:	Art. 22.15, C.C.P. Tex. R. Civ. P. 239.
❒ a. Before entering default judgment, determine if service was proper; court should have evidence of properly signed return of service or verified waiver. Proof of service includes:	Tex. R. Civ. P. 107.
❒ (1) Verified waiver;	
❒ (2) Certified mail; green card signed by:	Tex. R. Civ. P. 107. Clerk is required to complete return on citation after receiving properly signed green card.
❒ (A) Defendant/surety;	
❒ (B) State Board of Insurance (surety is corporation);	

❒ (C) Registered agent (surety is a corporation); or	
❒ (D) Executor, administrator, or heirs (surety is deceased).	
❒ (3) If the prosecutor files a motion supported by an affidavit showing specific facts why personal service or service by mail has not been successful, grant an order of substitute service (someone over 16 years of age at location specified in affidavit) and officer's return on citation completed;	Tex. R. Civ. P. 106(b).
❒ (4) Personal service—officer's return on citation is completed; or	Tex. R. Civ. P. 107.
❒ (5) If substitute service is unsuccessful, prosecutor's affidavit states the residence of surety was unknown and, though diligence has been used to serve the citation, the defendant surety could not be located, order granting publication and copy of publication attached to return.	Tex. R. Civ. P. 109.
❒ b. Court must inquire into the sufficiency of the diligence exercised in attempting to ascertain the residence or whereabouts of the defendant before granting default judgment on service.	Tex. R. Civ. P. 239. Art. 22.15, C.C.P.
❒ c. Proof of service on file at least 10 days, exclusive of the date of filing and the date of judgment, for every defendant.	Tex. R. Civ. P. 107.
❒ d. Time expired for answers.	Defendant(s) may have been served on different days and therefore may have different deadlines to answer.

❒e. The State moves for default judgment.

Tex. R. Civ. P. 239.
See *TMCEC 2024 Forms Book*: Final Judgment: Cash or Personal Recognizance Bond – Finding for State and Final Judgment: Surety Bond – Finding for State.

❒ (1) The State prepares default judgment for judge's signature; and

Tex. R. Civ. P. 305.

❒ (2) The State certifies the address of the parties against whom the default is taken.

Tex. R. Civ. P. 239a.

❒ f. The clerk sends notice of default judgment to surety and defendant.

If an answer has been filed and the case is set on the *scire facias* docket but no one appears, the State can move for default judgment.

❒ 12. Summary judgment in a bond forfeiture case is usually filed by the State as claimant.

Tex. R. Civ. P. 166a(a).
See *TMCEC 2024 Forms Book*: Final Judgment: Cash or Personal Recognizance Bond – Finding for State; Final Judgment: Surety Bond – Finding for State; and Agreed Final Judgment.

❒ a. Party requesting must file and serve the motion and supporting affidavit at least 21 days before the time specified for hearing.

Tex. R. Civ. P. 166a(c).

❒ b. Filed when:

❒ (1) No valid defense is raised; and

❒ (2) No genuine issue as to material fact exists and moving party is entitled to judgment as matter of law.

❒ c. The answer must be verified if the Defendant raises any of the following defenses:

❒ (1) Defendant did not execute bond;

Tex. R. Civ. P. 93.

❒ (2) Defendant is not liable in the capacity sued;

❒ (3) There is a defect of parties; or

❒ (4) Defendant alleged to be a corporation and is not incorporated as alleged.

❒ d. Not later than seven days prior to the hearing date, the defendants may serve opposing affidavits or other written responses.

Tex. R. Civ. P. 166a(c).

❒ e. Fact issues include:

❒ (1) Whether surety executed bond;

Alvarez v. State, 861 S.W.2d 878 (Tex. Crim. App. 1992).

❒ (2) Whether principal's name was called at courthouse door;

❒ (3) Whether principal failed to appear; or

❒ (4) Whether principal had a valid reason for not appearing.

❒ f. Summary judgment hearing:

❒ (1) No oral testimony;

❒ (2) Judge reviews pleadings; and,

❒ (3) State asks judge to take judicial notice of bond and judgment *nisi*, then rests.

❒ g. Defense must set forth affidavits. Affidavit must include:

❒ (1) Information based on personal knowledge; and

❒ (2) How affiant became personally familiar with facts.

Villarreal v. State, 826 S.W.2d 621 (Tex. App.— Houston [14th Dist.] 1992, pet. ref'd).

❒ h. If no genuine issue exists, grant movant's motion for summary judgment.

❒ i. If there is a genuine issue, deny and set for bond forfeiture trial.

❒ 13. Procedure at bond forfeiture trial:

Tex. R. Civ. P. 245.
In the case of continuance, the court may reset to a later date on any reasonable notice to the parties or by agreement of the parties.

❒ a. At least 45 days notice of the first trial setting required.

❒ b. If service of citation is by publication and there was no answer, appoint an attorney to represent the surety.

Tex. R. Civ. P. 244.

❒ c. Defendant may request a jury trial.

Tex. R. Civ. P. 216.

❒ d. Written request for a jury trial is required.

❒ e. Must be received not less than 30 days in advance of the first trial setting for trial before the judge.

❒ f. Defendant must pay jury trial fee of $5. (Fee might be $5, which is paid to county court, or $10, which is paid to district court. Court will have to determine which fee is applicable.)

Tex. R. Civ. P. 216.

❒ g. If fee is not paid, deny jury trial and proceed with bench trial.

❒ 14. Call case.

"What says the State in cause number ____?"

State answers. If defense does not appear, State can move for default judgment.

"What says Defendant?"

Defense answers.

❒ 15. State presents case.

❒ a. Bond.

❒ b. Docket entry and indication of forfeiture.

❒ c. Certificate, affidavit, or testimony of bailiff or person who called name.

❒ d. Judgment *nisi*.

❒ 16. State may ask court to take judicial notice of bond and judgment *nisi*.

❒ 17. Judge may take judicial notice of bond and judgment *nisi* unless defendant and/or surety have filed a sworn answer challenging bond's validity. If sworn answer, State must establish required predicate (present the court facts that the bond is valid) to introduce the bond.

❒ 18. When validity of the bond is challenged, the judge cannot take judicial notice of bond. State presents evidence that bond is:

❒ a. Submitted by the defendant;

❒ b. Received by the court;

❒ c. Court has taken proper care of bond; and

❒ d. Not more burdensome than required by law.

❒ 19. State rests.

❒ 20. Defendant, principal, or surety presents evidence on one of the following defenses: — Art. 22.13, C.C.P.

❒ a. Bond is not valid because:

❒ (1) Not valid as to principal or surety; — Art. 22.13, C.C.P.

❒ (2) Defendant did not execute bond (must be verified by affidavit); or — Art. 22.13, C.C.P.

❒ (3) Bond is more burdensome than statute requirement. — *Browne v. State*, 268 S.W.2d 131 (Tex. Crim. App. 1954).

❒ b. Defendant or principal died before forfeiture taken. — Art. 22.13, C.C.P.

❒ c. Defendant or principal was sick or some uncontrollable circumstance prevented the defendant's appearance. Defendant shows that the principal's failure to appear arose from no fault on the principal's part.	Art. 22.13, C.C.P.
❒ d. Incarceration of the principal in any jurisdiction in the United States at the time of or not later than the 180th day after the date of the principal's failure to appear in court.	Art. 22.13, C.C.P. *James v. State*, 413 S.W.2d 111 (Tex. Crim. App. 1967).
❒ e. Defendant's name was not called at courthouse door.	
❒ f. Surety had requested to be relieved from the bond and the court had:	Arts. 17.16 and 17.19, C.C.P.
❒ (1) Refused to issue a warrant of arrest for principal after the affidavit for surrender of the principal was filed with the court; and	
❒ (2) After refusal to issue warrant, principal failed to appear.	
❒ g. The following defenses must be verified by affidavit:	Tex. R. Civ. P. 93.
❒ (1) Defendant did not execute bond;	Tex. R. Civ. P. 93(7).
❒ (2) Defendant is not liable in the capacity sued;	Tex. R. Civ. P. 93(2).
❒ (3) Defendant does not have legal capacity to be sued;	Tex. R. Civ. P. 93(1).
❒ (4) There is a defect of parties; or	Tex. R. Civ. P. 93(4).
❒ (5) Defendant alleged to be a corporation is not incorporated as alleged.	Tex. R. Civ. P. 93(6).
❒ 21. After a judicial declaration of forfeiture is entered the court has the power to do any of the following:	Art. 22.125, C.C.P.

❒ a. Exonerate the defendant and any sureties for cause;	Art. 22.13, C.C.P. If the principal is not liable, everyone is exonerated. If the principal is liable and one or more sureties, if any, is liable on bond, then only non-liable sureties are exonerated.
❒ b. Remit forfeiture;	Art. 22.125, C.C.P.
❒ c. Set aside forfeiture only as expressly provided for in Chapter 22, C.C.P.; or	
❒ d. The court may approve any proposed settlement of the liability on the forfeiture that is agreed to by the State and by the defendant or the defendant's sureties, if any.	See *TMCEC 2024 Forms Book*: Dismissal and Reinstatement of Bond; Motion and Order of Dismissal with Costs; Motion and Order of Dismissal without Costs; and Agreed Final Judgment.
❒ 22. If no exoneration, enter judgment against each for the amount in which sureties, if any, are respectively bound.	Art. 22.14, C.C.P.
❒ 23. Enter dismissal of forfeiture if exoneration is found.	"The court finds that the principal and/or surety has/have shown grounds for exoneration and the court enters an order of dismissal in this matter."
❒ 24. Remittitur.	Art. 22.16, C.C.P.
❒ a. If the defendant or surety is entitled to remittitur, before entry of final judgment and written motion submitted, deduct from the amount of the bond, court costs, interest, and any reasonable costs to the city for the return of the defendant.	
❒ b. Interest accrues on the bond amount from the date of forfeiture in the same manner and at the same rate as provided for in the accrual of prejudgment interest in civil cases.	Sec. 302.002, Fin. C.

❒ c. Interest on the bond amount after forfeiture begins to accrue on the face amount of the bond if no specified rate of interest is agreed upon by the defendant (surety) or State (prosecutor). Interest on the bond forfeiture begins to accrue from the date of the judgment nisi.

Arts. 22.16(c) and 22.17(a), C.C.P. *Dees v. State*, 865 S.W.2d 461 (Tex. Crim. App. 1993).

❒ d. Remittitur is required if the defendant or sureties show:

❒ (1) Defendant (principal) is released on new bail; or

❒ (2) The case for which the bond was given is dismissed.

❒ e. The court may remit the bond or any part of the bond for any other good cause shown the court.

❒ 25. Agreed Judgment. If the county population is more than 110,000 or a bail bond board created within the county:

Art. 22.125, C.C.P.; Sec. 1704.205, O.C.

❒ a. State and defense may agree to an amount less than bond and recommendation is submitted to court.

❒ b. Court accepts the recommendation and enters a final judgment.

The court accepts the State's recommendation of the agreed judgment and finds that the judgment nisi is now final. The defendant and sureties are jointly and severally bound in the amount of $_____ and costs of court to (*City*), Texas and order judgment be entered and execution issued. (Note: If sureties are a corporation, they are not in default until the 11th day after judgment. Sec. 1704.212, O.C.)
See *TMCEC 2024 Forms Book*: Agreed Final Judgment.

❒ 26. Motion for new trial:

Tex. R. Civ. P. 329(b).

❒ a. Defendant and/or surety requests within 30 days after final judgment has been signed.

❒ b. Request (motion) is made in writing.

Motion extends time for issuance of execution up to 105 days. If the judge never signs the motion for new trial, it will be deemed overruled 75 days after the original judgment was signed. The same rule applies whenever a final judgment is signed.

❒ 27. Non-contested cases:

❒ a. Proper answer is filed; and

Tex. R. Civ. P. 245.
The case may be tried or disposed of at any time, whether set or not, and may be set at any time for any other time.

❒ b. Defendant is not contesting forfeiture.

❒ 28. Appeal:

Art. 45.042/45A.202, C.C.P., C.C.P.

❒ a. Defendant(s) have the right to appeal a final forfeiture.

❒ 29. Special bill of review:

Art. 22.17, C.C.P.

❒ a. Defense presents not later than two years after the date of final judgment.

❒ b. Includes request, on equitable grounds, that the final judgment be reformed and that all or part of the bond be remitted to the surety.

❒ c. The court grants a bill in part or in whole. For bill of review, interest accrues on the bond amount from the date of:

The court grants the bill of review (*in part / in whole*) and orders that judgment be reformed and the amount of $____ be returned to the defendant.

❒ (1) The date of forfeiture to the date of final judgment in the same manner and at the same rate as provided for the accrual of prejudgment interest in civil cases; and

❒ (2) The date of final judgment to the date of the order for remittitur at the same rate as provided for the accrual of post-judgment interest in civil cases.

❒ d. The court denies the bill.

The State should review and respond to the bill. If granting the bill, costs of court, any reasonable expenses in re-arresting the defendant, and interest accrued on the bond from the date of the forfeiture should be deducted.

CHAPTER 10 NEW TRIALS AND APPEALS

1. Motion for New Trial in Non-record Municipal Court

Unlike in Municipal Courts of Record, motions for new trial are not a prerequisite to an appeal. Motions for new trial can still be filed in non-record courts, however, and courts should respond to them appropriately. Keep in mind the following regarding motions for new trial:

Checklist 10-1		Script/Notes
❒ 1.	A defendant has five days after the rendition of judgment and sentence to file a motion for new trial.	Art. 45.037/45A.201(a), C.C.P. See Article 45.013/45A.054, C.C.P., for an increase in the amount of time to file the motion for new trial. If the defendant mails the motion for new trial on or before the due date and the clerk receives the motion not later than 10 days after the due date, the motion is timely filed. Do not count Saturday, Sunday, or legal holidays.
❒ 2.	A motion for new trial may be granted not later than 10 days after the date of judgment when the judge, for good cause shown, believes that justice has not been served.	Art. 45.038/45A.201(b), C.C.P. Since the judge must rule on the motion by the 10th calendar day after judgment, the motion, if filed by mail, may be overruled by operation of law.
❒ 3.	A defendant may only receive one new trial.	Art. 45.039/45A.201(e), C.C.P.
❒ 4.	The court must hold a second trial as soon as practicable.	Art. 45.039/45A.201(d), C.C.P.
❒ 5.	In no case is the State entitled to a new trial.	Art. 45.040/45A.201(f), C.C.P.

CHAPTER 10 NEW TRIALS AND APPEALS

2. Appeal in Non-record Municipal Court

Checklist 10-2	Script/Notes
❒ 1. All defendants have a right to appeal their convictions.	Art. 44.02, C.C.P. See *Municipal Courts and the Texas Judicial System*: Chapters 1 and 8.
❒ 2. Defendants are not required to go to trial; the defendant can plead guilty or nolo contendere and have judgment entered.	
❒ 3. Defendant may give notice of appeal (but is not required to do so).	Art. 45.0426(c)/45A.202(c), C.C.P.
❒ 4. An appeal bond must be filed with the judge who tried the case not later than the 10th day after the date the judgment was entered.	Art. 45.0426(a)/45A.203(a, C.C.P.
❒ a. Mailbox Rule – If defendant mails the bond on or before the due date and the court receives it within 10 working days from the due date, the bond is properly filed.	Courts should keep the defendant's postmarked envelope. Art. 45.013 /45A.054, C.C.P.
❒ b. If appeal bond is not timely, the municipal court should still send it to the appellate court.	The appellate court does not have jurisdiction if the bond is not timely, and the appellate court shall remand the case back to the municipal court for execution of the sentence. Art. 45.0426(b) /45A.203(b), C.C.P.
❒ 5. Appearance by mail or delivery in person to the court: Court shall notify the defendant either in person or by regular mail of the amount of any fine or costs assessed in the case, information regarding the alternatives to the full payment of any fine or costs assessed against the defendant, if the defendant is unable to pay that amount, and, if requested by the defendant, the amount of an appeal bond the court will approve.	Art. 27.14(b), C.C.P. A court may send any notice or document using mail or electronic mail. Sec. 80.002, G.C.

❒ a. Mailbox Rule – If defendant mails the bond on or before the due date and the court receives it within 10 working days from the due date, the bond is properly filed.	Courts should keep the defendant's postmarked envelope. Art. 45.013/ 45A.054 C.C.P.
❒ b. If appeal bond is not timely, the municipal court should still send it to the appellate court.	The appellate court does not have jurisdiction if the bond is not timely, and the appellate court shall remand the case back to the municipal court for execution of the sentence. Art. 45.0426(b) /45A.203(b)),C.C.P.
❒ 6. Appeal bond must be at least two times the amount of the fine and court costs, but in no case less than $50.	Art. 45.0425(a)/45A.203(c), C.C.P.
❒ 7. Bond may be cash or surety (court cannot require cash); judge may grant a personal appeal bond.	Arts. 17.38 and 44.20, C.C.P.
❒ a. Conditions of the appeal bond – Must recite that the defendant has been convicted and has appealed and that the defendant will make a personal appearance before the court to which the appeal is taken instanter, if the court is in session, or, if the court is not in session, at its next regular term, stating the time and place of that session, and there remain from day to day and term to term, and answer in the appealed case before the appellate court.	Art. 45.0425(b) 45A.203(e), C.C.P. See *TMCEC 2024 Forms Book*: Cash Appeal Bond; Surety Appeal Bond; and Personal Appeal Bond.
❒ 8. If bond is filed after time deadline, the appellate court shall remand (send back) the case to the municipal court to collect the judgment.	Art. 45.0426(b)/45A.203(b), C.C.P.
❒ 9. If bond is defective in form or substance, the appellate court may allow the defendant to file a new bond.	Art. 44.15, C.C.P.
❒ 10. When court receives bond, clerk should date stamp day received.	
❒ a. Posting of bond perfects (completes) appeal.	Art. 45.0426(a)/45A.203(a), C.C.P.

❒ 11. Clerk should give bond to judge to make a determination if the surety is sufficient.

Arts. 17.10 and 17.13-141, C.C.P.

❒ 12. Clerk makes copies of all original papers in case file.

Art. 44.18, C.C.P.

❒ 13. Clerk sends all the original papers and attaches the bond with a certified record to the appellate court (usually county court). The certified record could include:

See *TMCEC 2024 Forms Book*: Certified Transcript of Proceedings (Court of Non-Record).

- ❒ a. Citation;
- ❒ b. Complaint;
- ❒ c. Magistrate's warning;
- ❒ d. Appearance bond;
- ❒ e. Plea form;
- ❒ f. Copy of setting notice to defendant;
- ❒ g. Applications for subpoenas;
- ❒ h. Writ summoning venire;
- ❒ i. Jury waiver;
- ❒ j. Venire;
- ❒ k. Jury;
- ❒ l. Verdict;
- ❒ m. Certified copy of judgment of conviction;
- ❒ n. Motion for new trial;
- ❒ o. Notice of appeal; and
- ❒ p. Appeal bond.

❒ 14. Case is tried de novo in county court.

Trial de novo means a whole new trial as if no earlier trial had occurred.
Arts. 44.17 and 45.042(b) /45A.202(b), C.C.P.

❒ 15. If defendant is convicted in appellate court, appellate court collects fine and deposits it in the county treasury.

❒ 16. Defendant may not withdraw appeal.

CHAPTER 10 NEW TRIALS AND APPEALS

3. Motion for New Trial and Appeal in Municipal Court of Record

Checklist 10-3		Script/Notes
❒ 1.	A defendant has the right to appeal from a judgment or conviction in a municipal court of record.	Sec. 30.00014(a), G.C.
❒ 2.	The appellate court shall determine each appeal from a municipal court of record conviction on the basis of the errors that are set forth in the appellant's motion for new trial and that are presented in the clerk's record and reporter's record prepared from the proceedings leading to the conviction or appeal.	Art. 44.17, C.C.P. Sec. 30.00014(b), G.C.
❒ 3.	An appeal from the municipal court of record may not be by trial de novo.	Sec. 30.00014(b), G.C.
❒ 4.	Judgment is entered (conviction).	Art. 45.041/45A.251, C.C.P.
❒ 4.	Defendant makes a written motion for a new trial not later than the 10th day after date on which judgment is rendered.	Sec. 30.00014(c), G.C.
	❒ a. The motion may be amended with permission of the court not later than the 20th day after the date on which the original motion is filed.	
	❒ b. The court may extend the time for filing or amending not to exceed 90 days from the original filing deadline.	
	❒ c. If the court does not act on the motion before the expiration of the 30 days allowed for determination of the motion, the original or amended motion is overruled by operation of law.	
❒ 5.	If the motion for new trial is denied, and if the defendant wants to appeal, the defendant must give notice of the appeal not later than the 10th day after the date on which the motion for new trial was overruled.	Sec. 30.00014(d), G.C.

❒ a. The notice of appeal may be given orally in open court, if the defendant requested a hearing on the motion for new trial.

❒ b. If there is no hearing on the motion for new trial, the notice of appeal must be in writing and must be filed with the court not later than the 10th day after the motion for new trial is overruled. The court may extend for good cause the time period not to exceed 90 days from the original filing deadline.

❒ c. The trial court or the clerk must note on the copies of the notice of appeal and the trial court's certification of the defendant's right to appeal, the case number and the date when each is filed. The clerk must then immediately send one copy of each to the clerk of the appropriate appellate court and, if the defendant is the appellant, one copy of each to the State's attorney.

Rule 25.2(e), Rules of Appellate Procedure

❒ 6. The appeal bond must be approved by the court and must be filed not later than the 10th day after the date on which the motion for new trial is overruled.

Sec. 30.00015(a), G.C.

❒ 7. The appeal bond must be for $100 or double the amount of the fines and costs adjudged against the defendant, whichever is greater.

Sec. 30.00015(b), G.C.

❒ a. Appeal bond must state that the defendant was convicted in the case and has appealed and be conditioned on the defendant's immediate and daily personal appearance in the court to which the appeal is taken.

Sec. 30.00015(c), G.C.
See *TMCEC 2024 Forms Book*: Cash Appeal Bond; Surety Appeal Bond; and Personal Appeal Bond.

❒ b. Judge determines whether the surety is sufficient.

Sec. 30.00015(a), G.C.

❒ 8. If bond is defective in form or substance, the appellate court may allow the defendant to file a new bond.

❒ 9. Defendant must pay the cost for an actual transcript of the proceedings.

Sec. 30.00014(g), G.C.

❒ 10. Defendant must pay for a reporter's record.

Sec. 30.00019(b), G.C.

❒ 11. Record on appeal: Must conform to the Texas Rules of Appellate Procedure and the C.C.P.

Sec. 30.00016, G.C.
Art. 44.33, C.C.P.
Rule 34.1-35.3, Rules of Appellate Procedure

❒ a. The clerk's record must conform to provisions in the Texas Rules of Appellate Procedure and the C.C.P.

Sec. 30.00017, G.C.
See *TMCEC 2024 Forms Book*: Checklist for Record on Appeal (Court of Record).
See Checklist 10-4.

Rules 33.1 and 33.2, Rules of Appellate Procedure

❒ b. The bills of exception must conform to the Texas Rules of Appellate Procedure and the C.C.P.

Sec. 30.00018, G.C.
A bill of exception is a formal statement in writing of the objections or exceptions taken by a party during trial to the decisions, rulings, or instructions of the trial judge, stating the objection, with the facts and circumstances on which it is founded, and signed by the judge.

❒ c. The reporter's record must conform to the Texas Rules of Appellate Procedure and the C.C.P.

Sec. 30.00019, G.C.
Art. 44.33, C.C.P.
Rules 34.6, 35.2, and 35.3, Rules of Appellate Procedure

❒ d. Transfer of the record – Not later than the 60th day after the date on which the notice of appeal is given or filed, the parties must file the reporter's record, a written description of material to be included in the clerk's record, and any material to be included in the clerk's record that is not in the custody of the clerk.

Sec. 30.00020(a), G.C.

❒ (1) On completion of the record, the municipal judge shall approve the record in the manner provided for record completion, approval, and notification in the appellate court.

Sec. 30.00020(b), G.C.

❒ (2) After the judge approves the record, the clerk shall promptly send the record to the appellate court clerk for filing.

Sec. 30.00020(c), G.C.

❒ (3) The appellate court determines appeal from the municipal court of record conviction on the basis of the errors that are set forth in the appellant's motion for new trial and that are presented in the transcript and statement of facts.

Sec. 30.00014(b), G.C.

❒ 12. Brief on Appeal:

Sec. 30.00021, G.C.

❒ a. An appellant's brief on appeal must be filed with the appellate court clerk not later than the 15th day after the date on which the clerk's record and reporter's record are filed with that clerk.

Sec. 30.00021(a)-(b), G.C.

❒ b. An appellee's brief on appeal must be filed with the appellate court clerk not later than the 15th day after the date on which the appellant's brief is filed.

Sec. 30.00021(c), G.C.

❒ c. Each party shall deliver a copy of the brief to the opposing party and to the municipal judge.

Sec. 30.00021(d), G.C.

❒ 13. Withdrawal of appeal and new trial:

Sec. 30.00022, G.C.

❒ a. The trial court shall decide from the briefs of the parties whether the appellant should be permitted to withdraw the notice of appeal and be granted a new trial by the court. The court may grant a new trial at any time before the record is filed with the appellate court.

Unless the briefs are filed well in advance of the deadline, the municipal court will not have the ability to grant the new trial.

❒ 14. Disposition on appeal – Appellate court may:

Sec. 30.00024(a)(1), G.C.

❒ a. Affirm the judgment of the municipal court of record;

❒ (1) If the judgment is affirmed, the fine imposed on appeal and the costs imposed on appeal shall be collected from the defendant by the municipal court, and the fine of the municipal court when collected shall be paid into the municipal treasury.

Art. 44.281, C.C.P.

❒ (2) The municipal court may enforce the judgment by:

Sec. 30.00025(b)(1)-(5), G.C.

❒ (a) Forfeiting the defendant's bond;

❒ (B) Issuing a writ of capias for the defendant;

See Checklist 2-2.
See *TMCEC 2024 Forms Book*: Capias (Chapter 43).

❒ (C) Abstracting the judgment;

See *TMCEC 2024 Forms Book*: Abstract of Judgment.

❒ (D) The municipal court may order a refund of the defendant's costs; or

❒ (E) The municipal court may conduct an indigency hearing.

See Checklist 8-3.

❒ b. Reverse and remand for a new trial;

Sec. 30.00024(a)(2), G.C.

❒ (1) If appellate court grants a new trial, it is as if the municipal court of record granted the new trial. The new trial is conducted by the municipal court of record.

Sec. 30.00026, G.C.

❒ c. Reverse and dismiss the case; or

Sec. 30.00024(a)(3), G.C.

❒ (1) If appellate court reverses and dismisses the case, the court must refund the $25 transcription preparation fee to the defendant.

❒ d. Reform and correct the judgment.

Sec. 30.00024(a)(4), G.C.

CHAPTER 10 NEW TRIALS AND APPEALS

4. Transcript in a Municipal Court of Record

Checklist 10-4	Script/Notes
❒ 1. The clerk's record may include the following:	
❒ a. The complaint;	Art. 33.07, C.C.P.
❒ b. Certified copy of the docket;	
❒ c. The jury charge and the verdict in a jury trial;	
❒ d. The judgment;	
❒ e. The motion for a new trial, if any;	
❒ f. The notice of appeal;	
❒ g. Written motions and pleas;	
❒ h. Written orders of the court; and	
❒ i. Any bills of exception filed with the court.	Art. 44.18, C.C.P.
❒ 2. Reporter's record may include:	
❒ a. Any portions of the proceedings may be included if either party requests them;	
❒ b. Either party may include bills of exception made orally on the record;	
❒ c. A statement of facts may be in the form of:	
❒ (1) A partial transcription and the agreed statement of facts of the case;	
❒ (2) A brief reporter's record of the case proven at trial as agreed to by the parties; or	

❒ (3) A transcript of all or part of the proceedings shown by the notes to have occurred before, during, or after the trial, if requested by the defendant.

CHAPTER 11 CITY ORDINANCES — General Rules

1. General Rules

Checklist 11-1	Script/Notes
❒ 1. Jurisdiction:	See *Municipal Courts and the Texas Judicial System*: Chapter 1.
❒ a. A home-rule city can enact and enforce laws to abate and remove nuisances in the city or within 5,000 feet of the city limits. General law cities can enact and enforce laws to abate and remove nuisances within the city limits.	Chapter 54 and Secs. 217.042, 217.022, L.G.C.; *Treadgill v. State*, 275 S.W.2d 658 (Tex. Crim. App. 1955).
❒ b. A municipal court has jurisdiction over any individual or business entity acting within its limits.	Art. 4.14(a), C.C.P.; Sec. 29.003(a), G.C.
❒ c. A municipal court has jurisdiction over city ordinance violations that occur on city-owned property in the city's extraterritorial jurisdiction.	Sec. 29.003(a), G.C.
❒ d. A municipality may enter into an agreement with a contiguous municipality or a municipality with boundaries that are within one-half mile to establish concurrent jurisdiction in the municipalities and provide original jurisdiction to the municipal court in which a case is brought as if the municipal court were located in the municipality in which the case arose. This concurrent jurisdiction is limited to the following types of cases:	Sec. 29.003(i), G.C.
❒ (1) All criminal cases arising under a municipal ordinance or resolution, rule, or order of a joint board operating an airport that either municipality would have jurisdiction over;	Sec. 29.003(a), G.C.

❒ (2) All criminal cases arising under state law that arise within either municipality's territorial limits or property owned by the municipality located in its extraterritorial jurisdiction that are punishable only by a fine or arise under Chapter 106, A.B.C., and do not include confinement as an authorized sanction; — Sec. 29.003(b), G.C.

❒ (3) Seizure of cruelly treated animal cases; and — Sec. 821.022, H.S.C.

❒ (4) Truant conduct cases. — Sec. 65.004(c), F.C.

❒ e. A municipal court has concurrent jurisdiction with county and justice courts in cases that arise under ordinances of the municipality's extraterritorial jurisdiction under Section 216.902 of the Local Government Code (Regulation of Outdoor Signs in Municipality's Extraterritorial Jurisdiction). — Art. 4.11, C.C.P.

❒ f. Municipal Courts of record in home-rule municipalities have jurisdiction over city ordinance violations enacted under Sections 215.072, 217.042, 341.903, and 551.002, L.G.C., providing the following: — Sec. 30.00005, G.C.

❒ (1) A municipality is permitted to inspect dairies, slaughterhouses, or slaughter pens in or outside the municipal limits from which milk or meat is furnished to the residents of the municipality. — Sec. 215.072, L.G.C.

❒ (2) A municipality may define and prohibit any nuisance within the limits of the municipality and within 5,000 feet outside those limits and may enforce all ordinances necessary to prevent and summarily abate and remove a nuisance. — Sec. 217.042, L.G.C.

❒ (3) A home-rule municipality may police the following areas owned by and located outside the municipality: (1) parks and grounds; (2) lakes and land contiguous to and used in connection with a lake; and (3) speedways and boulevards.	Sec. 341.903, L.G.C.
❒ (4) A home-rule municipality may prohibit the pollution or degradation of the city's water supply and provide protection and policing of watersheds. The statute further provides that the authority granted by this statute may be exercised inside the city boundaries and in the extra-territorial jurisdiction only if required to meet certain other state or federal requirements. The authority granted under this statute regarding the protection of recharge areas may be exercised outside the city boundaries within the extra-territorial limits provided that the city has a population greater than 750,000 and the groundwater constitutes more than 75 percent of the city's water supply.	Sec. 551.002, L.G.C.
❒ g. The city may grant the municipal court of record, by passing an ordinance, civil jurisdiction for the purpose of enforcing municipal ordinances under Chapter 214, L.G.C., (Nuisance), and Chapter 683, T.C., (Junked Vehicles). This jurisdiction is concurrent with district and county courts at law and includes the power to issue search warrants and destruction orders.	Sec. 30.00005(d), G.C.
❒ h. The city may create by ordinance an administrative procedure for dealing with nuisance violations and junked vehicles that may be appealed to the municipal court.	Sec. 54.044, L.G.C. and Sec. 683.0765, T.C.

❒ 2. Ordinance is **invalid** if:

- ❒ a. It is inconsistent with the city's charter;
- ❒ b. It is inconsistent with state law or the Texas Constitution;

Some statutes specifically grant authority to cities to go beyond state law definitions or regulatory schemes.

- ❒ c. It is preempted by state or federal law;

A determination of invalidity in municipal court results in an individual being found not guilty. Barring an injunction from a court of equity, a municipality may continue to enforce its ordinances. *State v. Morales*, 869 S.W.2d 941 (Tex. 1994).

- ❒ d. It is inconsistent with the U.S. Constitution or federal law; or
- ❒ e. It is enacted in violation of the Texas Open Meetings law and not subsequently validated by the Legislature.

❒ 3. Culpable mental states:

Sec. 6.02(b), P.C. A city ordinance on adult businesses was held to require a culpable mental state even though the ordinance was silent as to the issue. *Aguirre v. State*, 22 S.W.3d 463 (Tex. Crim. App. 1999). NOTE: To the degree that *Aguirre* contradicts Section 6.02, P.C., its holding is modified by legislative enactment.

- ❒ a. If the ordinance does not prescribe a culpable mental state, a culpable mental state is nevertheless required unless the definition of the offense plainly dispenses with any mental element.
- ❒ b. An offense defined by municipal ordinance may not dispense with the requirement of a culpable mental state if the offense is punishable by a fine exceeding $500.

Sec. 6.02(f), P.C.

❒ 4. Notice

❒ a. There is no notice requirement in most ordinances.

A city may adopt an ordinance which incorporates some other document, such as the International Building Code. Unless a notice provision is specifically eliminated or altered, the city is bound to follow the language of the incorporated document. *State v. Cooper*, 420 S. W. 3d 829 (Tex. Crim. App. 2013).

❒ b. If there is a notice requirement, whether it has been complied with is a matter to be decided after hearing the testimony.

❒ c. Notice need not be pled in the complaint.

❒ 5. Judicial Notice:

Check procedure in Chapter 30, G.C., if a court of record.

❒ a. Judge **may** take judicial notice of all municipal ordinances.

❒ b. Some court of record statutes state that the judge **shall** take judicial notice of the ordinances.

❒ c. A printed ordinance is self-authenticating and a judge **shall** admit it without further proof.

❒ 6. Warrants:

❒ a. A magistrate may issue search warrants for code inspections based on probable cause.

Requirements for these warrants are found in Section 18.05, C.C.P.

CHAPTER 12 OATHS AND CEREMONIES

Complaints (a/k/a the Charging Instrument)

1. Complaints Filed in Municipal Court

Caution: The term "complaint" has historically been a source of confusion in Texas criminal law (especially in the context of criminal procedure). The term describes the formal charging instrument to try Class C misdemeanors. Unfortunately, it is also the term used to describe what is commonly known as the sworn affidavit for a warrant under Chapter 15, C.C.P. Do not confuse the two different applications of the term. For a detailed discussion of the different meanings of the term "complaint," see "Complaints, Complaints, Complaints: Don't Let the Language of the Law Confuse You," *The Recorder* (July 2004). Checklist 12-1 relates to the term as used to refer to the charging instrument under Chapter 45/45A, C.C.P. Checklist 12-2 relates to the term as it refers to the affidavit for the issuance of a warrant.

In *Naff v. State*, 946 S.W.2d 529 (Tex. App.–Fort Worth 1997, no writ), the court held that a person swearing to a complaint in municipal court may do so based on information contained in the citation. In this case, the defendant argued that the complaint filed against him in municipal court was invalid because it was sworn to by the municipal prosecutor's secretary. The secretary did not have firsthand knowledge of the events in question. She swore to the complaint based upon the information contained in the citation written by the police officer. The court stated that there is no requirement that the person swearing to the complaint do so based on firsthand knowledge.

Checklist 12-1	Script/Notes
❒ 1. Affiant reviews complaint.	The requisites of the complaint are found in Article 45.019 /45A.101, C.C.P. "Affiant" - a person who signs an affidavit and swears to its truth.
❒ 2. Affiant and person administering oath both raise their right hands.	
❒ 3. Oath is administered.	"Do you solemnly swear (or affirm) that the information contained in this complaint is true and correct (so help you God)?"
❒ a. The following persons have authority to administer this oath:	

❒ (1) Any officer authorized to administer oaths;

❒ (2) Municipal judge or retired municipal judge;

❒ (3) Municipal court clerk or deputy court clerk;

❒ (4) City secretary; and

❒ (5) City attorney or deputy city attorney.

Art. 45.019(d)/45A.101(d), C.C.P. , Sec.602.002, G.C.

Art. 45.019(e)/45A.101(e), C.C.P.

❒ 4. Affiant signs complaint.

❒ 5. Person administering oath signs jurat.

"Jurat"- the certificate of an officer that a written instrument was sworn to by the individual who signed it.

❒ 6. Judge or clerk places municipal court seal on complaint. The impression of the seal can either be attached manually or it may be created electronically.

All municipal courts must have a court seal, which must be included on all papers issued out of the court except subpoenas. Art. 45.012(g)/45A.052, C.C.P.

For municipal courts of record, the seal must include the phrase: "Municipal Court of/in _____, Texas." Sec. 30.000125, G.C.

❒ 7. If a notary public administered the oath, notary seal is also required to be placed on the complaint.

CHAPTER 12 OATHS AND CEREMONIES

Complaints (a/k/a the Probable Cause Affidavit)

2. Complaints Accepted by a Magistrate as Sworn Affidavit for Arrest Warrant

The affidavit made before the magistrate is called a "complaint" if it charges the commission of an offense. Art. 15.04, C.C.P. The complaint must contain the name or a reasonable description of the accused, a statement that the accused has committed or that the affiant has good reason to believe and does believe that the accused has committed some offense, and the time and place the offense was committed. Art. 15.05, C.C.P. It must also be signed by the affiant.

Checklist 12-2	Script/Notes
❒ 1. Affiant reviews complaint.	The requisites of the complaint are found in Article 15.05, C.C.P. "Affiant" - a person who signs an affidavit and swears to its truth.
❒ 2. Affiant and person administering oath both raise their right hands.	An affiant may appear before a magistrate, for the purposes of making oath, either in person or through an electronic broadcast system. Art. 15.03(c), C.C.P. See Checklist 2-1 on arrest warrants.
❒ 3. Oath is administered.	"Do you solemnly swear (or affirm) that the information contained in this complaint is true and correct (so help you God)?"
❒ a. The following persons have authority to administer this oath:	Art. 15.04, C.C.P.
❒ (1) Magistrate;	
❒ (2) District Attorney; and	
❒ (3) County Attorney.	
❒ 4. Affiant signs complaint.	Art. 15.05, C.C.P.

❒ 5. Person administering oath signs jurat.

"Jurat"- the certificate of an officer that a written instrument was sworn to by the individual who signed it.

CHAPTER 12 OATHS AND CEREMONIES

3. Other Affidavits

One frequently administered oath involves the defendant being placed on DSC. (See Checklist 5-2.) This procedure should be followed for that affidavit or any other oath or affidavit requested or required by the court.

Checklist 12-3	Script/ Notes
❒ 1. Affiant reviews affidavit.	"Affiant" - a person who signs an affidavit and swears to its truth.
❒ 2. Defendant and person administering the oath both raise their right hands.	
❒ 3. Oath is administered.	"Do you solemnly swear (or affirm) that the information contained in this affidavit is true and correct (so help you God)?" "Do you and each of you solemnly swear that you will make true answers to such questions as may be propounded to you by the court, or under its directions, touching your service and qualifications as a juror (so help you God)?"
❒ a. This oath may be administered by any person authorized to administer oaths in Texas. Persons with the authority to administer an oath most commonly seen in municipal court include the following: (1) Municipal judge, retired municipal judge, or clerk; (2) Municipal judge or retired judge of a court of record; (3) Municipal court clerk of a court of record; (4) Notary public; and (5) Peace officer may administer an oath when engaged in performance of duties and oath pertains to duties.	Sec. 602.002, G.C., contains a full list of all persons who may administer an oath in Texas. Note: The ability of municipal judges and clerks to administer oaths to appointed and elected officials is detailed in Checklist 12-7.

❒ 4. Defendant signs affidavit.	"Jurat"- the certificate of an officer that a written instrument was sworn to by the individual who signed it.
❒ 5. Person administering oath signs jurat.	
❒ 6. Court seal is impressed, stamped, or electronically imprinted on document.	Art. 45.012(g)/45A.052, C.C.P.
❒ 7. If a notary public administers oath, notary public seal required to be placed on affidavit.	

CHAPTER 12 OATHS AND CEREMONIES

4. Oaths Administered During Trial — Jurors and Witnesses

Checklist 12-4	Script/Notes
❒ 1. Jury:	Art. 35.02, C.C.P.
❒ a. Summon jurors. (Jurors are required to answer questions about their qualifications; this is called voir dire.)	For further procedures in jury trials, see Chapter 7 in this book.
❒ b. Ask prospective jurors to raise their right hands.	
❒ c. Person administering the oath raises right hand.	
❒ d. Oath is administered by the court or under its direction.	"Do you and each of you solemnly swear that you will make true answers to such questions as may be propounded to you by the court, or under its directions, touching your service and qualifications as a juror (so help you God)?" Arts. 35.22 and 45.030/45A.159, C.C.P.
❒ e. Voir dire is completed and six persons are selected to hear the case.	
❒ f. Ask jurors to raise their right hands.	
❒ g. Judge (or other person administering oath) raises right hand.	
❒ h. Oath is administered by the court or under its direction.	"Do you and each of you solemnly swear that, in the case of the State of Texas against the defendant, you will a true verdict render according to the law and the evidence (so help you God)?"
❒ 2. Witnesses:	

❒ a. Before testifying, each witness shall be required to declare that he or she will testify truthfully by oath or affirmation in a form calculated to awaken the witness's conscience and impress on the witness the duty to do so.	Rule 603, T.R.E.
❒ b. Both the judge (or other person administering oath) and witness should raise their right hands.	
❒ c. Oath is administered.	"Do you solemnly swear or affirm that the testimony that you are about to give in the case now on trial is the truth, the whole truth, and nothing but the truth (so help you God)?"
❒ d. Invoke "The Rule."	At the request of either party, or the court, witnesses may be excluded from the courtroom so that they cannot hear the testimony of other witnesses. This is commonly called "The Rule." If "The Rule" is invoked, all witnesses should be sworn before being directed to wait outside the courtroom. Rule 614, T.R.E.

CHAPTER 12 OATHS AND CEREMONIES

5. Interpreters

For a complete discussion of interpreters for non-English speaking defendants and witnesses as well as those who are deaf or hard of hearing, see Chapter 4 of *Municipal Courts and the Texas Judicial System*.

Although there is no statutory requirement that the oath be taken in writing, signed, or filed in the court's record, it is recommended to ensure some documentation that the oath requirement has been met. It is especially recommended in non-record courts where there is no transcript.

Checklist 12-5	Script/Notes
❒ 1. Interpreter for foreign language:	Art. 38.30, C.C.P., and Rule 604, T.R.E.
❒ a. Interpreter raises right hand.	
❒ b. Judge (or other person administering oath) raises right hand.	
❒ c. Oath is administered by the court or under its direction.	"Do you solemnly swear or affirm that you will truly and correctly interpret for the court, jury, attorneys, defendant, and the person being examined all of the proceedings (and deliberations of the jury) in this case into the language that the witness (or the accused) understands and you will repeat the statements made by said witness (or said accused) into the English language to the best of your skill and judgment (so help you God)?" See *TMCEC 2024 Forms Book*: Oath for Language Interpreter.
❒ 2. Interpreter for deaf or hard of hearing:	Art. 38.31, C.C.P., and Rule 604, T.R.E.
❒ a. Interpreter raises right hand.	
❒ b. Judge (or other person administering oath) raises right hand.	

❒ c. Oath is administered by the court or under its direction.

"Do you solemnly swear or affirm that you will make a true interpretation to the person being examined (or the person accused, or the juror), who is deaf, of all the proceedings in the case in a language that he/she understands, and that you will repeat said deaf person's statements, questions, and answers to questions to counsel, the court, or the jury, in the English language, to the best of your skill and judgment (so help you God)?"

See *TMCEC 2024 Forms Book*: Oath for Interpreter for Deaf or Hard of Hearing Juror, Defendant, or Witness.

CHAPTER 12 OATHS AND CEREMONIES

6. Court Reporters

An official court reporter must take the oath of office required of other officers of this state. In addition to the official oath, each official court reporter must sign an oath administered by the district clerk.

Checklist 12-6		Script/Notes
❒ 1.	Court reporter raises right hand.	Sec. 52.045, G.C.
❒ 2.	Person administering the oath raises right hand.	
❒ 3.	Oath administered by the clerk.	"I, _____, do solemnly swear (or affirm) that I will well and truly keep a correct and impartial record of the evidence offered in the case, the objections and the exceptions made by the parties to the case, and the rulings and remarks made by the court in determining the admissibility of testimony presented in the case (so help me God)."
❒ 4.	The court reporter files these oaths with the papers of the court.	
❒ 5.	Court reporter signs the oath.	
❒ 6.	Person administering the oath signs jurat.	"Jurat"- the certificate of an officer that a written instrument was sworn to by the individual who signed it.
❒ 7.	If notary public administered the oath, notary seal is also required to be placed on the oath.	

CHAPTER 12 OATHS AND CEREMONIES

7. Appointed and Elected Officials

All appointed or elected officials are required to subscribe to an anti-bribery statement before taking an oath of office. Municipal judges should take and file an oath before each term of office, even if they continue to serve another term as an operation of Section 29.005 of the Government Code. See "When the Acts of a Judge May Be Void: A Look at the Constitutional Oath Requirement in Light of Section 29.005 of the Texas Government Code," *The Recorder* (May 2013).

Checklist 12-7	Notes
❒ 1. All elected and appointed officials, including judges, court clerks, and court reporters, must:	Art. XVI, Sec. 1, Tex. Const. See *TMCEC 2024 Forms Book*: Anti-Bribery Oath of Appointed/ Elected Officer.
❒ a. Swear to an anti-bribery statement; and	
❒ b. File it with the city secretary or clerk of the court.	An amendment to the Texas Constitution effective January 1, 2002 altered the previous requirement of this section that the oath be sent to the Texas Secretary of State.
❒ 2. Both the official and person administering oath raise their right hands.	
❒ 3. Oath is administered.	"I,_____, do solemnly swear (or affirm) that I have not directly or indirectly paid, offered, promised to pay, contributed, or promised to contribute any money thing of value, or promised any public office or employment for the giving or withholding of a vote at the election at which I was elected or as a reward to secure my appointment or confirmation, whichever the case may be (so help me God)."
❒ a. The following municipal court personnel have authority to administer this oath:	See Section 602.002, G.C., for a complete list of authorized persons.
(1) Municipal judge or retired municipal judge;	

(2) Municipal court clerk; and

(3) Notary public.

❒ 4. Appointed official signs statement.

❒ a. Person administering oath signs jurat.

"Jurat"- the certificate of an officer that a written instrument was sworn to by the individual who signed it.

❒ b. If notary public administers oath, notary's seal is placed on oath.

❒ 5. Oath of office

Art. XVI, Sec. 1, Tex. Const.
See *TMCEC 2024 Forms Book*: Oath of Office.

❒ a. Both the appointed official and the person administering the oath raise their right hands.

❒ b. Oath is administered.

"I,_____, do solemnly swear (or affirm), that I will faithfully execute the duties of the office of _____ of the State of Texas, and will to the best of my ability preserve, protect, and defend the Constitution and laws of the United States and of this State (so help me God)."

The oath of office should be administered at the beginning of each new term of office for a clerk or judge.

❒ c. The following municipal court personnel have authority to administer an oath to an appointed or elected official:

See Section 602.002, G.C., for a complete list of authorized persons.

(1) Municipal judge or retired municipal judge;

(2) Municipal court clerk; and

(3) Notary public.

❒ d. Appointed official signs oath.

(1) Person administering oath signs jurat.

(2) If notary public administers oath, notary's seal is placed on oath.

❒ 6. File the oath of office with the city secretary or the person responsible for maintaining the official records of the office.

The city secretary must notify the Texas Judicial Council of the name of each person who is elected or appointed as, or who vacates the office of mayor, municipal judge, or clerk of a municipal court within 30 days after the election, appointment, or vacancy. Sec. 29.013(a), G.C.

See *TMCEC 2024 Forms Book*: Report of Change or Vacancy in Judge/Clerk/Mayor Position.

A copy of the reporting form can also be found here: https://www.txcourts.gov/judicial-directory/directory-updates/.

CHAPTER 13 JUVENILE AND MINOR PROCEEDINGS

1. General Procedures

IMPORTANT: Before proceeding with this checklist, see H.B. 3186 (88th Legislature, 2023) for eligibility and requirements related to youth diversion. Generally, children alleged to have committed non-traffic offenses on or after January 1, 2025 must be diverted under new Subchapter E of Chapter 45 of the Code of Criminal Procedure (Youth Diversion).

For checklists related to Youth Diversion, go to tmcec.com/youth-diversion.

Checklist 13-1	Script/Notes
❒ 1. If the defendant does not appear as required, see Checklist 13-16.	
❒ 2. If the defendant appears, determine age of offender at the time of the offense.	A student required to make a court appearance, including days absent from school due to traveling, receives an excused absence from school. Sec. 25.087, E.C.
❒ a. Generally, a municipal court has jurisdiction over a person between 10 years of age and under 17 years of age for the following offenses:	Secs. 51.02(2)(A) and 51.03(f), F.C., and Sec. 8.07, P.C.
(1) Certain traffic offenses;	
(2) Status Alcoholic Beverage Code offenses;	A "status" offender is a child who is accused, adjudicated, or convicted of conduct that would not, under state law, be a crime if committed by an adult. Sec. 51.02(15), F.C.
(3) Certain Education Code offenses;	In 2015, the Texas Legislature repealed Failure to Attend School and designated justice, municipal, and certain county courts as truancy courts, having original, exclusive jurisdiction over allegations of truant conduct, handled as civil cases under Title 3A of the Family Code. See *Texas Truancy Resource Manual*.

(4) Class C misdemeanors in the Penal Code;

Juveniles younger than 12 may not be charged criminally for most types of Disorderly Conduct offenses occurring at a public school campus (involving language, gestures, odors, noise, and fights). Sec. 42.01., P.C.

(5) Status tobacco offenses in the Health and Safety Code; and

(6) Other fine-only offenses.

❒ b. A person who is at least 10 years of age but younger than 15 years of age is presumed incapable of committing a fine-only offense under state law or local ordinance.

Sec. 8.07(e), P.C.

❒ (1) The presumption may be refuted if the prosecution proves to the court by a preponderance of the evidence that the child had sufficient capacity to understand that the conduct was wrong at the time.

❒ (2) The prosecution is not required to prove that the child knew that the act was a crime or knew the legal consequences of the offense.

❒ c. Under the Transportation Code, a "minor" is a person who is younger than 17 years of age.

Sec. 729.001, T.C.
See Checklist 13-3 for a listing of traffic offenses and penalties.

❒ d. Under the Alcoholic Beverage Code, a "minor" is a person under 21 years of age.

Sec. 106.01, A.B.C.
See Checklists 13-5, 13-6, and 13-15 for a listing of Alcoholic Beverage Code offenses and penalties.

❒ e. Municipal courts do have jurisdiction of public intoxication of children.

A defendant younger than age 21 is subject to the penalties in Section 106.071, A.B.C.

Sec. 49.02(e), P.C.
See Checklist 13-5.

❒ f. For purposes of status tobacco offenses, a "minor" is an individual under 21 years of age.

Sec. 161.252(a), H.S.C.
See Checklists 13-7 and 13-8 for a listing of status tobacco offenses and penalties.

❒ g. For purposes of all other offenses, a child is a person who is at least age 10 and under the age of 17.

Sec. 51.02(2), F.C.
Municipal court has jurisdiction only if the child is at least 10 years of age.

❒ 3. Court determines if there is probable cause to believe that a child, including a child with mental illness or developmental disability:

Sec. 8.08, P.C.

❒ a. Lacks the capacity to understand the proceedings or to assist in their own defense and is unfit to proceed; or

❒ b. Lacks substantial capacity either to appreciate the wrongfulness of the child's own conduct or to conform their conduct to the requirements of the law.

❒ 4. If court determines that probable cause exists under step 3 above, the court may dismiss the complaint after giving notice to the prosecution.

The prosecution has the right to appeal such determinations. Art. 44.01, C.C.P.

❒ 5. Court determines whether to retain jurisdiction or to transfer a case involving a child under the age of 17 to the juvenile court.

See Checklist 13-2.
The court may not transfer a traffic offense or a tobacco offense involving persons under the age of 17.

❒ 6. If the court does not waive jurisdiction, the court proceeds.

❒ 7. Determine if parent(s) is present. (Parent's presence required for all proceedings if the child or minor is under the age of 17 and for a 17-year-old defendant charged with a sexting offense under Section 43.261, P.C.)

Art. 45.0215/45A.452, C.C.P.
This is subject to the requirements of Subchapter E of Chapter 45 (Youth Diversion).

"Parent" includes a person standing in parental relation, a managing conservator, or a custodian. Art. 45.057(a)(3)/45A.457(a)(2), C.C.P.

Marriage removes the disability of minority. Thus, the parents of defendants who are younger than 17 years of age and who are married need not be summoned. Sec. 1.104, F.C.

❒ 8. If the parent does not appear, determine if the parent(s) has been served with a summons. If not, reset the case.

❒ a. The court must summon the parent(s) to appear in open court with his or her child (a person under the age of 17 or a 17-year-old charged with a sexting offense under Section 43.261, P.C.).

Art. 45.0215/45A.452, C.C.P. This is subject to the requirements of Subchapter E of Chapter 45 (Youth Diversion).

❒ b. If the parent(s) has been served with a summons but failed to appear, the court may waive the requirement of the presence of the parents, guardian, or managing conservator if, after diligent effort, the court cannot locate them or compel their presence.

If the court waives this requirement, it is advisable to document what action the court employed to compel the parent's presence in the offender's file. If the parent, guardian, or managing conservator fails to respond to the summons, it is punishable as a Class C misdemeanor. Art. 45.057(g)/45A.457(g), C.C.P.

❒ 9. Notify parent and child in writing of their continuing obligation to give written notice of current address. The court should provide a copy of Article 45.057(h) and (i)/45A.457(h) and (i), C.C.P., to child and parent.

Art. 45.057/45A.457, C.C.P.

"Here is a copy of the law requiring you and your parent to give notice of your current address. If you fail to give this court written notice of your current address or if you move and fail to give written notice of your current address within seven days after moving, you and your parent(s) could be charged with a Class C misdemeanor that has a maximum penalty of $500."

Art. 45.057(h)/45A.457(h), C.C.P. A child and parent required to appear before the court have an

	obligation to provide the court in writing with the current address and residence of the child. The obligation does not end when the child reaches age 17. On or before the seventh day after the date the child or parent changes residence, the child or parent shall notify the court of the current address in the manner directed by the court. A violation of this subsection may result in arrest and is a Class C misdemeanor. The obligation to provide notice terminates on discharge and satisfaction of the judgment or final disposition not requiring a finding of guilt. Art. 45.057(i)/45A.457(i), C.C.P. If an appellate court accepts an appeal for a trial de novo, the child and parent shall provide the notice under Subsection (h) to the appellate court.
❒ 10. Make notes on child's sophistication and maturity and file notes with case.	Article 45.045/45A.259, C.C.P., requires the court to consider the defendant's sophistication and maturity before issuing a capias pro fine for the defendant when the defendant reaches age 17. This might be the only time that the court has to determine that information. See Checklist 13-19 Children Now Adults Who Fail to Pay.
❒ 11. If an attorney appears without the child or the child's parent(s), reset the case.	Art. 45.0215/45A.452, C.C.P. "The law requires that a child and his or her parents must personally be present in open court before the court can proceed with the child's case. Therefore, I am resetting this case."
❒ 12. If the child does not appear with an attorney, determine whether the child or child's parent(s) is intending to hire an attorney.	See Checklist 3-2 for explaining the defendant's right to counsel.

❒ a. If an attorney is going to be hired, reset the case and inform the child and parent or guardian to have the attorney present for the date and time in which the case is rescheduled.

"At your next court date and at any subsequent court appearances, you and your parent(s) must still appear even though you will be represented by an attorney." Art. 45.0215/45A.452, C.C.P.

❒ b. Provide the specific:

(1) Date;

(2) Place; and

(3) Time of the resetting.

❒ c. If an attorney is not going to be hired, proceed.

❒ 13. Explain the child's rights, charge(s), pleas, and penalties. Make sure that child understands consequences of each plea.

See Checklists 3-2 and 4-1 for rights and pleas; see Checklists 13-3, 13-4, 13-5, 13-7, and 13-12 for information on charges and penalties for each code.

❒ 14. In addition to the rights in Checklists 3-2 and 4-1, if the offense is a fine-only misdemeanor penal offense (includes Penal Code offenses, penal ordinance offenses, and Education Code offenses the court must:

❒ a. Notify the parent and child of the child's right to an expunction at the commencement of the proceedings; and

See Checklist 13-20.

"You have the right to have the offense of _____ expunged.

❒ b. Give both the parent and child a copy of the expunction statute, Article 45.0216 /45A.463, C.C.P.

Here is a copy of the law regarding your right to expunction. Please take time to read this information."

❒ 15. Request a plea.

See Chapter 5 on taking pleas.

"How do you plead to the charge of _____ brought against you? 'Guilty,' 'No Contest,' or 'Not Guilty'?"

❒ 16. On a plea of not guilty, determine whether the defendant wants to:

All trials are to be open to the public. Art. 1.24, C.C.P.

❒ a. Waive a jury trial and proceed with a non-jury trial; or	See Chapters 6 and 7 for pretrial and trial procedures.
❒ b. Exercise his or her right to a trial by jury.	
❒ c. Set the case according to the juvenile offender's request.	
❒ d. Set bail, if applicable.	
❒ e. Inform both the defendant and his or her parent or guardian of the date, time, and place of the trial.	If the trial date is not known at the time of plea, tell the defendant and parent or guardian that notice is coming. Verify the juvenile's address at this time.
❒ f. In a case that involves a child eligible for diversion under Article 45.304 that results in a trial, if the court determines that the evidence presented in a bench trial would support a finding of guilt, or if a jury returns a verdict of guilty, provide the child and the child 's parents the opportunity to accept placement in diversion, under Article 45.310, instead of entering an adjudication of guilt. If the child and parent accept, place the child in diversion. If they decline, find the child guilty and proceed to Step 18.	Art. 45. 041(a-2), C.C.P. This provision applies to offenses committed on or after January 1, 2025.
❒ 17. On a plea of "guilty" or "no contest," inform the defendant and his or her parent or guardian of the possible options to dispose of the case:	
❒ a. Driving safety course, if applicable.	See Checklist 5-1.
❒ b. Teen court, if applicable.	Art. 45/45A.401, C.C.P.
❒ c. Deferred disposition, if applicable.	See Checklist 8-2. See Checklist 8-1 for sentencing.
❒ 18. Set the fine and impose any required sanctions. The court may require rehabilitative sanctions under Article 45.057/45A.457, C.C.P. See Checklist 13-15 for imposing those sanctions.	"The fine is set in the amount of $_____. In addition to the fine, you must pay court costs." For Alcoholic Beverage Code offenses, see Checklist 13-6 for information on required sanctions.

For tobacco offenses, see Checklist 13-9 for information on required sanctions.

For additional sanctions that the court might also impose upon conviction for any offense, see Checklist 13-15.

❒ 19. Unless the defendant is under the conservatorship of the Department of Family and Protective Services or in extended foster care, you may allow a defendant who is a child to elect at the time of conviction to discharge the fine and costs by:

Art. 45.041(b-3)/45A.253(b), C.C.P.
For offenses committed by a child on or after January 1, 2025, the court must allow the child to elect the method of discharging the fine and costs. See H.B. 3186 (88th Legislature).

A defendant in conservatorship or extended foster care may not be ordered to pay the fine and costs but may be required to discharge by community service as provided by Arts. 45.049/45A.254 or 45.0492/45A.459 and 45A.460, C.C.P.
Art 45.041(b-6)/45A.253(d), C.C.P.

- ❒ a. Performing community service or receiving tutoring under Article 45.0492 (as added by Chapter 227 (H.B. 350), Acts of the 82nd Legislature, Regular Session, 2011)/45A.460; or
- ❒ b. Paying the fine and costs.

❒ 20. If you do not allow election by the child, determine how you would like the fine to be discharged. It can be discharged by:

For offenses committed by a child on or after January 1, 2025, the court must allow the child to elect the method of discharging the fine and costs. See H.B. 3186 (88th Legislature).

- ❒ a. Payment (unless the defendant is under the conservatorship of the Department of Family and Protective Services or in extended foster care);

Art. 45.041(b-6)/45A.253(d), C.C.P.

❒ b. By performing community service, if eligible, under Article 45.049/45A.254, C.C.P., if:

(1) Defendant failed to pay previously assessed fine or cost; or

(2) Defendant is determined by the court to have insufficient resources or income to pay fine or costs.

❒ c. By performing community service, if defendant is younger than 17 years, under Article 45.0492/45A.459, C.C.P.;

❒ d. By performing tutoring, if defendant is younger than 17 years of age and the criminal offense occurred in a building or on the grounds of the primary or secondary school at which the defendant was enrolled at the time of the offense, under Article 45.0492/45A.460, C.C.P.; or

❒ e. Through a combination of the alternatives described above.

See Checklist 8-3 for indigent hearings.

Art. 45.049/45A.254, C.C.P.
"If you do not have the resources to pay the fine and costs, you may perform community service for a governmental entity or a non-profit organization to discharge payment of your fine and costs."

CHAPTER 13 JUVENILE AND MINOR PROCEEDINGS

2. Waiver of Municipal Court Jurisdiction and Transfer of Child to Juvenile Court

Checklist 13-2	Script/Notes
❒ 1. If the court decides to waive jurisdiction, see the following information:	
❒ a. A municipal court may enter an "order of waiver of jurisdiction" and transfer the juvenile defendant to juvenile court whenever a complaint is pending against a juvenile for any fine-only offense other than a traffic offense, or a tobacco offense under Section 161.252, H.S.C. This is called discretionary transfer.	Sec. 51.08(b)(2), F.C. Sec. 161.257, H.S.C While H.B. 3186 (88th Legislature, 2023) requires that an eligible offense be diverted from criminal adjudication, Chapter 45, Subchapter E (Youth Diversion) of the Code of Criminal Procedure does not limit the authority of a municipal court to waive jurisdiction and transfer a case to juvenile court. Art. 45.303, C.C.P.
❒ b. A municipal court shall enter an "order of waiver of jurisdiction" and transfer the juvenile defendant to juvenile court if the complaint pending alleges a violation of Section 43.261, P.C., that is punishable by fine-only (e.g., "sexting").	"Sexting" offenses alleged against a child must be transferred to juvenile court. Municipal courts may only see a defendant age 17 for a "sexting" offense.
❒ c. A municipal court shall enter an "order of waiver of jurisdiction" and transfer the juvenile defendant to juvenile court if the municipal court or another court has previously dismissed a complaint against the child under Section 8.08, P.C.	Sec. 51.08(f), F.C. Section 8.08, P.C., allows a court to dismiss a complaint if probable cause exists to believe that the child lacked sufficient capacity to proceed in the trial or to appreciate the wrongfulness of the child's action.
❒ d. A municipal court shall enter an "order of waiver of jurisdiction" and transfer the juvenile defendant to juvenile court when the juvenile has previously been convicted of:	If court is waiving because of two prior convictions, include information on prior convictions in waiver notice.
❒ (1) Two or more misdemeanors punishable by fine-only other than traffic or tobacco;	Sec. 161.257, H.S.C. Sec. 51.08(b)(1), F.C.

❒ (2) Two or more violations of a penal ordinance of a political subdivision other than a traffic; or

❒ (3) One or more of each of the types of misdemeanors described above.

This is called mandatory transfer.

❒ 2. A municipal court may elect not to enter an "order of waiver of jurisdiction" for a third or other subsequent violation if the court employs a juvenile case manager under Article 45.056/45A.451, C.C.P.

Sec. 51.08(d), F.C.

❒ 3. Notice to Juvenile Court

Sec. 51.08(c), F.C.

❒ a. A municipal court is required to notify the juvenile court of any pending complaint against a juvenile in which jurisdiction is not waived except for:

A letter addressed to the juvenile court judge or the appropriate designee of the juvenile court should contain the following information:

1) Name of the court;
2) Name of the defendant;
3) Name of the judge;
4) Offense charged; and
5) Cause number assigned to the case.

See *TMCEC 2024 Forms Book*: Report to Juvenile Court of Complaint Filed.

❒ (1) A traffic offense; or

❒ (2) A tobacco offense committed by a person under the age or 17.

❒ b. In addition, the municipal court must furnish the juvenile court with notice of the final disposition of the cases in which the municipal court retained jurisdiction.

Sec. 51.08(c), F.C.

CHAPTER 13 JUVENILE AND MINOR PROCEEDINGS

Traffic and Other Motor Vehicle Misdemeanors

Section 729.001, T.C., provides that Chapter 729 applies to a person who is under the age of 17. Municipal courts may not waive jurisdiction over traffic offenses committed by a person under age 17 regardless of the number of convictions for fine-only traffic offenses. Sec. 51.08, F.C.

3. Offenses

Checklist 13-3	Script/Notes
❒ 1. Before proceeding with this Checklist, see Chapter 4 and Checklist 13-1 for general procedures, rights, and pleas.	
❒ 2. Identify the traffic law that is alleged to have been violated.	
❒ 3. A person under the age of 17 may be charged with the following traffic offenses:	Ch. 729, T.C.
❒ a. Chapter 502, T.C., (Registration of Vehicles) other than an offense under Sec. 502.412;	
❒ b. Chapter 521, T.C., (Driver's Licenses and Certificates) other than an offense under Sec. 521.457;	
❒ c. Transportation Code Chapters 541-600, Subtitle C (Rules of the Road), other than an offense punishable by imprisonment or confinement in jail under Secs. 550.021, 550.022, 550.024, and 550.025, T.C.;	
❒ d. Chapter 601, T.C. (Motor Vehicle Safety Responsibility Act);	Municipal courts have jurisdiction over the offense of Failure to Maintain Financial Responsibility.
❒ e. Chapter 621, T.C. (General Provisions Relating to Vehicle Size and Weight);	
❒ f. Chapter 661, T.C. (Protective Headgear for Motorcycle Operators and Passengers); and	
❒ g. Chapter 681, T.C. (Privileged Parking).	

❒ 4. The fine range provided in Transportation Code violations applies to violators under age 17.	Sec. 729.001(c), T.C.
❒ 5. There is no right to expunge traffic convictions.	

CHAPTER 13 JUVENILE AND MINOR PROCEEDINGS

Alcoholic Beverage Code

4. General Status Offenses

Checklist 13-4	Script/Notes
❒ 1. Before proceeding with this Checklist, see Checklists 3-2, 4-1, and 13-1 for general procedures, rights, and pleas.	
❒ 2. Identify the code provision that is alleged to have been violated.	
❒ a. Purchase of Alcohol by a Minor – Elements of this offense are:	Sec. 106.02, A.B.C.
❒ (1) A minor;	It is not an offense if the minor purchases an alcoholic beverage under the immediate supervision of a commissioned peace officer engaged in enforcing the provisions of this code.
❒ (2) Purchases;	
❒ (3) An alcoholic beverage.	
❒ b. Attempt to Purchase Alcohol by a Minor – Elements of this offense are:	Sec. 106.025, A.B.C.
❒ (1) A minor;	
❒ (2) With specific intent to purchase alcohol;	
❒ (3) Does an act amounting to more than mere preparation;	
❒ (4) That intends but fails to commit the offense.	
❒ c. Consumption of Alcohol by a Minor – Elements of this offense are:	Sec. 106.04, A.B.C.
❒ (1) A minor;	
❒ (2) Consumes;	

❒ (3) An alcoholic beverage.

❒ (4) It is an affirmative defense if the minor consumed an alcoholic beverage in the visible presence of the minor's adult parent, guardian, or spouse.

Sec. 106.04(b), A.B.C.

❒ (5) This offense does not apply to a minor who:

Sec. 106.04(e), A.B.C.

❒ (A) Requested emergency medical assistance in response to the possible alcohol overdose of the minor or another person;

❒ (B) Was the first person to make a request for medical assistance;

❒ (C) Remained on the scene until medical assistance arrived; and

❒ (D) Cooperated with medical assistance and law enforcement personnel.

❒ (6) This offense does not apply to a minor who reports the sexual assault of the minor or another person, or is the victim of a sexual assault reported by another person, to:

A minor is entitled to raise this defense only if the minor is in violation of this section at the time of the commission of the reported sexual assault. A minor who commits a sexual assault that is reported is not entitled to raise the defense. Secs. 106.04(e)-(g), A.B.C.

❒ (A) a health care provider treating the victim of the sexual assault;

❒ (B) an employee of a law enforcement agency, including an employee of a campus police department of an institution of higher education; or

❒ (C) the Title IX coordinator of an institution of higher education or another employee of the institution responsible for responding to reports of sexual assault.

❒ d. Driving or Operating Watercraft Under the Influence of Alcohol by a Minor – Elements of this offense are:

Sec. 106.041, A.B.C.

❒ (1) A minor;

Sec. 106.041, A.B.C. Juvenile DUI is not a lesser included offense under Section 49.04 (DWI), 49.045 (DWI with Child Passenger), 49.06 (Boating While Intoxicated), or 49.061 (Boating While Intoxicated with Child Passenger), P.C. Sec. 106.041(g), A.B.C.

❒ (2) Operates a motor vehicle or a watercraft;

❒ (3) In a public place;

❒ (4) With any detectable amount of alcohol in his or her system.

❒ e. Possession of Alcohol by a Minor – Elements of this offense are:

Sec. 106.05, A.B.C.

❒ (1) A minor;

❒ (2) Possesses;

❒ (3) An alcoholic beverage.

❒ (4) It is an exception to an offense under this section if the minor possesses an alcoholic beverage:

❒ (A) In the course and scope of his or her employment provided that such employment is not prohibited by this code;

❒ (B) In the presence of an adult parent, guardian, or spouse; or

❒ (C) In the immediate supervision of a commissioned peace officer engaged in enforcing the provisions of this code.

❒ (5) This offense does not apply to a minor who:

Sec. 106.05(d), A.B.C.

❒ (A) Requested emergency medical assistance in response to the possible alcohol overdose of the minor or another person;

❒ (B) Was the first person to make a request for medical assistance;

❒ (C) Remained on the scene until medical assistance arrived; and

❒ (D) Cooperated with medical assistance and law enforcement personnel.

❒ (6) This offense does not apply to a minor who reports the sexual assault of the minor or another person, or is the victim of a sexual assault reported by another person, to:

A minor is entitled to raise this defense only if the minor is in violation of this section at the time of the commission of the reported sexual assault. A minor who commits a sexual assault that is reported is not entitled to raise the defense. Sec. 106.05(e)-(g), A.B.C.

❒ (A) a health care provider treating the victim of the sexual assault;

❒ (B) an employee of a law enforcement agency, including an employee of a campus police department of an institution of higher education; or

❒ (C) the Title IX coordinator of an institution of higher education or another employee of the institution responsible for responding to reports of sexual assault.

❒ f. Misrepresentation of Age by a Minor – Elements of this offense are: — Sec. 106.07, A.B.C.

❒ (1) A minor;

❒ (2) Falsely states;

❒ (3) That he or she is 21 years of age or older;

❒ (4) To a person selling or serving alcoholic beverages.

❒ g. Public Intoxication – Elements of this offense are:

❒ (1) Younger than 21 years of age (minor); — Sec. 49.02(e), P.C.

❒ (2) Appears in a public place;

❒ (3) Intoxicated to a degree that the person is: — Sec. 49.02(a), P.C.

❒ (A) A danger to themselves; or

❒ (B) A danger to another.

❒ (4) It is a defense to prosecution that the alcohol or other substance is administered for therapeutic purposes as part of medical treatment administered by a licensed physician. — Sec. 49.02(b), P.C.

❒ (5) Upon conviction, punishment is in the same manner as if the minor committed an offense to which Section 106.071, A.B.C., applies. — Sec. 49.02(e), P.C.

CHAPTER 13 JUVENILE AND MINOR PROCEEDINGS

Alcoholic Beverage Code

5. General Penalty Provision, Section 106.071, A.B.C.

Checklist 13-5	Script/Notes
❒ 1. Section 106.071, A.B.C., provides the punishment scheme for the following offenses:	
❒ a. Purchase of Alcohol by a Minor.	Sec. 106.02, A.B.C.
❒ b. Attempt to Purchase Alcohol by a Minor.	Sec. 106.025, A.B.C.
❒ c. Consumption of Alcohol by a Minor.	Sec. 106.04, A.B.C.
❒ d. Possession of Alcohol by a Minor.	Sec. 106.05, A.B.C.
❒ e. Misrepresentation of Age by a Minor.	Sec. 106.07, A.B.C.
❒ f. Public Intoxication Under the Age of 21.	Sec. 49.02(e), P.C.
❒ 2. FIRST CONVICTION: A charge is punishable as a Class C misdemeanor—maximum fine of $500.	"You have been found guilty of the offense of _____ and the fine is assessed at $_____. In addition, you must pay court costs. Moreover, the court must require other sanctions." See items below.
❒ 3. In addition to assessing a fine for an offense under Section 106.071, A.B.C. or for Driving or Operating a Watercraft Under the Influence of Alcohol by a Minor (Section 106.041, A.B.C.; See Checklist 13-6), the court is required to order:	Sec. 106.115, A.B.C.
❒ a. Successful completion of an alcohol awareness or substance misuse education program regulated under Ch. 171, G.C.;	H.B. 1560 (87th Legislature) repealed DADAP from Sec. 106.115(a), A.B.C. and Sec. 1001.103, E.C., effective June 1, 2023.

❒ (1) If the defendant resides in a county with a population of 75,000 or less and access to an alcohol awareness program is not readily available in the county:

Sec. 106.115(b-1) A.B.C.
A defendant's residence is the one listed on the defendant's driver's license. If no driver's license or state ID, residence is that of defendant's voter registration certificate. If not registered to vote, the residence is that which is on file with the public school district. If not enrolled in public school, residence is determined by the court. The court may consider a defendant who is a college student to be a resident of the county where the college is, if the county offers readily available alcohol awareness classes. See Sec. 106.115(b-2), A.B.C.

❒ (A) The court may allow the defendant to take an online alcohol awareness program approved by the Texas Department of Licensing and Regulation;

❒ (B) The court may require the defendant to perform not less than eight hours of community service related to alcohol abuse prevention or treatment instead of attending the alcohol awareness program.

Community service ordered under this subsection is in addition to community service ordered under Section 106.071(d).

❒ (2) The minor has 90 days from the date of final conviction to submit to the court evidence of satisfactory completion of a court-ordered program.

Sec. 106.115(c), A.B.C.
"You have 90 days from today to submit to this court evidence of completion of the program ordered by the court."

❒ (3) For good cause, the court may extend this period by not more than 90 days.

"If you fail to submit the proper evidence within 90 days, this court will schedule a show cause hearing."

❒ (4) Failure by the defendant to present evidence of completion of an awareness program within the prescribed time period obligates the court to order the Department of Public Safety to suspend the defendant's driver's license or permit, or, if the defendant does not have a driver's license or permit, to deny the issuance of a license or permit for a period not to exceed six months in either event.

"If the court determines that you did not have a good reason for not completing the alcohol awareness program and submitting evidence of completion within 90 days, I will order the Texas Department of Public Safety to suspend or deny issuance of your driver's license for up to 180 days." Sec. 106.115(d)(1)(A), A.B.C.

❒ (5) If the minor fails to present evidence of completion of an alcohol awareness program, the court may order the parent or guardian of the minor to do any act or refrain from doing any act if the court determines that the doing or refraining from doing the act will increase the likelihood that the minor will complete the alcohol awareness course.

Sec. 106.115(d)(2), A.B.C.

❒ (6) Court order on parents may be enforced by contempt.

Ex parte Powell, 883 S.W.2d 775 (Tex. App.—Beaumont 1994, no pet.),
Sec. 21.002(c), G.C.

❒ (A) Punishment for the parents: up to three days in jail and a fine up to $100.

❒ (7) If the defendant presents evidence of successful completion of the course in a timely manner, the court may reduce the assessed fine to an amount equal to no less than one-half of the amount of the initial fine.

Sec. 106.115(c), A.B.C.

❒ b. Eight to 12 hours of alcohol-related community service; and

Sec. 106.071(e), A.B.C.
"In addition to the fine and alcohol awareness program, you must perform eight to 12 hours of community service (judge selects amount of hours between eight to 12 hours). You must complete the community service by _____."

Community service ordered must be related to education about or prevention of misuse of alcohol or drugs if programs and services are available in the community. If educational programs and services are not available, the court may order community service that it considers appropriate for rehabilitative purposes.

❒ c. DPS to suspend or deny issuance of the minor's DL or permit for 30 days.

"Also, I am going to order the Texas Department of Public Safety to suspend (or deny issuance of) your driver's license for 30 days. The suspension is effective 11 days from today." Sec. 106.071(h), A.B.C.

The judge should order the clerk to immediately send notice of the order to DPS.

❒ d. The court may also issue additional orders per Art. 45.057/45A.457, C.C.P.

❒ 4. SUBSEQUENT CONVICTION: A charge alleging a prior conviction is punishable as a Class C misdemeanor--maximum fine of $500.

Sec. 106.071, A.B.C.

❒ a. The court is required to order:

❒ (1) 20-40 hours of alcohol-related community service; and

Community service ordered must be related to education about or prevention of misuse of alcohol if programs and services are available in the community. If educational programs and services are not available, the court may order community service that it considers appropriate for rehabilitative purposes.

❒ (2) DPS to suspend or deny issuance of the minor's DL or permit for 60 days.

The driver's license suspension takes effect on the 11th day after the date the minor is convicted. Sec. 106.071(h), A.B.C. The judge should order the clerk to immediately send notice of the order to DPS.

❒ b. The court may, but is not required to, order an alcohol awareness proram or a substance misuse education program.

If the court requires the minor to attend a court-ordered program, the court may require that the parent or guardian of the minor attend the program when the minor is younger than 18 years of age. Sec. 106.115(a-2), A.B.C.

However, if the court opts to order the defendant to attend a program and the defendant fails to provide proof of attending with the proscribed period, the court may either order the suspension of the defendant's driver's license or permit for a period not to exceed one year or, if the defendant does not have a license or permit, may deny the issuance of a license or a permit for a period not to exceed one year.

Sec. 106.115(d)(1)(B), A.B.C.

❒ c. The court may also issue additional orders per Art. 45.057/45A.457, C.C.P.

❒ 5. ENHANCEMENT TO CLASS B MISDEMEANOR: If it is shown at trial that a minor (17 to 20 years of age) has two prior convictions under this section, the offense is punishable by a fine of not less than $250 or more than $2,000; confinement in jail of not more than 180 days; or both fine and confinement; plus 180 days suspension or denial of DL or permit.

Sec. 106.071(c) and (d), A.B.C.

❒ 6. MANDATORY TRANSFER TO JUVENILE COURT: If a person is under 17 years of age and has two prior convictions under this section, then the court must transfer the case to juvenile court.

Sec. 51.08, F.C.
An exception is made in Section 51.08(d), F.C., for courts that have created juvenile case managers under Article 45.056/45A.451, C.C.P.

❒ 7. WHAT IS CONSIDERED A CONVICTION: For purposes of determining whether a minor has been previously convicted:

Sec. 106.071(f), A.B.C.

❒ a. An adjudication under Title 3, F.C., that the minor engaged in DUI is considered a conviction; and

❒ b. An order of deferred disposition for an offense alleging DUI is considered a conviction.

Note: When a defendant receives deferred disposition for an alcohol offense (excluding DUI), the defendant's driver's license is not suspended. The court does, however, report the deferred disposition to DPS using Form DL-115. If the defendant is subsequently convicted of an alcohol offense, prior deferred disposition orders are treated as convictions for the purpose of determining the duration of the driver's license suspension (e.g., a defendant convicted of an alcohol offense with two prior deferred dispositions would face a 180-day suspension). Furthermore, prosecutors may use prior deferred dispositions to allege enhanced charges.

❒ 8. DEFERRED DISPOSITION: If a court grants deferred disposition, the court, in addition to any other term ordered under Article 45.051/Subchapter G of Chapter 45A, C.C.P., must require the minor to:

- ❒ a. Attend an alcohol awareness program or substance misuse education program; and — Sec. 106.115, A.B.C.
- ❒ b. Perform eight to 40 hours of community service. — Sec. 106.071, A.B.C.

❒ 9. Minors convicted of or arrested for an Alcoholic Beverage Code status offense may request an expunction. — Sec. 106.12, A.B.C. See Checklist 13-21.

CHAPTER 13 JUVENILE AND MINOR PROCEEDINGS

Alcoholic Beverage Code

6. Specific Penalty Provision, Section 106.041, A.B.C. – Operating Motor Vehicle Under Influence of Alcohol by a Minor (DUI/BWI)

With two notable exceptions, adjudicating an allegation of Section 106.041, A.B.C., generally follows the provisions of Section 106.071, A.B.C. (See Checklist 13-5). However, because operation of a motor vehicle by a minor with any detectable amount of alcohol in the minor's system is, as a matter of public policy, considered an "at-risk" behavior and potentially a gateway to more dangerous criminal behavior, Texas law (1) proscribes more community service than for other Chapter 106 offenses, and (2) makes suspension of driving prvileges a separate administrative matter.

Checklist 13-6	Script/Notes
❒ 1. Section 106.041, A.B.C., provides the punishment for Driving or Operating Watercraft Under the Influence of Alcohol by a Minor.	Sec. 106.041, A.B.C.
❒ 2. FIRST CONVICTION: Punishable as a Class C misdemeanor—maximum fine of $500.	"You have been found guilty of the offense of driving under the influence and the fine is assessed at $_____. In addition, you must pay court costs. Moreover, the court must require other sanctions." See items below.
❒ a. In addition to a court-ordered program (see Checklist 3-6), the court is required to order 20-40 hours of alcohol-related community service.	Sec. 171.0001, G.C. Sec. 106.115, A.B.C. "In addition to the fine and alcohol awareness program, you must perform 20 to 40 hours community service (judge selects amount of hours). You must complete the community service by _____." Community service ordered must be related to education about or prevention of misuse of alcohol.
❒ b. The court has no authority to order DPS to suspend or deny issuance of the DL.	An administrative DL suspension is conducted in the same manner as DWI offenders. See Chapters 524 and 724, T.C.

❒ 3. SUBSEQUENT CONVICTION: A charge alleging a prior conviction is punishable as a Class C misdemeanor—maximum fine of $500.

❒ a. The court is required to order 40-60 hours of alcohol-related community service.

Community service ordered must be related to education about or prevention of misuse of alcohol.

CHAPTER 13 JUVENILE AND MINOR PROCEEDINGS

Health & Safety Code

Section 161.257, H.S.C., provides that Title 3, F.C., does not apply to a proceeding under Chapter 161, Subchapter N (Tobacco Use by Minors), H.S.C. This means that minors charged with tobacco offenses may not be transferred to juvenile court.

7. Tobacco Offenses Committed by Minor

Checklist 13-7	Script/Notes
Definitions: Section 161.251, H.S.C., incorporates the definitions of "cigarette," "e-cigarette," and "tobacco product" found in the Tax Code and elsewhere in the Health and Safety Code. "Cigarette" is defined in Section 154.001, Tax Code, as a roll for smoking: ❒ (1) that is made of tobacco or tobacco mixed with another ingredient and wrapped or covered with a material other than tobacco; and ❒ (2) that is not a cigar. "E-cigarette" is defined in Section 161.081, H.S.C., as an electronic cigarette or any other device that simulates smoking by using a mechanical heating element, battery or electronic circuit to deliver nicotine or other substances to the individual inhaling from the device or a consumable liquid solution or other material aerosolized or vaporized during its use. The term does not include a prescription medical device unrelated to the cessation of smoking. The term includes: ❒ (1) a device described by this subdivision regardless of whether the device is manufactured, distributed, or sold as an e-cigarette, e-cigar, or e-pipe or under another product name or description; and ❒ (2) a component, part, or accessory for the device, regardless of whether the component, part, or accessory is sold separately from the device. "Tobacco product" is defined in Section 155.001, Tax Code, as:	

❒ (1) a cigar;

❒ (2) smoking tobacco, including granulated, plug-cut, crimp-cut, ready-rubbed, and any form of tobacco suitable for smoking in a pipe or as a cigarette;

❒ (3) chewing tobacco, including Cavendish, Twist, plug, scrap, and any kind of tobacco suitable for chewing;

❒ (4) snuff or other preparations of pulverized tobacco; or

❒ (5) an article or product that is made of tobacco or a tobacco substitute and that is not a cigarette.

❒ 1. Before proceeding with this Checklist, see Chapter 4 and Checklist 13-1 for general procedures, rights, and pleas.

❒ 2. A person must be younger than 21 years of age to commit the offenses described in Section 161.252, H.S.C.

Sec. 161.252(a), H.S.C.

❒ 3. Identify the code provision that is alleged to have been violated.

❒ a. Possession, Purchase, Consumption, or Acceptance of Cigarettes, E-cigarettes, or Tobacco Products by a Minor – Elements of this offense are:

Sec. 161.252(a)(1), H.S.C.

(1) an individual younger than 21;

(select one):

(2) possesses;

(3) purchases;

(4) consumes; or

(5) accepts

(select one):

(A) a cigarette; or

(B) an e-cigarette; or

(C) a tobacco product (specify the product).

❒ b. False Proof of Age by a Minor to Obtain Cigarette, E-cigarette, or Tobacco Product – Elements of this offense are:

Sec. 161.252(a)(2), H.S.C.

(1) an individual younger than 21;

(2) falsely represents himself or herself to be 21 or older;

(3) by displaying a proof of age that is false;

(4) in order to *(select one)*:

(A) obtain possession of;

(B) purchase; or

(C) receive

(select one):

(i) a cigarette; or

(ii) an e-cigarette; or

(iii) a tobacco product (specify the product).

❒ c. Exceptions:

(1) It is an exception if the defendant is in the presence of an employer, if possession or receipt is required as part of defendant's duties as an employee.

The employee exception applies only to possession or receipt by a minor. Sec. 161.252(b)(2), H.S.C.

(2)	It is an exception if the defendant is participating in an inspection or test of compliance in accordance with Section 161.088, H.S.C.	This is sometimes known as "the minor sting operation" exception and applies to all Section 161.252 offenses. Sec. 161.252(c), H.S.C.
(3)	It is an exception if the defendant is at least 18 years of age and presents at the time of purchase a valid military identification card of the United States military forces or the state military forces.	Sec, 161.252(c-1), H.S.C.
(1)	On subsequent conviction: Case not dismissed, but judge has discretion to reduce fine to not less than half the fine imposed.	Sec. 161.253(f)(1), H.S.C.

CHAPTER 13 JUVENILE AND MINOR PROCEEDINGS

Health & Safety Code

8. Penalties for Tobacco Use by Minors. Section 161.253, H.S.C.

Checklist 13-8	Script/Notes
❒ 1. Section 161.253, H.S.C., provides the punishments for tobacco offenses committed by persons under the age of 21.	
❒ 2. A conviction is punishable by a fine not to exceed $100.	Sec. 161.252(d), H.S.C. "You have been found guilty of the offense of _____. I am assessing a fine in the amount of $_____."
❒ 3. The court is required to:	Sec. 161.253, H.S.C.
❒ a. Suspend execution of sentence; and	"I am going to suspend execution of the sentence, which means that I am not going to require you to pay the fine. However, you must pay court costs."
❒ b. Order attendance at an e-cigarette and tobacco awareness program.	Sec. 161.253(b), H.S.C. "I am going to require you to attend an e-cigarette and tobacco awareness program (or perform eight to 12 hours of tobacco related community service). You have 90 days to attend the program (or perform the community service) and submit evidence to me that you completed the program." Defendant may request an e-cigarette and tobacco awareness program be taught in a language other than English.
❒ c. Determine if an e-cigarette and tobacco awareness program approved by the Texas Department of State Health Services is readily available where defendant resides.	Call the Office of Tobacco Prevention and Control, Texas Department of State Health Services, at 800.345.8647 for a list of approved providers.

❒ d. If approved e-cigarette and tobacco awareness program is available, order defendant to complete program by the 90th day after conviction.	Sec. 161.253(a) and (e), H.S.C.
❒ e. If e-cigarett and tobacco awareness program is not readily available, order defendant to complete eight to 12 hours of e-cigarette and tobaccco-related community service by the 90th day after conviction.	Sec. 161.253(c) and (e), H.S.C.
❒ f. Court may order parent or guardian to attend e-cigarette and tobacco awareness program with the defendant.	Sec. 161.253(a), H.S.C.
❒g. Defendant to present to court, in the manner required by the court, evidence of completion of the awareness course or of the community service.	Sec. 161.253(e), H.S.C.
❒ h. If defendant presents evidence on time:	
(1) On first conviction: Judge shall dismiss the case.	Sec. 161.253(f)(2), H.S.C. "If you complete the e-cigarette and tobacco awareness program and present evidence of completion within 90 days from today, I will dismiss your case." "If you do not present this court with evidence of completion of the program, I will enter a final judgment and assess a fine of $____."
(2) On subsequent conviction: Case not dismissed, but judge has discretion to reduce fine to not less than half the fine imposed.	Sec. 161.253(f)(1), H.S.C.
❒ 4. The court may also order a sanction under Section 45.057/45A.457, C.C.P.	See Checklist 13-14.
❒ 5. Minors convicted of a status tobacco offense may apply to the court to have the conviction expunged on or after their 21st birthday.	Sec. 161.255, H.S.C. See Checklist 13-23.

CHAPTER 13 JUVENILE AND MINOR PROCEEDINGS

Penal Code Offenses and Other Fine-Only Misdemeanors

9. Offenses

Checklist 13-9	Script/Notes
❒ 1. Before proceeding with this Checklist, see Chapter 4 and Checklist 13-1 for general procedures, rights, and pleas.	
❒ 2. Identify the Penal Code offense alleged to have been violated.	
❒ 3. Municipal court has jurisdiction over all fine-only offenses (Class C misdemeanors) in the Penal Code, other state codes, and local ordinances.	

CHAPTER 13 JUVENILE AND MINOR PROCEEDINGS

Penal Code Offenses and Other Fine-Only Misdemeanors

10. Penalties

Checklist 13-10	Script/Notes
❒ 1. Fine-only offenses in the Penal Code are called Class C misdemeanors and have a maximum fine of $500.	Sec. 12.23, P.C.
❒ 2. Outside the Penal Code, offenses are classified as Class C misdemeanors if the offense is punishable by fine only.	Sec. 12.41, P.C.
❒ 3. In addition to the fine, upon conviction, the court may order a sanction under Section 45.057 /45A.457, C.C.P.	See Checklist 13-14.
❒ 4. A child charged with a Class C misdemeanor Penal Code offense has a right to expunction.	Art. 45.0216/45A.463, C.C.P. See Checklist 13-20.
❒ a. A warning letter to be issued to the child and the child's parent or guardian that specifically states the child's alleged school offense and explains the consequences if the child engages in additional misconduct;	
❒ b. A behavior contract with the child that must be signed by the child, the child's parent or guardian, and an employee of the school and that includes a specific description of the behavior that is required or prohibited for the child and the penalties for additional alleged school offenses, including additional disciplinary action or the filing of a complaint in a criminal court;	
❒ c. The performance of school-based community service by the child; and	
❒ d. The referral of the child to counseling, community-based services, or other in-school or out-of-school services aimed at addressing the child's behavioral problems.	A referral to counseling may include participation by the child's parent or guardian if necessary. Sec. 37.144(b), E.C.

CHAPTER 13 JUVENILE AND MINOR PROCEEDINGS

Education Code Offenses

11. Criminal Procedure for School Offenses

Under Section 37.141, E.C., Subchapter E-1 of Chapter 37 of the Education Code (Criminal Procedure) governs criminal procedures to be utilized when a child is alleged to have committed an offense on property under the control and jurisdiction of a school district which is a Class C misdemeanor, excluding traffic offenses. The goal of this subchapter is to preserve judicial resources for students who are most in need of formal adjudication.

Checklist 13-11	Script/Notes
Definitions: "Child" is a person who is at least 10 years of age and younger than 18 years of age, who is charged with or convicted of an offense that a justice or municipal court has jurisdiction of, and who is a student.	Sec. 37.141(1), E.C.
"School offense" is an offense committed by a child enrolled in a public school that is a Class C misdemeanor other than a traffic offense and that is committed on property under the control and jurisdiction of a school district.	Sec. 37.141(1), E.C
❒ 1. To the extent of any conflict, this subchapter controls over any other law applied to a school offense alleged to have been committed by a child.	Sec. 37.142, E.C.
❒ 2. Outside A peace officer may not issue a citation to a child who is alleged to have committed a school offense	Sec. 37.143(a), E.C.
❒ 3. Subchapter E-1 does not prohibit a child from being taken into custody under Section 52.01,	Sec. 37.143(b), E.C.

CHAPTER 13 JUVENILE AND MINOR PROCEEDINGS

Education Code Offenses

12. Offenses

Checklist 13-12	Script/Notes
❒ 1. Before proceeding with this Checklist, see Chapter 4 and Checklist 13-1 for general procedures, rights, and pleas.	
❒ 2. Identify the Education Code offense alleged to have been violated.	
❒ 3. The following offenses may be violated under the Education Code:	H.B. 2398 (84th Legislature) repealed Failure to Attend School and designated justice, municipal, and certain county courts as truancy courts, having original, exclusive jurisdiction over allegations of truant conduct, handled as civil cases under Title 3A of the Family Code.
❒ a. Rules Enacted by School Board (related to the operation of vehicles and parking on school property);	Sec. 37.102, E.C.
❒ b. Trespass on School Grounds;	Sec. 37.107, E.C.
❒ c. Possession of Intoxicants on School Grounds;	Sec. 37.122, E.C. It is a defense to prosecution under this section that the person possessed the intoxicating beverage at a performing arts facility during an event held outside of regular school hours and not sponsored or sanctioned by a school district. Sec. 37.122(a-1), E.C.
❒ d. Disruption of Classes;	This offense cannot be committed by a primary or secondary grade student enrolled at the school. Sec. 37.124, E.C.

❒ e. Disruption of Transportation; and	This offense cannot be committed by a primary or secondary grade student. Sec. 37.126, E.C.
❒ f. Pledging or soliciting another to pledge to a public school fraternity, sorority, secret society, or gang that is not sanctioned by the statute or state or national authorities.	Sec. 37.121, E.C.

CHAPTER 13 JUVENILE AND MINOR PROCEEDINGS

Education Code Offenses

13. Penalties and Orders

Checklist 13-13	Script/Notes
❒ 1. The following offenses are Class C misdemeanors with a maximum fine of $500:	
❒ a. Rules enacted by School Board Relating to Traffic;	Sec. 37.102, E.C.
❒ b. Trespass on School Grounds;	Sec. 37.107, E.C.
❒ c. Possession of Intoxicants on School Grounds;	Sec. 37.122(c), E.C
❒ d. Disruption of Classes;	Sec. 37.124(b), E.C.
❒ e. Disruption of Transportation;	Sec. 37.126(b), E.C.
❒ f. Pledging or soliciting another to pledge to a public school fraternity, sorority, secret society, or gang that is not sanctioned by the statute or state or national authorities; and	Sec. 37.121(2)(c), E.C.
❒ 2. A child charged with an Education Code offense has a right to an expunction under Article 45.0216, C.C.P.	See Checklist 13-20.

CHAPTER 13 JUVENILE AND MINOR PROCEEDINGS

14. Additional Optional Orders

While deferred disposition allows courts to impose conditions as terms of probation, Article 45.057, C.C.P., provides a "laundry list" of orders that can be imposed on any child upon conviction.

Checklist 13-14	Script/Notes
❒ 1. In addition to any fine and upon finding that the child committed a fine-only misdemeanor, the municipal or justice court may:	Art. 45.057/45A.457, C.C.P. "In addition to the fine that I have already assessed, I am going to require you (or you and your parents) to _____. This must be completed by _____."
❒ a. Refer the child or the child's parents, managing conservators, or guardians for services under Section 264.302, F.C.; or	
❒ b. Order parent to refrain from conduct that may encourage the child to violate court order.	Art. 45.057(b)(3)/45A.457(b)(3), C.C.P. Any order for a parent should be included in the child's judgment. The court should inform the parent of the consequences of not complying — contempt with a maximum fine of $100 and/or up to three days in jail. See Chapter 14 of this book concerning contempt.
❒ c. Parent may be ordered to attend a parenting class or a parental responsibility program.	
❒ d. Require that the child attend a special program that the court determines to be in the best interest of the child. Programs include:	
❒ (1) Rehabilitation;	
❒ (2) Counseling;	
❒ (3) Self–esteem and leadership;	

	❒ (4) Work and job skills training;	
	❒ (5) Job interviewing and work preparation;	
	❒ (6) Self–improvement;	
	❒ (7) Parenting;	
	❒ (8) Manners;	
	❒ (9) Violence avoidance;	
	❒ (10) Tutoring;	
	❒ (11) Sensitivity training;	
	❒ (12) Parental responsibility;	
	❒ (13) Community service;	
	❒ (14) Restitution;	
	❒ (15) Advocacy; and	
	❒ (16) A mentoring program.	
❒ e.	If the program involves the expenditure of municipal or county funds, it must be approved by the governing body of the municipality or county commissioners court.	Art. 45.057(b)(2)/45A.457(b)(2), C.C.P.
❒ f.	The court may not order a parent, managing conservator, or guardian of a child to pay an amount greater than $100 for the costs of the program.	Art. 45.057(c)/45A.457(c), C.C.P.
❒ g.	The court may require that a person required to attend this program submit proof of attendance to the court.	Art. 45.057(d)/45A.457(d), C.C.P.
❒ h.	A municipal or justice court shall endorse on the summons issued to a parent, managing conservator, or a guardian an order to personally appear at the hearing with the child.	Art. 45.057(e)/45A.457(e), C.C.P.

❒ i.	An order under this section involving a child is enforceable as contempt under Article 45.050/45A.461, C.C.P.	Art. 45.057(f)/45A.457(f), C.C.P. See Checklist 13-26.

CHAPTER 13 JUVENILE AND MINOR PROCEEDINGS

15. Difficulty or Default in Payment of Fine

Checklist 13-15	Script/Notes
❒ 1. If the defendant notifies the judge that the defendant has difficulty paying the fine and costs in compliance with the judgment, the judge shall hold a reconsideration of satisfaction hearing to determine whether the judgment imposes an undue hardship on the defendant. The defendant may notify the judge by voluntarily appearing in court, filing a motion, mailing a letter, or any other method established by the judge.	Art. 45.0445/45A.258, C.C.P.
❒ a. If the judge determines at the hearing that the judgment imposes an undue hardship on the defendant, the justice or judge shall consider whether to allow the defendant to satisfy the fine and costs through one or more methods listed under Article 45.041(a-1)/45A.252(b).	This reconsideration hearing was created by the Legislature in 2019, and judges may allow a defendant to appear by telephone or videoconference if a personal appearance would impose an undue hardship. Arts. 45.0201/45A.260 and 45.0445/45A.258, C.C.P.
❒ b. The judge may decline to hold the hearing if the judge:	
❒ (1) previously held a hearing under that subsection with respect to the case and is able to determine without holding a hearing that the judgment does not impose an undue hardship on the defendant; or	
❒ (2) is able to determine without holding a hearing that the judgment imposes an undue hardship on the defendant and the fine and costs should be satisfied through one or more methods listed under Article 45.041(a-1)/45A.252(b).	
❒ c. The justice or judge retains jurisdiction for the purpose of making a determination under this article.	

❒ 2. Default in payment of fines — Art. 45.050/45A.461, C.C.P.

- ❒ a. In no event, after conviction or plea of guilty and imposition of fine, may a child be committed to any jail in default of payment of any fine or costs. — Art. 45.050/45A.461, C.C.P.
- ❒ b. The court may consider contempt when a child fails to pay a fine or violates a court order. (These rules apply even if the child has turned age 17 before the contempt hearing is conducted, or if the child turned age 17 and then failed to pay.) — Article 45.045(b)(3)/45A.259(h)(3), C.C.P., requires courts to proceed under Article 45.050/45A.461, C.C.P., to compel the person to discharge the judgment before issuing a capias pro fine. See Checklist 13-20.
- ❒ c. Court must schedule a contempt hearing and give the child an opportunity to be heard. — Art. 45.050(c)/45A.461(c), C.C.P. See Checklist 13-25 for contempt procedures.
- ❒ d. Court may waive payment of all or part of a fine imposed on a defendant if the court determines that: — Art. 45.0491(a)/45A.257(a), C.C.P.
  - ❒ (1) Defendant is indigent or was, at the time the offense was committed, a child; and
  - ❒ (2) Discharging the fine through community service or tutoring would impose an undue hardship on the defendant.
- ❒ e. Court may waive of all or part of the costs imposed if the court determines that: — Art. 45.0491(d)/45A.257(b), C.C.P.
  - ❒ (1) Defendant is indigent or does not have sufficient income to pay all or part of the costs; or
  - ❒ (2) Defendant was a child (under 17) at the time the offense was committed.

CHAPTER 13 JUVENILE AND MINOR PROCEEDINGS

16. Failure to Appear

Checklist 13-16	Script/Notes
❒ 1. A justice or municipal court may not order the confinement of a child for the failure to appear for an offense committed by the child.	Art. 45.050/45A.461, C.C.P.
❒ 2. If the parent(s) does not appear:	
❒ a. Determine if the parent(s) has been served with a summons. If not, reset the case.	
❒ b. If the parent(s) has been served with a summons but failed to appear, the court may waive the requirement of the presence of the parents, guardian, or managing conservator if, after diligent effort, the court cannot locate them or compel their presence.	If the court waives this requirement, the court should document the actions taken in an effort to compel the parent's presence in the defendant's file.
❒ c. If the parent(s) was served with a summons, the prosecutor may charge the parent(s) with a Class C misdemeanor for failure to appear in court with child. (Maximum fine $500).	Arts 45.0215(d)/45A.452(e), C.C.P. and 45.057(g)/45A.457(g), C.C.P.
❒ 3. If child does not appear for a traffic offense, the court shall:	
❒ a. Report to the Department of Public Safety any minor charged with a traffic offense who does not appear.	Sec. 521.3452, T.C.
❒ b. A court that has filed a report under this section shall report to the Department of Public Safety on final disposition of the case.	Sec. 521.3452, T.C.
❒ 4. If a child fails to appear for any offense other than traffic, the court may:	
❒ a. Report to the Department of Public Safety any minor charged with an offense other than traffic who does not appear.	Secs. 521.201 and 521.294, T.C.

❒ b. A court that has filed a report under this section shall report to the Department of Public Safety on final disposition of the case.

Secs. 521.201 and 521.294, T.C

❒ 5. General procedure when a child fails to appear:

❒ a. A court should issue an order for nonsecure custody for the child.

Arts. 45.058/45A.453 and 45A.454 and 45.059/45A.455, C.C.P.

Article 45.060/45A.456, C.C.P., requires the court to have used all available procedures in Chapter 45 to secure the appearance of the child before issuing a warrant of arrest when the child turns age 17.

See Checklist 13-18 for nonsecure custody.

See Checklist 13-19 for information regarding a juvenile who has failed to appear and then turns age 17.

CHAPTER 13 JUVENILE AND MINOR PROCEEDINGS

17. Children Taken into Custody – General Procedures

While only a juvenile court may issue a directive to apprehend (Sec. 52.015, F.C.), children accused of criminal behavior may be taken into custody "pursuant to the laws of arrest." Sec. 52.01, F.C. Because Class C misdemeanors are an exception to the general rule that children do not belong in the criminal justice system, Chapter 45, C.C.P., contains provisions for taking children into custody accused of fine-only offenses.

The following procedures place the responsibility of ensuring compliance with this section on the peace officer who takes into custody a person under 17 years of age.

Checklist 13-17	Script/Notes
❒ 1. A peace officer who takes into custody a person under the age of 17 for an act committed prior to becoming 17 years of age shall take the person to:	Art. 45.058/45A.453, C.C.P.
❒ a. A place of nonsecure custody, unless the child is released to a parent, guardian, or other responsible adult; or	
❒ b. The municipal court.	
❒ 2. The place of nonsecure custody must be:	Art. 45.058/45A.453, C.C.P.
❒ a. Designated as such by the head of the law enforcement agency having custody of the person;	
❒ b. Unlocked;	
❒ c. A multipurpose area; and	
❒ d. Not used as a secure detention area or part of a secure detention area.	
❒ 3. A place of nonsecure custody must observe the following procedures:	Art. 45.058/45A.453, C.C.P.
❒ a. A child may not be secured physically to a cuffing rail, chair, desk, or other stationary object.	
❒ b. The child may be held in the nonsecure facility only long enough to accomplish the purpose of:	

❒ (1) Identification;

❒ (2) Investigation;

❒ (3) Processing;

❒ (4) Release to parents; or

❒ (5) The arranging of transportation to the appropriate juvenile court, juvenile detention facility, municipal court, or justice court.

❒ c. Residential use of the area is prohibited.

❒ d. The child shall be under continuous visual supervision by a law enforcement officer or facility staff person during the time the child is in nonsecure custody.

❒ e. The child may not be detained in a place of nonsecure custody for more than six hours.

❒ 4. A child taken into custody for an offense that a municipal court has jurisdicition of may be released to the child's parent, guardian, custodian, or other responsible adult as provided in Section 52.02(a)(1), F.C.

Art. 45.058/45A.453, C.C.P.

❒ 5. A child cannot be incarcerated for contempt. For details about contempt for juveniles see Checklists 13-16, 13-20, and 13-26.

❒ 6. If the judge sees the child, the judge may handle all charges against the child.

CHAPTER 13 JUVENILE AND MINOR PROCEEDINGS

18. Unadjudicated Children, Now Adults (No Appearance Made)

Checklist 13-18	Script/Notes
❒ 1. Procedures when child turns age 17:	An individual may not be taken into secured custody for offenses alleged to have occurred before the individual's 17th birthday except an individual under the age of 17 may be taken into nonsecure custody as allowed by Articles 45.058/45A.453 and 45A.454 and 45.059/45A.455, C.C.P.
❒ a. Court issues a notice of continuing obligation to appear by personal service or by mail to the last known address and residence of the individual. Notice contains an order to appear.	Art. 45.060/45A.456, C.C.P.
❒ b. Court gives notice to a peace officer to serve either in person or by mail at the last known address on file with the court.	Art. 45.202/45A.103, C.C.P. If defendant is convicted and peace officer served notice, court must assess $35 reimbursement fee under Art. 102.011, C.C.P.
❒ c. If child now an adult appears:	
❒ (1) Court proceeds to handle all cases filed against the 17 year old.	
❒ (2) Court should explain charges, pleas, and rights.	See Checklist 13-1. See Chapter 4 in this book.
❒ d. The child now an adult fails to appear in response to the notice and order to appear.	
❒ (1) Prosecutor files a sworn complaint charging the offense of Violation of Continuing Obligation to Appear (VCOA) as ordered by the notice. (Not to be confused with Section 38.10, P.C., offense of Failure to Appear.)	Sec. 45.060(c)/45A.456(c), C.C.P.

❒ (2) Court orders a warrant prepared for issuance only for the VCOA as ordered by the notice. (Court must also have a probable cause affidavit before issuing the warrant.)

Court may not issue warrants on the charges filed while the individual was under the age of 17. Art. 45.060/45A.456, C.C.P.

When a warrant is processed or served by a peace officer, the court must assess a $50 warrant reimbursement fee. Art. 102.011, C.C.P.

❒ 2. Procedures when child now an adult is arrested:

❒ a. Court should explain charges, pleas, and rights.

See Checklist 13-1.
See Chapter 4 in this book.

❒ b. Court proceeds to handle all cases filed against the 17 year old, including all the cases that were filed while the individual was under the age of 17.

It is an affirmative defense to prosecution for the charge of violation of continuing obligation to appear as ordered by the notice if the individual was not informed of the individual's obligation to notify the court of a current address within seven days of moving. Art. 45.060(d)/45A.456(d), C.C.P.

❒ c. For the penalties, see the applicable Checklist for that offense in this chapter.

If the individual fails to pay, see Checklist 13-20.

CHAPTER 13 JUVENILE AND MINOR PROCEEDINGS

19. Children Now Adults Who Fail to Pay

Checklist 13-19	Script/Notes
❒ 1. When a child now an adult (at least age 17) fails to pay:	
❒ a. A capias pro fine may not be issued for an individual convicted for an offense committed before the individual's 17th birthday unless:	Art.45.045(b)/45A.259(h), C.C.P.
❒ (1) The individual is 17 years of age or older;	Art 45.045(b)(1)/45A.259(h)(1), C.C.P.
❒ (2) The court finds that the issuance of the capias pro fine is justified after considering:	Art. 45.045(b)(2)/45A.259(h)(2), C.C.P.
❒ (A) The sophistication and maturity of the individual;	
❒ (B) The criminal record and history of the individual; and	
❒ (C) The reasonable likelihood of bringing about the discharge of the judgment through the use of procedures and services currently available to the court; and	
❒ (3) The court has satisfied the requirements of Article 45.050 /45A.461, C.C.P.	Art. 45.045(3)/45A.259(h)(3), C.C.P. See Checklist 13-16.
❒ 2. If the court finds that the issuance of a capias pro fine is not justified, the court may still issue an order for nonsecure custody for the child who is now an adult.	Art. 45.045(c)/45A.259(i), C.C.P. See Checklist 13-18.

CHAPTER 13 JUVENILE AND MINOR PROCEEDINGS

Expunction

20. Expunction Under Article 45.0216/45A.463, C.C.P.

Checklist 13-20	Script/Notes
❒ 1. Determine if the offense is covered by Article 45.0216/45A.463, C.C.P.	Art. 45.0216(b)/45A.463(c), C.C.P.
❒ a. Article 45.0216/45A.463, C.C.P., applies to offenses described by Sections 8.07(a)(4) and (5) and 43.261, P.C.	Transportation Code offenses and traffic ordinances are an exception to this expunction provision.
❒ b. These offenses include Penal Code offenses and Education Code offenses except failure to attend school, and penal ordinance offenses.	Article 45.0216/45A.463, C.C.P., does not apply to status offenses under the Alcoholic Beverage Code. They have a separate provision in Section 106.12, A.B.C. See Checklist 13-22. Art. 45.0216/45A.463, C.C.P., does not apply to status offenses under the Health and Safety Code. They have a separate provision in Section 161.252, H.S.C. See Checklist 13-23. Article 45.0216/45A.463, C.C.P., does not apply to the Failure to Attend School offense. It has a separate provision in Article 45.0541/45A.464, C.C.P. See Checklist 13-14.
❒ 2. Article 45.0216/45A.463, C.C.P., applies also to a conviction and dismissal pursuant to Article 45.051/Subchapter G, Chapter 45A (deferred disposition) or Article 45.052/45A.401 (teen court) for defendants under the age of 17.	Art. 45.0216(h)/45A.463(f), C.C.P.

❒ 3. All eligible defendants and any parents must be informed in open court of their rights and provided with a copy of Article 45.0216/45A.463, C.C.P.

Art. 45.0216(e)/45A.463(f), C.C.P.
"You have the right to request the court to expunge the offense of _____.

Here is a copy of the law regarding your right to expunction. Please take time to read this information."

❒ 4. Eligibility requirements:

- ❒ a. Defendant must not have been convicted of more than one offense covered by these provisions;
- ❒ b. Defendant must be at least 17 years of age; and
- ❒ c. Offense must have been committed before turning 17.

❒ 5. Procedures are instigated by request of the defendant:

- ❒ a. In writing;
- ❒ b. Identifying the case to be expunged;
- ❒ c. Stating that the person has not been convicted of another offense under these provisions; and
- ❒ d. Made under oath.

❒ 6. The court shall require a person who requests expunction under this article to pay a reimbursement fee in the amount of $30 to defray the cost of notifying state agencies of orders of expunction.

Art. 45.0216(i)/45A.463(j), C.C.P.

❒ 7. The provisions do not require notice or a hearing.

❒ 8. If the court finds the person was not convicted of any other covered offense while the person was a child, the court shall order the following items expunged:

Art. 45.0216(f)/45A.463(g), C.C.P

❒ a. Conviction;

❒ b. Complaints;

❒ c. Verdicts;

❒ d. Sentences;

❒ e. Prosecutorial records;

❒ f. Law enforcement records; and

❒ g. Any other documents related to the offense.

❒ 9. Order the appropriate entities to return the relevant records to the court or to destroy them.

The order should contain a list of agencies, officials, and persons who are subject to the order. The clerk sends by certified mail/return receipt a copy of the order to all that are subject to the order.

❒ 10. Give the order to the clerk to serve on the appropriate entities.

❒ 11. Destroy the records and delete computer references.

❒ 12. Further order that the person is released from all disabilities resulting from the conviction and that the conviction may not be shown or made known.

❒ 13. Provide a copy of the order to the movant/ defendant.

❒ 14. Seal the order and make no computer or index reference to it.

CHAPTER 13 JUVENILE AND MINOR PROCEEDINGS

Expunction

21. Expunction for State Offenses Under the Alcoholic Beverage Code

Alcoholic Beverage Code offenses have their own expunction provision and are specifically excluded from the general juvenile expunction procedures in Article 45.0216/45A.463, C.C.P.

Checklist 13-21	Script/Notes
❒ 1. Eligibility requirements:	Sec. 106.12, A.B.C.
❒ a. Must be at least 21 years of age;	
❒ b. Must have been	
❒ (1) convicted of only one Alcoholic Beverage Code Offense or	
❒ (2) arrested for not more than one incident in violation of the Alcoholic Beverage Code (and not convicted)	
❒ c. Must pay a fee in the amount of $30 to defray the cost of notifying state agencies of orders of expunction.	
❒ 2. Must file an application with the court requesting expunction.	See *TMCEC 2024 Forms Book*: Application for Expunction: Alcoholic Beverage Code Offenses - Conviction; Application for Expunction: Alcoholic Beverage Code Offenses - Arrest
❒ a. The application shall contain the applicant's sworn statement that he or she was not convicted of any violation of this code except for the one that he or she seeks to have expunged; or	
❒ b. The application must contain the applicant's sworn statement that the applicant was not arrested for an event leading to a violation of this code other than the arrest the applicant seeks to expunge.	

❒ 3. The court may, but does not have to, conduct a hearing in open court. The court, upon finding that the applicant's statement is true (statement that they had only one conviction or were arrested for only one event), shall prepare an order that requires all disabilities resulting from the conviction be removed from the applicant's record.

If the event leading to a violation of the Alcoholic Beverage Code included multiple violations during this event, all violations from this event are eligible for expunction. Sec. 106.12(d), A.B.C.

❒ 4. Order the appropriate entities to return the relevant records to the court or to destroy them.

The order should contain a list of agencies, officials, and persons who are subject to the order. The clerk sends by certified mail/ return receipt a copy of the order to all that are subject to the order. See *TMCEC 2024 Forms Book*: Order for Expunction of Records: Alcoholic Beverage Code Offenses

❒ 5. Give the clerk the order to serve.

❒ 6. Destroy the records and delete computer references.

❒ 7. Further order that the person is released from all disabilities resulting from the conviction and that the conviction may not be shown or made known.

❒ 8. Provide a copy of the order to the movant/ defendant.

❒ 9. Seal the order and make no computer or index reference to it.

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Expunction

22. Expunction of Status Tobacco Offenses

Checklist 13-22	Script/Notes
❒ 1. An individual convicted for an offense under Section 161.252, H.S.C., may apply to court to have conviction expunged.	Sec. 161.255, H.S.C.
❒ a. Defendant must apply to court on or after the individual's 21st Birthday;	
❒ b. Court must find defendant satisfactorily completed tobacco awareness program or tobacco-related community service ordered by the court; and	There is no requirement that defendant have only one conviction under Section 161.252 to qualify for expunction. General expunction procedures found in Article 45.0216/45A.463, C.C.P., do not apply to tobacco violations
❒ c. The court shall require a person who requests expunction under this article to pay a fee in the amount of $30 to defray the cost of notifying state agencies of orders of expunction.	
❒ 2. If above satisfied, court shall order that the conviction may not be shown or made known for any purpose and order the following expunged from the record:	
❒ a. Conviction;	
❒ b. Complaint;	
❒ c. Verdict;	
❒ d. Sentence; and	
❒ e. Any other document relating to the offense.	
❒ 3. Mail certified copies of order to:	

❒ a. Alcohol awareness course provider; or

❒ b. Community services provider; and

❒ c. Chief of your city's police department.

CHAPTER 13 JUVENILE AND MINOR PROCEEDINGS

Expunction

23. Expunction Procedures for Truancy Offenses

H.B. 2398 (84th Legislature) repealed the offense of Failure to Attend School along with former Articles 45.054 and 45.055 of the Code of Criminal Procedure related to the expunction of Failure to Attend School offenses. Article 45.0541/45A.464, C.C.P., provides that an individual who has been convicted of the former offense of Failure to Attend School, or who has had a complaint dismissed, is entitled to an expunction, regardless whether the person petitions for the expunction. No expunction fee authorized.

Checklist 13-23	Script/Notes
❒ 1. An individual who has been convicted of a truancy offense or has had a complaint for a truancy offense dismissed is entitled to have the conviction or complaint and records relating to the conviction or complaint expunged.	A "truancy offense" means a Failure to Attend School offense. Art. 45.0541(a)/45A.464(a), C.C.P.
❒ 2. A petition for expunction is not required.	Art. 45.0541(c)/45A.464(b), C.C.P.
❒ 3. A court in which an individual was convicted or a complaint for a truancy offense was filed shall order the following related to the offense to be expunged from the person's record:	Art. 45.0541(c)/45A.464(c), C.C.P., C.C.P.
❒ a. Convictions;	
❒ b. Complaints;	
❒ c. Verdicts;	
❒ d. Sentences;	
❒ e. Prosecutorial records;	
❒ f. School Records;	
❒ g. Any other documents relating to the offense.	
❒ 4. After entry of the order, the individual is released from all disabilities resulting from the conviction or complaint, and the conviction or complaint may not be shown or made known for any purpose.	Art. 45.0541(c)/45A.464(d), C.C.P., C.C.P.

CHAPTER 13 JUVENILE AND MINOR PROCEEDINGS

The criminal records of children have traditionally been handled in municipal courts in the same manner as the criminal records of adults. Juvenile records in juvenile courts, however, have long been confidential. In 2011, H.B. 961 created procedures that conditionally made particular criminal case records confidential. In 2013, S.B. 393 expanded conditional confidentiality to those children that successfully completed a form of "probation" (e.g., DSC, deferred disposition, or teen court.). This was intended to provide parity to children in the juvenile justice system by extending the confidentiality of juvenile courts to criminal court records. Also in 2013, H.B. 528 supported confidentiality for the criminal records of children upon charging. This approach, called total confidentiality, appeared to be incompatible with conditional confidentiality under S.B. 393.

Conflicting versions of Art. 15.27 of the Code of Criminal Procedure remained for eight years. Finally, in 2021, H.B. 2669 repealed conditional confidentiality in favor of confidentiality for children accused of Class C misdemeanors, other than traffic offenses, from the moment of charging. Now, in such cases, the public has no access to inspect these criminal records.

24. Confidentiality

Checklist 13-24	Script/Notes
❒ 1. Except as authorized to notify schools under Art. 15.27 of the Code of Criminal Procedure and the exceptions below, all records and files, including those held by law enforcement and information stored by electronic means or otherwise from which a record or file could be generated relating to a child who is (1) charged with, (2) convicted of, (3) found not guilty of, (4) had a charge dismissed for, or (5) is granted deferred disposition for a fine-only offense other than a traffic offense, are confidential and may not be disclosed to the public.	Art. 45.0217(a)/45A.462(b), C.C.P.
❒ 2. Information subject to confidentiality may be open to inspection only by:	Art. 45.0217(b)/45A.462(c), C.C.P.
❒ a. Judges or court staff;	
❒ b. A criminal justice agency for criminal justice purposes;	See Sec. 411.082, G.C.
❒ c. The Department of Public Safety;	
❒ d. An attorney for a party to the proceeding;	
❒ e. The child defendant; or	
❒ f. The defendant's parent, guardian, or managing conservator.	

CHAPTER 13 JUVENILE AND MINOR PROCEEDINGS

25. Juvenile Contempt

Article 45.050/45A.461, C.C.P. gives municipal and justice courts two distinct options when dealing with children who do not comply with court orders. The first option is to refer the child to juvenile court for delinquent conduct. Art. 45.050(c)(1)/45A.461(c)(1). The second option is to retain the matter and proceed to conduct a contempt hearing. Art. 45.050(c)(2).

Checklist 13-25	Script/Notes
❒ 1. Court gives the child notice of the hearing.	Art. 45.050(c)/45A.461(c), C.C.P.
❒ 2. Court issues a summons for the parent(s) to appear with the child.	Art. 45.0215(a-1)(2)(B)/ 45A.452(b)(1)(B)
❒ a. If the child appears, court conducts a hearing; and	
❒ b. Parent(s) must appear with child. If summons has been served and parent fails to appear, court may waive presence of parent; if summons has not been served, reset hearing.	
❒ 3. Explain to the child why the court is conducting the hearing, the consequences of waiving jurisdiction, and the consequences of retaining jurisdiction.	"If I determine that your actions constitute contempt and I decide to keep jurisdiction over you, I can assess a fine of up to $500. This is in addition to the fines that you still owe this court. Also, I can order the Texas Department of Public Safety to suspend or deny issuance of your driver's license until you have completely complied with all of this court's orders." "If I decide to transfer you to the juvenile court, this conduct is considered delinquent conduct by the juvenile court."
❒ 4. Court decides whether to transfer the child to juvenile court or to retain jurisdiction.	Art. 45.050(c)(1)/45A.461(c)(1), C.C.P.

❒ a. If the court transfers the child to juvenile court, further action against the child ceases in municipal court. (The child is still liable for payment of the fine on the original charge(s).)	Art. 45.050(c)(1)/45A.461(c)(1), C.C.P. The court may not refer to the juvenile court a child who has turned age 17 by the time that the municipal court conducts the contempt hearing. Art. 45.050(g)/45A.461(g), C.C.P.
❒ b. If the court retains jurisdiction, the court may:	
❒ (1) Find the child in contempt and order the child to pay a fine of up to $500; and/or	Art. 45.050(c)(2)(A)/45A.461(c)(2)(A), C.C.P. Court may not find a child in contempt of another court's order.
❒ (2) Order DPS to suspend or deny issuance of the child's driver's license.	Art. 45.050(c)(2)(B)/45A.461(c)(2)(B), C.C.P.
❒ 5. If the child turns age 17 before paying the fine, see Checklist 13-20.	Art. 45.045/45A.259, C.C.P.

CHAPTER 13 JUVENILE AND MINOR PROCEEDINGS

Magistrate's Warning for a Written or Oral Juvenile Confession of a Child, Section 51.095, F.C.

26. Written Confession

Checklist 13-26	Script/Notes
❒ 1. Identify yourself to the child.	"My name is _____. I am the Judge of _____ Court."
❒ 2. Determine if the child sufficiently understands the English language or possesses any impairments.	
❒ 3. If necessary, swear a person to act as an interpreter.	Art. 38.30, C.C.P.
❒ 4. If the child is deaf, obtain the services of an interpreter as provided by Article 38.31, C.C.P., to interpret the warning.	Art. 15.17(c), C.C.P. See Checklist 12-5.
❒ 5. All activities must take place in a setting approved by the juvenile board. This means the juvenile processing office, or the office or official designated by the juvenile court as required in Section 52.02, F.C.	A "juvenile processing office" should not be confused with a "place of nonsecure custody" described in Article 45.058, C.C.P.
❒ a. Be sure that you know the policy set out by your local juvenile court or juvenile board as to where a child might be taken for receipt of a statement.	
❒ 6. Advise the child of the following warning:	Sec. 51.095(a)(1)(A), F.C.
❒ a. "You may remain silent and not make any statement at all and that any statement that you make may be used in evidence against you."	
❒ b. "You have the right to have an attorney present to advise you either prior to any questioning or during the questioning."	

❒ c. "If you are unable to employ an attorney, you have the right to have an attorney appointed to counsel with you before or during any interviews with peace officers or attorneys representing the State."

When an attorney is requested, a police officer must stop asking the accused questions until he is provided with an attorney. However, a request for counsel must be sufficiently clear that a reasonable police officer would understand the statement to be a request for an attorney. *Davis v. U.S.*, 512 U.S. 452, 459 (1994).

❒ d. "You have the right to terminate the interview at any time."

❒ 7. Advise the child as follows:

❒ a. "You will not be penalized for not making a statement."

❒ b. "Any prior oral statements made by you are not admissible except if the statement contains assertions of facts or circumstances that are found to be true, and which tends to establish your guilt."

❒ 8. Sign the written warning noting the date and time.

❒ 9. After the statement is reduced to writing, a magistrate must again give a proper warning to the child before the written statement is signed by the juvenile in the presence of the magistrate.

❒ 10. No law enforcement official or prosecuting attorney can be present except that a magistrate may require a bailiff or law enforcement officer to be present to ensure the safety of the magistrate and other court personnel. The bailiff or law enforcement officer may not carry a weapon in the presence of the child.

❒ 11. The magistrate must certify in writing that he or she is convinced that the child understands the nature and contents of the statement and signs it voluntarily.

CHAPTER 13 JUVENILE AND MINOR PROCEEDINGS

Magistrate's Warning for a Written or Oral Juvenile Confession of a Child, Section 51.095, Family Code

27. Oral Confession

Checklist 13-27	Script/Notes
❒ 1. Comply with items 1–7 in Checklist 13-26.	
❒ 2. The warning must be part of the recording.	Sec. 51.095(a)(5)(A), F.C.
❒ 3. At the time of the warning, the magistrate may require that the officer return the child and the recording to the magistrate at the conclusion of questioning.	Sec. 51.095(f), F.C.
❒ a. The magistrate may then view the recording with the child or have the child view the recording in order to determine whether the child's statement was given voluntarily.	Note: While subsection (f) is discretionary, magistrates should be prepared to explain why they did or did not invoke the option.
❒ b. The magistrate's determination of voluntariness must be reduced to writing and signed and dated by the magistrate.	See *TMCEC 2024 Forms Book*: Magistrate's Determination of Voluntariness – Recorded Statement of Child.
❒ c. If a magistrate invokes Section 51.095(f), F.C., a child's confession is not admissible unless the magistrate determines that statement was given voluntarily.	See *State v. Torres*, 666 S.W.3d 735 (Tex. Crim. App. 2023)f)
❒ 4. The child must knowingly and voluntarily waive each right stated in the warning.	
❒ 5. The recording device must be capable of making an accurate recording.	
❒ 6. The operator of the device must be competent to use the device.	

CHAPTER 14 CONTEMPT OF COURT

1. General Contempt

The contempt power of the court should be used sparingly. A person accused of contempt has the rights of a criminal defendant, regardless of whether the contempt is considered civil or criminal (discussed below). A more thorough discussion of contempt of court is contained in Chapter 6 of *Municipal Courts and the Texas Judicial System*. **Juvenile contempt under Article 45.050/45A.461, C.C.P., is covered in Checklist 13-25.**

Checklist 14-1	Script/Notes
Definitions:	
"Contemnor" is a person held in contempt.	
"Contempt:" Although there is no statutory definition of contempt, common law defines it as conduct that tends to impede the judicial process by disrespectful or uncooperative behavior in open court or by unexcused failure to comply with clear court orders.	*Ex parte Norton*, 191 S.W.2d 713 (Tex. 1946).
❒ 1. Contempt can be direct or indirect.	*Ex parte Chambers*, 898 S.W.2d 257 (Tex. 1995).
❒ 2. "Direct contempt" is an act which occurs in the judge's presence and under circumstances that require the judge to act immediately to quell the disruption, violence, disrespect, or physical abuse. "Presence of the court" does not necessarily mean in the immediate presence of the judge or court. Examples of direct contempt may include:	*Ex parte Knable,* 818 S.W.2d 811 (Tex. Crim. App. 1991).
❒ a. A physical altercation occurring at the door of the courtroom although the court was not able to see the physical act itself;	*Ex parte Daniels*, 722 S.W.2d 707 (Tex. Crim. App. 1987).
❒ b. Disruptive act or event in the courtroom or just outside the courtroom while court is in session;	*Ex parte Aldridge*, 334 S.W.2d 161 (Tex. Crim. App. 1959).
❒ c. Refusal to rise on the entrance and exit of the judge;	*Ex parte Krupps*, 712 S.W.2d 144 (Tex. Crim. App. 1986).
❒ d. Tampering with jurors in the jury room;	
❒ e. An abusive letter delivered to the judge in chambers while trial was in short recess; or	

❒ f. Refusal to answer questions in court.

Ex parte Flournoy, 312 S.W.2d 488 (Tex. 1958).

Note that an affront to a judge's personal sensibilities should not be confused with obstruction to the administration of justice. Offensive comments, even though spoken in open court, are not contemptuous unless they are disruptive or boisterous.

In re Bell, 894 S.W.2d 119 (Tex. 1995).

❒ 3. In many instances, direct contempt is punished summarily by the offended court at the time the act occurs. However, there is no requirement that direct contempt be punished immediately; a judge has discretion to set the matter for hearing at a later time.

See *Ex parte Knable*, 818 S.W.2d 811 (Tex. Crim. App. 1991).

The trial court's authority to punish contemptuous conduct summarily requires an act which occurs in the judge's presence and under circumstances that require the judge to act immediately to maintain order. If the contemnor can be afforded due process protections without disrupting the orderly trial process, the Due Process Clause of the 14th Amendment mandates that the contemnor should be afforded these protections.

❒ 4. "Indirect contempt" is an act that occurs outside the court's presence. Examples of indirect contempt include:

❒ a. Failure to comply with a valid court order.

Ex parte Gordon, 584 S.W.2d 686 (Tex. 1979).

❒ b. Failure to appear in court.

Ex parte Cooper, 657 S.W.2d 435 (Tex. Crim. App. 1983).

❒ c. Attorney being late for trial.

Ex parte Hill, 52 S.W.2d 367 (Tex. 1932).

❒ d. Offensive papers filed in court.

Ex parte O'Fiel, 246 S.W. 664 (Tex. Crim. App. 1923).

❒ 5. Indirect contempt requires the contemnor to be notified of the charges, the right to trial or hearing in open court, and the right to counsel.

See *TMCEC 2024 Forms Book* for five different show cause notices in Chapter XIV, Enforcement.

❒ 6. Contempt can be civil or criminal:

Civil contempt is willfully disobeying a court order or decree.

Ex parte Powell, 883 S.W.2d 775 (Tex. App.—Beaumont 1994).

Criminal contempt is an act that disrupts court proceedings, obstructs justice, is directly against the dignity of the court, or brings the court into disrepute.

See Step 15: Sentencing goals.

❒ 7. Statutory authority for contempt proceedings.

❒ a. In municipal courts, contempt is generally punishable by up to three days confinement in jail and/or a fine up to $100.

Sec. 21.002(c), G.C.

❒ b. Some statutes provide for specific contempt fines and do not allow confinement in jail:

❒ (1) Failure by sheriff or officer to execute summons, subpoena, or attachment is punishable for contempt by a fine of $10 to $200.

Art. 2.16/2A.055, C.C.P.

❒ (2) Failure to appear for jury duty is punishable for contempt by a maximum fine of $100.

Art. 45.027(c)/45A.156(c), C.C.P. See *TMCEC 2024 Forms Book*: Contempt: Failure to Appear for Jury Service (Complaint and Judgment).

❒ 8. Special procedures for officers of the court:

Officers of the court include attorneys, peace officers, clerks, bailiffs, court reporters, interpreters, and others on whom the court relies for its operation and enforcement of its orders. Note: the defendant and witnesses are not officers of the court.

❒ a. Upon proper motion, release contemnor on personal recognizance bond.

Sec. 21.002(d), G.C.

❒ b. Refer the case to the presiding judge of the administrative district where alleged contempt occurred.

The presiding judge will assign a judge to conduct a contempt hearing. (You may be called as a witness.)

❒ c. An officer of the court is essentially entitled to a trial de novo on request.

Ex parte Avila, 659 S.W.2d 443 (Tex. Crim. App. 1983).

❒ d. An attorney may be held in direct contempt primarily for misconduct at trial:

❒ (1) Expressing indifference to what court may hold or do on account of his or her improper remarks and misconduct.

Ex parte Norton, 191 S.W.2d 713 (Tex. 1946).

❒ (2) Making continuous frivolous objections amounting to obstruction of the orderly progress of the trial.

Ex parte Crenshaw, 259 S.W.587 (Tex. Crim. App. 1924).

❒ 9. Determine whether the act constitutes direct or indirect contempt.

❒ a. Direct contempt:

❒ (1) Act occurred in the presence of the court or in its immediate vicinity while the court was in session. Judge is aware of all facts constituting contempt.

If both of these conditions are met, summary proceedings are authorized and you may go to Step 10: Direct Contempt Procedure below.

❒ (2) Immediate action is necessary to quell disruption, violence, disrespect, or to allow trial or proceeding to continue.

❒ b. Indirect contempt:

Due process requires notice and a hearing. Go to Step 11: Indirect Contempt Procedure below.

❒ (1) Act occurred outside the presence of the court. Judge does not personally witness act.

❒ (2) Immediate action is not required to quell disruption, violence, disrespect, or physical abuse.

❒ (3) Act requires testimony or production of evidence to establish its existence.

❒ (4) Most common violation — disobeying a court order:

❒ (A) Court order must be in effect at the time of the act;

❒ (B) Contemnor must be aware of the order; and

❒ (C) A written order must be served on the contemnor.

❒ 10. Direct contempt procedure:

See *TMCEC 2024 Forms Book*: Judgment of Direct Contempt: Adult.

Example: Any act that disrupts court proceedings or offends the dignity of the court. Contemnor argues combatively, uses curse words or threatening acts.

❒ a. If the act is in disobedience to a court order or admonishment, and the contemnor disobeys or fails to cease the undesirable conduct:

❒ (1) Announce that contemnor is in contempt of court.

Factors to consider: egregious conduct; danger if contemnor not immediately removed.

❒ (2) Optional: Give contemnor opportunity to explain:

❒ (A) If explanation is not accepted or if conduct persists, contempt exists.

Announce "You are in contempt of court."

Sec. 21.002(c), G.C.

See Step 13 below.

❒ (B) If explanation is accepted, no contempt exists.

Skip the rest of this section.

❒ 11. Indirect contempt procedure:

See *TMCEC 2024 Forms Book:* Indirect Contempt: Adult.

❒ a. If disobedience to a court order is alleged, notice to contemnor must:

See *TMCEC 2024 Forms Book* for contempt show cause notices in Chapter XIV, Enforcement.

❒ (1) Contain the order;

❒ (2) Specify when and how contemnor was notified of the order;

❒ (3) Specify contemnor's alleged act in disobedience of the order;

❒ (4) Specify when and where the act occurred; and

❒ (5) Specify that the act took place after the contemnor became aware of the order.

❒ b. Otherwise, notice must:

❒ (1) Specify contemnor's alleged contemptuous act; and

❒ (2) Specify when and where the act occurred.

❒ 12. Right to counsel:

❒ a. Contemnor has the right to have counsel represent him or her.

❒ b. Appoint counsel to represent contemnor if:

Ex parte Goodman, 742 S.W.2d 536 (Tex. App.—Fort Worth 1987, no pet.). Appointed counsel is not necessary for contempt punishment limited to fine-only sanctions under Arts.2.16/2A.055 and 45.027(c) /45A.156(c), C.C.P.

❒ (1) the contemnor is indigent; and

❒ (2) jail time is imposed as part of contempt punishment.

❒ 13. Contempt Hearing for Direct Contempt:

❒ a. An act of direct contempt occurring in the presence of the court generally requires neither notice nor hearing since there is no factual dispute concerning the contemptuous conduct. Contemnor may be convicted and sentenced for the direct contempt as it occurs.

Ex parte Krupps, 712 S.W.2d 144 (Tex. Crim. App. 1986).

See Step 15 below.

❒ b. Summary punishment is permissible on the theory that immediate action is necessary to control courtroom proceedings. If the court postpones conviction and punishment until after the trial, for example, the justification for dispensing with due process requirements disappears.

Ex parte Smith, 467 S.W.2d 411 (Tex. Crim. App. 1971). If a contemnor is summarily held in contempt, the fact that the court waits a day to enter the contempt order does not affect its validity.

❒ 14. Contempt hearing for indirect contempt:

❒ a. Since indirect contempt involves an offense not observed by the court, due process requires the contemnor to be given notice and a hearing.

❒ b. If disobedience to a court order is alleged:

❒ (1) Provide evidence contemnor was properly notified of the order;

❒ (2) Provide evidence contemnor willfully disobeyed the order after notified of it; and

❒ (3) Provide evidence for no satisfactory explanation or defense for disobedience.

Possible defenses include: court lacks personal or subject matter jurisdiction; order of court lacked clarity or specificity or was ambiguous; contemnor not given adequate notice; and order was not based on same acts set forth in charge of contempt.

❒ c. If court order not involved:

❒ (1) Provide evidence contemnor committed the alleged act; and

❒ (2) Provide evidence for no satisfactory explanation or defense for act.

❒ d. Ensure contemnor's constitutional rights are protected:

❒ (1) Right to counsel;

❒ (2) Right to confront and cross-examine witnesses;

❒ (3) Privilege against self-incrimination;

❒ (4) Protection against double jeopardy; and

❒ (5) Right to public trial.

There is no right to trial by jury in most contempt hearings. Texas courts generally have the right to adjudicate contempt proceedings without a jury.
Ex parte Werblud, 536 S.W.2d 542 (Tex. 1976).

Contemnor is entitled to a jury trial if the contempt is classified as a serious rather than petty offense. One factor in determining whether the offense should be treated as serious or petty is the amount of the fine imposed. The imposition of a minor fine does not elevate the offense from the classification of petty to a serious crime.
Ex parte Werblud, 536 S.W.2d 542 (Tex. 1976).

❒ 15. Sentencing goals:

❒ a. Civil Contempt.

Purpose of civil contempt is remedial and coercive in nature. Judgment of civil contempt exerts the judicial authority of the court to persuade the contemnor to obey some order of the court where such obedience will benefit an opposing litigant.

Ex parte Werblud, 536 S.W.2d 542 (Tex. 1976).

❒ b. Criminal Contempt (Punitive).

The sentence is not conditioned upon some promise of future performance because the contemnor is being punished by fine and imprisonment for some completed act that affronted the dignity and authority of the court.

Ex parte Werblud, 536 S.W.2d 542 (Tex. 1976).

Examples: disruptive conduct that prevents trial from proceeding; attempting to bias jury panel by handing them pamphlets.

❒ 16. Order and commitment:

❒ a. Describe the act found to be in contempt.

See *TMCEC 2024 Forms Book*: Judgment of Direct Contempt: Adult; and Judgment of Indirect Contempt: Adult.

❒ b. If the act was disobeying a court order:

❒ (1) Include written order or reduce verbal order to writing.

❒ (2) Specify when and how contemnor was notified of the order.

❒ (3) Specify that the act was in disobedience of the order.

❒ (4) State that the act was committed after contemnor was aware of the order.

❒ c. Remedial sanction:

❒ (1) Specify exactly what contemnor must do to purge the contempt.

❒ (2) Order sheriff or chief of police to place person in jail.

No particular form is required for commitment. Directive that a person be placed in jail and detained may be contained in an authenticated copy of the court's order. *Ex parte Barnett*, 600 S.W.2d 252 (Tex. 1980).

❒ (3) If contemnor purges himself or herself of contempt, order his or her release.

❒ d. Punitive Sanction:

Normally, maximum punishment is three days in jail and $100. Check specific statutes; some authorize fine-only. See Arts. 2.16/2A.055 and 45.027(c)/45A.156(c), C.C.P.

❒ (1) Specify the punishment.

❒ (2) If jail time is part of punishment, order sheriff or chief of police to place contemnor in jail for specified time.

❒ (3) If fine is part of punishment, order contemnor to pay fine by a specific date.

❒ (4) If there is more than one act of contempt, specify a separate punishment for each act.

Punishment should be assessed for each act even if sentences run concurrently. If one punishment is assessed for multiple acts and one of those acts is not contempt, the entire judgment is void.
Ex parte Lee, 704 S.W.2d 15 (Tex. 1986).

CHAPTER 15 CORPORATIONS AND ASSOCIATIONS

1. Corporations and Associations

Whether corporations or associations may be prosecuted as defendants in a criminal court depends on the language or intent of the statute alleged to be violated. Sec. 7.22, P.C. The leading case on the subject of criminal liability of corporations is *Vaughan & Sons v. State*, 737 S.W.2d 805 (Tex. Crim. App. 1987). Reversing the court of appeals, the Court of Criminal Appeals in *Vaughan* held that a corporation could commit the crime of criminally negligent homicide. Because of the complexities that accompany the prosecution of a corporation or association, it is more common to see prosecutors opt to pursue criminal charges against individual employees or association officers. In such cases, Texas law provides individual criminal liability for acts committed on behalf of a corporation or association. Sec. 7.23, P.C. See *Sabine Consol. Inc. v. State*, 816 S.W.2d 784 (Tex. App.—Austin 1991, no pet.). Such prosecutions may be in addition to any administrative penalty imposed against the corporation. *Ex parte Canady*, 140 S.W.3d 845 (Tex. App.—Houston [14th Dist.] 2004, no pet.).

Checklist 15-1	Script/Notes
Definitions:	
"Agent" means a director, officer, employee, or other person authorized to act on behalf of a corporation, an association, a limited liability company, or another business entity.	Sec. 17A.01, C.C.P.
"Association" means a government or governmental subdivision or agency, trust, partnership, or two or more persons having a joint or common economic interest.	
"High managerial agent" means: an officer of a corporation or association; a partner in a partnership; or an agent of a corporation or association who has duties of such responsibility that his or her conduct may reasonably be assumed to represent the policy of the corporation or association.	
"Person," means an individual or a corporation, association, limited liability company, or other entity or organization governed by the Business Organizations Code.	
❒ 1. Summoning corporation or association:	Art. 17A.03, C.C.P.

❒ a. The court must summon the corporation or association. The summons is in the same form as a capias. A certified copy of the complaint must accompany the summons.

Art. 17A.03 (a)(1-2), C.C.P
See *TMCEC 2024 Forms Book:* Corporate Summons.

❒ b. The corporation or association has until 10:00 a.m. on the next Monday after the 20th day after service to answer.

Art. 17A.03 (a)(3), C.C.P.

❒ c. Service must be by a peace officer on the registered agent or a high managerial agent.

Arts. 17A.04 and 17A.05, C.C.P.

❒ d. No individual may be arrested upon a complaint filed against a corporation or association.

Art. 17A.03(b), C.C.P.

❒ 2. Appearance:

Arts. 17A.07(a) and 17A.06, C.C.P

❒ a. The corporation or association must appear through counsel.

❒ (1) Appearance is for the purpose of entering a plea.

❒ (2) Ten full days must elapse after the day of appearance before the corporation may be tried.

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❒ b. If a corporation or association does not appear in response to a summons, or appears but fails or refuses to plead:

Art. 17A.07(b), C.C.P.

❒ (1) It is deemed to be present in person for all purposes;

❒ (2) The court shall enter a plea of not guilty on its behalf; and

❒ (3) The court may proceed with the trial, judgment, and sentencing.

This is the only instance in a criminal case where a defendant may be tried *in absentia*. Because a corporation or association cannot be taken into custody pursuant to Article 17A.03(b), C.C.P., it is presumed that such defendants cannot be charged with Failure to Appear (Sec. 38.10, P.C), which requires a showing that a person was lawfully released from custody.

❒ c. If, having appeared and entered a plea in response to summons, a corporation or association is absent without good cause at any time during later proceedings:

Art. 17A.07(c), C.C.P.

❒ (1) It is deemed to be present in person for all purposes; and

❒ (2) The court may proceed with trial, judgment, or sentencing.

❒ 3. Criminal responsibility:

❒ a. If conduct constituting an offense is performed by an agent acting in behalf of a corporation, an association, a limited liability company, or another business entity and within the scope of the agent's office or employment, the corporation, association, limited liability company, or other business entity is criminally responsible for an offense defined:

Sec. 7.22, P.C.

❒ (1) In the Penal Code where corporations, associations, limited liability companies, and other business entities are made subject thereto;

Sec. 7.22(a)(1), P.C.

❒ (2) In other statutes where the legislative purpose to impose criminal responsibility on corporations, associations, limited liability companies, and other business entities plainly appears; or

Sec. 7.22(a)(2), P.C.

❒ (3) In other statutes where strict liability is imposed, unless a legislative purpose not to impose criminal responsibility on corporations, associations, limited liability companies, or other business entities plainly appears. — Sec. 7.22(a)(3), P.C.

❒ b. It is an affirmative defense to prosecution of a corporation, an association, a limited liability company, or another business entity under Section 7.22(a)(1) or (a)(2) that the high managerial agent having supervisory responsibility over the subject matter of the offense employed due diligence to prevent its commission. — Sec. 7.24, P.C.

❒ 4. Punishments upon finding or plea of guilty: — Art. 17A.09, C.C.P.

❒ a. Court may sentence the corporation, association, limited liability company, or other business entity to pay a fine in an amount fixed by the court, not to exceed the fine provided by the offense. — Sec. 12.51(a), P.C.

❒ b. If an offense provides no specific penalty, the offense is classified as a Class C misdemeanor and the fine is not to exceed $2,000. — Sec. 12.51(b), P.C.

❒ c. In addition to any sentence, the court may order a corporation, an association, a limited liability company, or another business entity to give notice of the conviction to any person the court deems appropriate. — Sec. 12.51(d), P.C.

❒ d. The clerk must notify the Attorney General's Office. — Sec. 12.51(e), P.C.

❒ (1) If a defendant is a corporation, or a high managerial agent, notice is given when the conviction becomes final and unappealable. — Art. 17A.09, C.C.P.

❒ (2) The notice of conviction of a corporation or high managerial agent shall include:

❒ (A) The corporation's name, the registered agent(s), and the address of the registered office, or the high managerial agent's name and address, or both.

❒ (B) Certified copies of the judgment, sentence, and complaint on which the judgment and sentence were based.

Art. 17A.08, C.C.P.
This may be construed to include deferred disposition.

❒ e. The benefits of adult probation laws shall not be available to corporations or associations.

❒ 5. Enforcement of judgment:

❒ a. No individual may be arrested upon judgment or sentence entered against a corporation or association.

Art. 17A.03(b), C.C.P.

❒ b. When the sentence against a defendant corporation or association is for fine and costs, it shall be discharged after:

Sec. 43.01, C.C.P.

❒ (1) The amount has been fully paid;

❒ (2) The execution has been fully satisfied; or

❒ (3) The judgment has been satisfied in any other manner.

A municipal judge may order the fine and costs collected by execution against the defendant's property in the same manner as in a civil suit. Art. 45.047/45A.263, C.C.P.

CHAPTER 16 EVIDENCE

Evidence is something presented at trial to prove or disprove the existence of an alleged fact. *Black's Law Dictionary*. Not all facts, recollections, records, opinions, or physical items are evidence. Each of the mentioned proofs must meet certain legal standards before they can be called evidence. In determining whether an offered proof is evidence, the court determines if the proof meets the legal threshold of admissibility, but not whether the proof is conclusive, credible, believable, or true. The factual credibility of the evidence is determined by the fact finder after hearing all the evidence. Rule 104, T.R.E.*

The most common form of evidence is oral statements of witnesses based on personal knowledge. In limited circumstance, evidence can be opinions of a witness. Evidence can also be physical items, such as records, photos, recordings, etc. Demonstrative evidence is proof offered as illustrations or explanations of the witness's recollections and perceptions. This includes physical demonstrations by the witness, drawings created during or before testimony, experiments, lists, items that are introduced that look like items observed by the witness, or any other item that demonstrates other properly introduced evidence.

Please note, the Texas Rules of Evidence (T.R.E.), referenced in this chapter, are available on the OCA website (linked here).

1. When Do the Texas Rules of Evidence Apply?

Checklist 16-1	Script/Notes
❒ 1. The Rules of Evidence apply in all trials before the court or a jury.	Art. 45.011/45A.004, C.C.P.
❒ a. They apply in all adversary hearings before the court except:	
❒ (1) Preliminary hearings to determine if competency is an issue;	Rule 101(e)(3)(B), T.R.E.
❒ (2) Initial appearance before a magistrate for a hearing and setting of bail;	Rule 101(e)(3)(C), T.R.E.
❒ (3) Applications for search or arrest warrants;	Rule 101(e)(3)(E), T.R.E.
❒ (4) Pre-trial hearings on the admissibility of confessions or other evidence outside the presence of the jury; and/or	Rules 101(e)(1) and 104(a), T.R.E.
❒ (5) Proceedings in a direct contempt determination.	Rule 101(e)(3)(F), T.R.E. See Chapter 14 in this book.

❒ 2. The rules of privilege always apply. A right of privilege is the right to refuse to testify or answer certain questions. The privileges recognized by the Rules of Evidence, in addition to the constitutional privilege against self incrimination, include the following:

❒ a. The lawyer-client privilege: — Rule 503, T.R.E.

Attorneys, their staff, clients of an attorney, and representatives of the client, may all refuse to disclose information concerning lawyer-client communications made pursuant to lawful representation.

❒ b. The spousal privilege: — Rule 504, T.R.E.

❒ (1) The spouse has a privilege not to take the stand, except in cases of domestic violence. — Art. 38.10, C.C.P.

❒ (2) The spouse can also refuse to answer questions concerning communications made during the marriage, unless they were made in furtherance of a crime or in cases of domestic violence. The marital communications privilege survives both death and divorce.

❒ c. The communications to a clergy member privilege. — Rule 505, T.R.E.

❒ d. There is no physician-patient privilege in criminal proceedings, except a limited privilege for those voluntarily seeking alcohol or drug abuse treatment. — Rule 509, T.R.E.

❒ e. The journalist's qualified testimonial privilege in criminal proceedings. — Art. 38.11, C.C.P.

❒ 3. Certain information as well as certain communications are privileged:

❒ a. A person's vote in any election; and — Rule 506, T.R.E.

❒ b. Privileges created by statutes that require certain records be kept, except where the privilege is asserted to conceal fraud.	Rules 502 (Required Reports), 507 (Trade Secrets), and 508 (Informers Identity), T.R.E.
❒ 4. Special statutory rules of evidence are used in hearings on sentencing or revocation.	Art. 38.37, C.C.P. (Evidence of Extraneous Offenses or Acts)

CHAPTER 16 EVIDENCE

2. Ways to Prove a Fact

Checklist 16-2	Script/Notes
❒ 1. Judicial notice:	
❒ a. Certain matters may be deemed by the court to be self-evident, well known, or conclusively proven so that the court can simply declare them established by "judicial notice" at the request of a party or on its own initiative.	Rule 201(c)-(d), T.R.E.
❒ b. The court may take judicial notice when:	
❒ (1) A fact is "generally known in the jurisdiction;"	
❒ (2) A fact is "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned;" or	Rule 201(b), T.R.E.
❒ (3) The fact in issue is the existence or wording of a municipal or county ordinance or other such government regulation, provided the movant present the court with a proper copy of such ordinance.	Rule 204, T.R.E.
❒ c. The court must allow both sides to be heard when taking judicial notice.	Rules 201(e) and 204, T.R.E.
❒ 2. By the testimony of competent witnesses.	See Rule 601, T.R.E., concerning competency of witnesses.
❒ 3. By the introduction of properly predicated and introduced records or other physical evidence.	
❒ 4. Arguments by attorneys, parties, witnesses, or any statements by others not sworn and examined are not evidence and not to be considered by the fact finder as evidence.	
❒ 5. Plea bargains, plea negotiations, and plea discussions are not admissible.	Rule 410, T.R.E.

CHAPTER 16 EVIDENCE

3. How Objections are Made and Ruled on by the Court

Checklist 16-3	Script/Notes
❒ 1. Objections:	
❒ a. Objections must be made by a party. Objections can never be made by a witness or the court.	A defendant cannot object if represented by counsel.
❒ b. The objection is made to the court and not to the opposing party, witness, or jury.	
❒ c. The objection should be respectful and not argumentative.	State the legal basis for objection to the proffered question or answer
❒ d. The objection should be timely made. The objection must be made when the objectionable question or answer is made or given.	Rule 103(a), T.R.E. Proper objection:"Your Honor, I object to that *question/answer* because it is *hearsay/not relevant/a leading question/ etc.*"
❒ e. Objections must be made every time a matter is raised to preserve the matter for review on appeal unless the court grants a "running objection" on the record, outside the presence of the jury.	*Ethington v. State*, 819 S.W.2d 854 (Tex. Crim. App. 1991).
❒ f. Objections that raise matters important to the court's ruling, but not appropriate for the jury to hear, should be made outside the earshot or presence of the jury.	Rule 103(c), T.R.E.
❒ (1) Removal may be made at either party's request or on the court's own suggestion.	
❒ 2. Responses:	
❒ a. The court has broad discretion in ruling on objections.	Rule 103, T.R.E.
❒ b. The court has no obligation to listen to responses, but should do so if hearing the response would aid the court in making a proper ruling.	Proper response: "Your Honor, may I respond to the objection?"

❒ c. Remember that responses are often best made outside of the jury's hearing.

❒ 3. Offers of proof:

❒ a. To properly consider excluded evidence on appeal, the reviewing court must be able to study that evidence.

❒ b. The party tendering the excluded evidence is responsible for getting the excluded evidence into the record.

❒ c. The offer of proof is always made outside the presence of the jury.

❒ d. The party making the offer of proof may be granted substantial latitude in the means of producing said evidence.

Dopico v. State, 752 S.W.2d 212 (Tex. App.— Houston [1st Dist.] 1988, pet. ref'd); and Rule 103(a)(2), T.R.E.

❒ e. The offer of proof may be made by:

❒ (1) Sworn statement;

❒ (2) Placement in the record of a physical object not admitted into evidence;

❒ (3) Questions to and answers of a witness; or

This is obligatory if requested. Rule 103(c), T.R.E.

❒ (4) A summary by counsel of the questions and answers expected.

❒ f. Offers of proof do not have to be made at the time of the objection and may be made at any time during the trial, so as to facilitate an orderly presentation of the evidence at trial.

CHAPTER 16 EVIDENCE

4. Hearsay

Checklist 16-4	Script/Notes
❒ 1. Hearsay is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.	Rule 801(d), T.R.E.
❒ 2. Hearsay testimony is not admissible unless it falls under an exception to the hearsay rule.	Rule 802, T.R.E.
❒ 3. Hearsay includes non-verbal conduct if intended as a substitute for verbal expression.	Rule 801(a), T.R.E.
❒ 4. To be hearsay, the statement must be offered to prove the content of the statement. If the statement is offered to prove that the statement was made and not that the statement is true, it is not hearsay.	
❒ 5. Statements defined by the rules as not hearsay:	Rule 801(e), T.R.E.
❒ a. Prior statements by the witness.	
❒ b. Statements by a party offered against that party.	
❒ 6. Statements that are hearsay, but admissible under an exception to the hearsay rule:	
❒ a. A present sense impression.	Rule 803(1), T.R.E.
❒ b. Excited utterances.	Rule 803(2), T.R.E.
❒ c. A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition.	Rule 803(3), T.R.E.
❒ d. A statement made for the purpose of medical diagnosis or treatment.	Rule 803(4), T.R.E.
❒ e. A prior written record by the witness about matters that he or she once had personal knowledge, but now is unable to recall if such a record was reliably created when the matters were fresh in his or her mind.	Rule 803(5), T.R.E.

❒ f. Regularly kept business, public, official, medical, commercial, or family records must: ❒ (1) Be kept in the regular course of these other enterprises; ❒ (2) Be recorded by persons with personal knowledge; and ❒ (3) Have some indicia of trustworthiness.	Rule 803(6)-(15), and (17), T.R.E.
❒ g. Authenticated documents over 20 years old.	Rule 803(16), T.R.E.
❒ h. Learned treatises when used to question experts.	Rule 803(18), T.R.E.
❒ i. Reputation testimony.	Rule 803(19)-(21), T.R.E.
❒ j. Judgments of previous conviction against the defendant.	Rule 803(22), T.R.E.
❒ k. Statements made by the declarant that were against his or her monetary, legal, or social interest.	Rule 803(24), T.R.E.
❒ l. Statements made exposing the declarant to criminal liability must be corroborated.	Rule 803(24), T.R.E.
❒ 7. Some hearsay statements are admissible only if the declarant is not available as a witness due to privilege, refusal to testify, lack of memory, death or infirmity, or lack of the witness's attendance at trial due to no fault of the party seeking the testimony. The following are not excluded from evidence if the declarant is unavailable as a witness:	Rule 804, T.R.E.
❒ a. Former testimony where both parties were able to fully cross-examine the witness.	Rule 804(b)(1), T.R.E.
❒ b. Dying declarations of the declarant.	Rule 804(b)(2), T.R.E.
❒ c. Statement of personal or family history.	Rule 804(b)(3), T.R.E.

❒ 8. If a hearsay statement comes into evidence, the credibility of the declarant of the hearsay statement is put at issue and may be challenged by other evidence.	Rule 806, T.R.E.
❒ 9. Hearsay within hearsay is not excluded if an exception is provided for each part of the combined statement.	Rule 805, T.R.E.

CHAPTER 16 EVIDENCE

5. Objections Concerning Nature of Questions, Answers, or Courtroom Behavior

Checklist 16-5		Script/Notes
❒ 1.	Leading questions are questions that suggest the answer desired by the questioner. Leading questions are proper and preferred during cross-examination or during any examination of a hostile witness.	Rule 611(c), T.R.E.
❒ 2.	Scope of cross-examination: A witness may be cross-examined on any matter relevant to any issue in the case, including credibility.	Rule 611(b), T.R.E.
❒ 3.	Narrative answers - All examinations should be done in a question and answer format. Failure to follow this format causes opposing counsel to be unable to object to particular matters. Testimony that moves from topic to topic without interspersed questions is narrative and improper. However, in some situations, the court may permit narrative responses.	
❒ 4.	Badgering the witness: A trial should be a formal and civilized proceeding. Undue dramatics, improper aggression, or just plain bad manners may be controlled by the court on a proper objection. The court, if necessary, may act on its own to stop certain conduct.	Rule 611(a), T.R.E.
❒ 5.	Sidebar comments and arguing with the witness: During testimony, the attorney's and/or pro se defendant's role is to ask questions; they are not sworn and they may not testify. Counsel and pro se defendants should not be allowed to comment on witness' answers, opposing counsel's questions, or the court's rulings in a verbal or non-verbal fashion. Counsel and pro se defendants must convey the ideas they wish to express to the jury through proper questions and during closing arguments. Objections, as noted earlier, should be addressed to the court and not to the witness, opposing counsel, pro se defendant, or jury.	An example of sidebar comments would include: "Oh, I'm sure that is what you saw." "Please, Your Honor, that is such a stupid question." "Objection . . . Like he's never going to sustain one of my objections."

❒ 6. Non-responsive answers: The court should require witnesses to answer proper, clearly stated questions as asked. During cross-examination, witnesses should be limited to answering questions as asked.	To properly make this objection, counsel must ask clear, simple questions that do not call for an explanation.
❒ 7. The court shall exercise reasonable control over witnesses and the presentation of evidence. The efficient presentation of evidence and actual ascertainment of the truth should be the constant goals of the court.	Rule 611(a), T.R.E.
❒ 8. Ethically, the court must require order and decorum in all proceedings. These objections are all based on conduct rather than content and may provide the court with a tool to control courtroom behavior.	Canon 3B(3), *Texas Code of Judicial Conduct*

CHAPTER 16 EVIDENCE

6. Objections to the Introduction of Physical Evidence

Checklist 16-6	Script/Notes
❒ 1. Predicate: Before introduction of a piece of physical evidence, the party offering the evidence must establish certain preliminary facts:	For a quick and complete listing of proper predicates, please refer to *Predicates* published by the Texas District and County Attorneys Association (512.474.2436).
❒ a. The item is authentic; and	
❒ b. If the item is perishable or alterable, the party offering the evidence must show either that the evidence has been in a secure "chain of custody" or that the item has not been altered or changed since it was gathered.	
❒ 2. Photographs and recordings must be shown to accurately reflect what the witness initially observed. If such testimony is not available, photographs and recordings are admissible under the rules in Step 1 above.	
❒ 3. Demonstrative evidence need only be shown to be helpful to the jury, and be explained by the witness.	

CHAPTER 17 ANIMALS

One area of municipal court civil jurisdiction is cases involving animals under the Health and Safety Code. State law provides procedures for the seizure, hearing, and disposition of dogs that are a danger to persons and animals that are cruelly treated; however, there are many lingering questions and uncertainties when it comes to handling these civil cases.

Many municipalities have enacted ordinances regulating these animal cases. Such local ordinances are contemplated in Sections 822.007 and 822.047 of the Health and Safety Code. Cities should be aware of the state laws as well and consider whether ordinances may be preempted by state law.

These checklists only discuss the procedures under state law contained in Chapters 821 and 822 of the Health and Safety Code.

1. Definitions

Checklist 17-1	Script/Notes
"Animal control authority" is a municipal or county animal control office with authority over the area in which the dog is kept or the county sheriff in an area that does not have an animal control office.	Secs. 822.001(1) and 822.041(1), H.S.C.
In an incorporated municipality with a population of more than 1,000 that is a county seat of a county with a population of 1,380 or more but less than 1,600, the police department is the animal control authority for the municipality in all areas in which a dog is kept and that are subject to the authority of the police department.	Secs. 822.0012 and 822.0411, H.S.C.
"Dangerous dog" is a dog that:	
❒ a. Makes an unprovoked attack on a person that causes bodily injury and occurs in a place other than an enclosure in which the dog was being kept and that was reasonably certain to prevent the dog from leaving the enclosure on its own; or	Sec. 822.041(2)(A), H.S.C.
❒ b. Commits unprovoked acts in a place other than an enclosure in which the dog was being kept and that was reasonably certain to prevent the dog from leaving the enclosure on its own and those acts cause a person to reasonably believe that the dog will attack and cause bodily injury to that person.	Sec. 822.041(2)(B), H.S.C.
"Dog" is a domesticated canine.	Sec. 822.041(3), H.S.C.

"Owner" is a person who owns or has custody or control of the dog.	Sec. 822.041(5), H.S.C.
"Secure" means to take steps that a reasonable person would take to ensure a dog remains on the owner's property, including confining the dog in an enclosure that is capable of preventing the escape or release of the dog.	Sec. 822.001(4), H.S.C.
"Secure enclosure" means a fenced area or structure that is locked; capable of preventing the entry of the general public, including children; capable of preventing the escape or release of a dog; clearly marked as containing a dangerous dog; and in conformance with the requirements for enclosures established by the local animal control authority.	Sec. 822.041(4), H.S.C.
"Serious bodily injury" is an injury characterized by severe bite wounds or severe ripping and tearing of muscle that would cause a reasonably prudent person to seek treatment from a medical professional and would require hospitalization without regard to whether the person actually sought medical treatment.	Sec. 822.001(2), H.S.C.

CHAPTER 17 ANIMALS

A county, justice, or municipal court has original jurisdiction to hear cases involving a dog attack, bite, or mauling that causes serious bodily injury or death to a person. These hearings are governed by Subchapter A, Chapter 822 of the Health and Safety Code.

2. Dogs that Cause Death or Serious Bodily Injury to a Person

Checklist 17-2	Script/Notes
❒ 1. Hearings to Determine if a Dog Has Caused Death or Serious Bodily Injury to a Person.	This type of hearing is used to determine if a dog caused the death of or serious bodily injury to a person by attacking, biting, or mauling the person. Secs. 822.002 and 822.003, H.S.C.
❒ a. Any person including the county attorney, city attorney, or a peace officer, may file a sworn complaint alleging that a dog attack, bite, or mauling caused the death of or serious bodily injury to a person.	Sec. 822.002(a)(1-2), H.S.C. See *TMCEC 2024 Forms Book*: Affidavit for Warrant to Seize Dog that Caused Serious Bodily Injury or Death.
❒ b. The complaint must be supported by an affidavit setting forth sufficient facts to establish probable cause to believe that the dog caused death or serious bodily injury by attacking, biting, or mauling a person.	
❒ c. When a sworn complaint showing probable cause is filed, the court must issue a warrant authorizing the animal control authority to seize the dog and impound it in secure and humane conditions until the court orders the disposition of the dog.	Sec. 822.002(a)-(b), H.S.C. See *TMCEC 2024 Forms Book*: Seizure Warrant for Dog that Caused Serious Bodily Injury or Death.
❒ d. The court must set a time for a hearing to determine whether the dog caused the death of or serious bodily injury to a person by attacking, biting, or mauling the person. The court must give written notice of the time and place of the hearing to the owner of the dog or the person from whom the dog was seized and the person who made the complaint.	Sec. 822.003(b), H.S.C. See *TMCEC 2024 Forms Book*: Notice of Hearing for Dog that Caused Serious Bodily Injury or Death.
❒ e. The hearing must be set within 10 days of issuing the warrant.	Sec. 822.003(a), H.S.C.

❒ f. Any interested person, including the county or city attorney, may present evidence at the hearing.

Sec. 822.003(c), H.S.C.

❒ g. A "preponderance of evidence" standard may be used to make the required findings.

Preponderance of the evidence is "superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other." *Black's Law Dictionary.*

It is statutorily unclear whether a "reasonable doubt" or a "preponderance of the evidence" standard should be used in this determination. However, in *Timmons v. Pecorino*, 977 S.W.2d 603, (Tex. Crim. App. 1998), the Court of Criminal Appeals implicitly acknowledged the civil nature of these cases but refused to answer the question for lack of jurisdiction.

❒ h. If the court determines at the hearing that the dog caused the death of a person, the court must order the dog be destroyed.

Sec. 822.003(d), H.S.C.
See *TMCEC 2024 Forms Book*: Order: Dog Caused Serious Bodily Injury or Death.

The dog must be destroyed by a licensed veterinarian, trained animal shelter or humane society personnel, or trained animal control authority personnel.

Sec. 822.004, H.S.C.

❒ i. If the court determines the dog caused serious bodily injury to the person, the court may order the dog be destroyed.

Sec. 822.003(e), H.S.C.

❒ j. The court may not order the dog to be destroyed if:

Sec. 822.003(f)(1-5), H.S.C.

❒ (1) The dog was being used to protect persons or property; the attack, bite, or mauling occurred in a properly marked enclosure in which the dog was being kept that was reasonably certain to prevent the dog from escaping and provided notice of the dog's presense; and the injured person was at least eight years old and was trespassing in the enclosure;

❒ (2) The dog was not being used to protect persons or property; the attack, bite, or mauling occurred in an enclosure in which the dog was being kept; and the injured person was at least eight years old and was trespassing in the enclosure;

❒ (3) The dog was being used for law enforcement purposes and the attack, bite, or mauling occurred during an arrest or other law enforcement action;

❒ (4) The dog was defending a person from an assault or defending property from damage or theft by the injured person; or

❒ (5) The injured person was under eight years of age and the attack, bite, or mauling occurred in a secure enclosure designed to prevent a person under eight years of age from entering.

❒ 2. There is no right to appeal a court's determination provided in the subchapter.

❒ 3. An owner may face criminal liability if the owner fails, with criminal negligence, to secure the dog, and the dog's unprovoked attack causes serious bodily injury to (3rd degree felony) or the death of (2nd degree felony) a person.

Sec. 822.005, H.S.C
Watson v. State, 369 S.W.3d 865 (Tex.Crim. App. 2012).

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Subchapter A, Chapter 822 of the Health and Safety Code, provides procedures for what to do if a dog attacks and causes death or serious bodily injury. What if the dog causes injury that does not rise to the level of serious bodily injury? The court cannot order a dog be destroyed if it causes just bodily injury to a person unless the dog has been determined to be a "dangerous dog," as defined in Section 822.041(2) of the Health and Safety Code.

There are three distinct types of hearings dealing with dangerous dogs that can originate in a county, justice, or municipal court. These proceedings are all governed by Subchapter D, Chapter 822 of the Health and Safety Code. A county or municipality may place additional requirements or restrictions on dangerous dogs if the requirements or restrictions are not breed specific and are more stringent than restrictions provided under Subchapter D. Sec. 822.047, H.S.C. It is a Class C misdemeanor for a person who owns or has custody or control of a dangerous dog to fail to comply with Section 822.042 or Section 822.0422 (b) or an applicable municipal ordinance relating to dangerous dogs, and a subsequent offense is a Class B misdemeanor. Sec. 822.045, H.S.C.

Note that none of these procedures apply when a dog attacks another animal. There is no municipal court involvement, under state law, when a dog attacks an animal. Sec. 822.013, H.S.C.

3. Dangerous Dogs

Checklist 17-3	Script/Notes
❒ 1. Appeal from Animal Control Authority Determination that Dog is a Dangerous Dog:	
❒ a. If a person reports an incident where a dog either:	Sec. 822.0421(a), H.S.C.
❒ (1) Makes an unprovoked attack on a person that causes bodily injury and occurs in a place other than an enclosure in which the dog was being kept and that was reasonably certain to prevent the dog from leaving the enclosure on its own; or	Sec. 822.041(2)(A), H.S.C.
❒ (2) Commits unprovoked acts in a place other than an enclosure in which the dog was being kept and that was reasonably certain to prevent the dog from leaving the enclosure on its own and those acts cause a person to reasonably believe that the dog will attack and cause bodily injury to that person.	Sec. 822.041(2)(B), H.S.C.

Then, the animal control authority may investigate the incident and determine if the dog is a "dangerous dog" according to Section 822.041(2), H.S.C. The animal control authority shall notify the owner in writing if the dog is determined to be dangerous.

Sec. 822.0421(a), H.S.C.

❒ b. Notwithstanding any other law, including a municipal ordinance, an owner may appeal the animal control authority determination to the county, justice, or municipal court of competent jurisdiction within 15 days of being notified of the determination.

Sec. 822.0421(b), H.S.C. There are no statutory procedures for how the municipal court should handle or dispose of the appeal. Tex. Atty. Gen. Opp. GA-0660 (2008) interprets "court of competent jurisdiction" to refer to territorial jurisdiction and not as requiring the municipal court be a court of record.

❒ c. To file an appeal, the owner must:

Sec. 822.0421(c), H.S.C.

❒ (1) File a notice of appeal with the court;

❒ (2) Attach a copy of the determination from the animal control authority; and

❒ (3) Serve a copy of the notice of appeal on the animal control authority by mailing the notice through the United States Postal Service.

❒ d. The owner may appeal the municipal court's decision under Sec. 822.0421(b), H.S.C., in the manner described by Section 822.0424, H.S.C.

Sec. 822.0421(d), H.S.C.

❒ e. The court may not order the destruction of a dog during the pendency of an appeal under Sec. 822.0424, H.S.C.

Sec. 822.042(e-1)(2), H.S.C.

❒ 2. Municipal Court Determination that Dog is a Dangerous Dog:

❒ a. If city has not adopted an ordinance electing to be governed by Sec. 822.0422, H.S.C., skip to number 3, as this portion does not apply.

Sec. 822.042(a), H.S.C.

❒ b. If city has adopted an ordinance electing to be governed by Sec. 822.0422, H.S.C., any person may report to the court an incident where a dog either:

Sec. 822.0422(b), H.S.C.
See *TMCEC 2024 Forms Book*: Complaint: Dangerous Dog Incident.

❒ (1) Makes an unprovoked attack on a person that causes bodily injury and occurs in a place other than an enclosure in which the dog was being kept and that was reasonably certain to prevent the dog from leaving the enclosure on its own; or

❒ (2) Commits unprovoked acts in a place other than an enclosure in which the dog was being kept and that was reasonably certain to prevent the dog from leaving the enclosure on its own and those acts cause a person to reasonably believe that the dog will attack and cause bodily injury to that person.

❒ c. The court must notify the owner that the report has been filed and that the owner has five days from the date they receive the notice of the report being filed to deliver the dog to the animal control authority, which shall provide for secure and humane impoundment of the dog until the court orders disposition.

Sec. 822.0422(b), H.S.C.
See *TMCEC 2024 Forms Book*: Notice of Dangerous Dog Complaint Filed.

❒ d. If the owner fails to deliver the dog, the court must issue a warrant authorizing the animal control authority to seize the dog and impound it in secure and humane conditions until the court orders the disposition of the dog. The owner shall pay any cost incurred in seizing the dog.

Sec. 822.0422(c), H.S.C.
See *TMCEC 2024 Forms Book*: Seizure Warrant for Dangerous Dog.

An owner who fails to deliver the dog as required may be charged with a Class C misdemeanor (Class B for subsequent offenses). Sec. 822.045, H.S.C.

❒ e. The court must set a time for a hearing to determine whether the dog is a dangerous dog. The court must give written notice of the time and place of the hearing to the owner of the dog or the person from whom the dog was seized and the person who made the complaint.	Sec. 822.0423(a)-(b), H.S.C. See *TMCEC 2024 Forms Book*: Notice of Dangerous Dog Hearing.
❒ f. The hearing must be set within 10 days of the date the dog is delivered or seized.	Sec. 822.0423(a), H.S.C.
❒ g. Any interested person, including the county or city attorney, may present evidence at the hearing.	Sec. 822.0423(c), H.S.C.
❒ h. A "preponderance of evidence" standard may be used to make the required findings. Preponderance of the evidence is "superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other." *Black's Law Dictionary.*	
❒ i. At the hearing, the court must determine if the dog is a dangerous dog, according to the definitions in Section 822.041(2), H.S.C.	See *TMCEC 2024 Forms Book*: Dangerous Dog Judgment.
❒ j. If the court determines the dog is a dangerous dog, the court may order the dog continue to be impounded until the court determines if the owner(s) comply with the requirements in Step 3.	Presumably, if the court declines to find that the dog is a dangerous dog, the court should order the dog be released to the owner or person from whom the dog was seized.
❒ k. The court shall determine the estimated costs to house and care for the impounded dog during the appeal process and shall set the amount of bond for an appeal adequate to cover those estimated costs.	Sec. 822.0423(c-1), H.S.C.

❒ l. The owner or person who filed the complaint may appeal the municipal court's decision in the manner provided for the appeal of cases from the municipal court.

Sec. 822.0423(d), H.S.C. The *In re Loban* case, highlighted a problem when it found that there was no court to which a decision from a court of record could be appealed. *In re Loban*, 243 S.W.3d 827 (Tex. App.—Fort Worth 2008, no pet.).

❒ m. The owner shall pay any cost or fee assessed under Sec. 822.042(d), H.S.C., for seizing the dog.

Sec. 822.0422(f), H.S.C. A city can enter into a contract for the collection of unpaid fines, fees, or court costs in civil cases. Sec. 140.009, L.G.C.

❒ 3. Appeal of Municipal Court Dangerous Dog Determination:

Sec. 822.0424, H.S.C.

❒ a. A party to an appeal under Sec. 822.0421(d) or a hearing under Sec. 822.0423, H.S.C., may appeal the decision to a county court or county court at law in the county in which the justice or municipal court is located and is entitled to a jury trial on request.

A decision of a county court or county court at law under this section may be appealed in the same manner as an appeal for any other case in a county court or county court at law. Sec. 822.0424(d), H.S.C.

❒ b. As a condition of perfecting an appeal, not later than the 10th calendar day after the date the decision is issued, the appellant must file a notice of appeal and, if applicable, an appeal bond in the amount determined by the court from which the appeal is taken.

See *TMCEC 2024 Forms Book*: Notice of Appeal and Appeal Bond: Dangerous Dog.

❒ c. A person filing an appeal from a municipal court under Subsection (a) is not required to file a motion for a new trial to perfect an appeal.

❒ 4. Requirements for Owner of Dangerous Dog:

❒ a. The owner learns the dog is a dangerous dog if the owner knows of an attack, receives notice that a court has found the dog to be dangerous, or the owner is informed by the animal control authority that the dog is dangerous.

Sec. 822.042(g), H.S.C.

❒ b. Not later than 30 days after learning that the person is the owner of a dangerous dog, the owner must:

❒ (1) Register the dog with the animal control authority for the area in which the dog is kept; — Sec. 822.042(a)(1), H.S.C.

❒ (2) Restrain the dog at all times in a secure enclosure or on a leash in the immediate control of the owner; — Sec. 822.042(a)(2), H.S.C.

❒ (3) Show financial responsibility or obtain liability insurance of at least $100,000 and provide proof of the insurance to the animal control authority; and — Sec. 822.042(a)(3), H.S.C.

❒ (4) Comply with any applicable municipal ordinances or county regulations. — Sec. 822.042(a)(4), H.S.C.

❒ c. If the owner does not comply with the requirements, he or she must deliver the dog to the animal control authority not later than 30 days after learning the dog is a dangerous dog. — Sec. 822.042(b), H.S.C.

❒ d. The animal control authority must register all dangerous dogs located within its jurisdiction if the owner pays an annual $50 fee and presents proof of: — Sec. 822.043(a)(2), H.S.C.

❒ (1) Current liability insurance or financial responsibility; — Sec. 822.043(a)(1)(A), H.S.C.

❒ (2) Current rabies vaccination; and — Sec. 822.043(a)(1)(B), H.S.C.

❒ (3) The secure enclosure for the dog. — Sec. 822.043(a)(1)(C), H.S.C.

❒ e. The animal control authority must issue to the owner a registration tag for the dangerous dog, which must be put on the dog's collar. — Sec. 822.043(b)(1), H.S.C.

❒ f. If the owner sells or moves the dog, the owner has 14 days to notify the animal control authority in the new jurisdiction of the dog's relocation. If the owner presents proof of prior registration and pays a $25 fee, the new animal control authority must accept the new registration and issue a new tag to be worn on the dog's collar.	Sec. 822.043(c), H.S.C.
❒ g. An owner of a registered dangerous dog must notify the animal control authority of any attacks the dog makes on people. An unprovoked attack by a dangerous dog, outside the dog's enclosure, causing bodily injury is a Class C misdemeanor offense against the owner.	Secs. 822.043(d) and 822.044, H.S.C. The court may order the dog be destroyed if the owner is convicted. Any order to destroy a dog is stayed for a period of 10 calendar days, during which the dog's owner may file a notice of appeal. Sec. 822.042(e-1)(1), H.S.C.
❒ h. An owner may face criminal liability if the owner knows the dog is a dangerous dog and the dog's unprovoked attack causes serious bodily injury to (3rd degree felony) or the death of (2nd degree felony) of a person.	Sec. 822.005, H.S.C.
❒ 5. Non-compliance Hearing:	
❒ a. Any person may file an application with the court alleging that a dog is dangerous or that the owner of a dangerous dog has failed to comply with the requirements under Sec. 822.042(a), H.S.C.	Sec. 822.042(c), H.S.C. See *TMCEC 2024 Forms Book*: Application: Dangerous Dog Owner Failed to Comply.
❒ b. The court must set a hearing and give written notice of the time and place of the hearing to the owner of the dog or the person from whom the dog was seized and the person making the complaint.	Sec. 822.0423(a)-(b), H.S.C. See *TMCEC 2024 Forms Book*: Notice of Hearing: Owner Failed to Comply.

❒ c. The hearing should be held not later than 10 days after the dog is seized or delivered.	Sec. 822.0423(a), H.S.C. There is a contradiction in the methodology for dangerous dog hearings set forth in Chapter 822. Specifically, Section 822.042(c) states that if, "**after notice and hearing**" to determine whether an owner of a dangerous dog has failed to comply with the requirements of Section 822.042(a), H.S.C., the court finds a failure to comply, it shall order the seizure of the dog. However, Section 822.0423(a) states that such a compliance hearing must be held not later than 10 days **after** the seizure. This apparent conflict can be resolved if the dog is seized pursuant to another seizure provision (e.g., a quarantine or dog-at-large ordinance). Otherwise, courts may set the hearing for not later than 10 days from the date the owner is notified.
❒ d. At the hearing, any interested party, including the city or county attorney, may present evidence.	Sec. 822.0423(c), H.S.C.
❒ e. The court shall determine the estimated costs to house and care for the impounded dog during the appeal process and shall set the amount of bond for an appeal adequate to cover those estimated costs.	Sec. 822.0423(c-1), H.S.C.
❒ f. If the court finds a lack of compliance, it shall order the seizure of the dog and impound the animal in secure and humane conditions pending the owner's compliance. The owner has 10 days to comply with the requirements to own a dangerous dog. If the owner does not comply, on the 11th day after seizure, the court must order the humane destruction of the dog.	Sec. 822.042(e), H.S.C. See *TMCEC 2024 Forms Book*: Dangerous Dog Judgment: Owner Failed to Comply; and Seizure Warrant for Dangerous Dog: Owner Failed to Comply.

❒ g. If the court orders the seizure of the dog, but is unable to locate the owner, the court may order the humane destruction of the dog 15 days after the date of impoundment.	Sec. 822.042(f), H.S.C.
❒ h. Any order to destroy a dog is stayed for a period of 10 calendar days from the date the order is issued, during which period the dog's owner may file a notice of appeal.	Sec. 822.042(e-1)(1), H.S.C.
❒ i. The owner is liable for all fees or costs assessed for the seizure, acceptance, impoundment, or destruction of the dog.	Sec. 822.042(d), H.S.C. A city can enter into a contract for the collection of unpaid fines, fees, or court costs in civil cases. Sec. 140.009, L.G.C.
❒ j. The owner or person filing the action may appeal the municipal court's determination in the manner as described by Sec. 822.0424, H.S.C.	Sec. 822.0423(d), H.S.C.
❒ k. An owner who fails to comply with the requirements of Sec. 822.042, H.S.C., can also be charged with a Class C misdemeanor.	A person may be charged with a Class C misdemeanor for failing to comply with requirements unders Sec. 822.042, Sec. 822.0422(b), H.S.C., or other applicable regulations under an ordinance, and subsequent offenses are Class B misdemeanors. Sec. 822.045, H.S.C.

CHAPTER 17 ANIMALS

There are two avenues for protecting animals from cruel treatment under state law: criminal prosecution of the actor under the Penal Code, and the civil remedy to remove animals from the owners under Chapter 822 of the Health and Safety Code. These cases can be presented originally to a judge of a justice or municipal court or to a magistrate for a hearing in the justice or municipal court.

4. Disposition of Cruelly Treated Animals

Checklist 17-4	Script/Notes
Definitions:	Sec. 821.021(1), H.S.C. Sec. 21.09, P.C., prohibits bestiality.
"Cruelly treated" includes tortured, seriously overworked, unreasonably abandoned, unreasonably deprived of necessary food, care, or shelter, cruelly confined, or caused to fight with another animal, or subject to conduct prohibited by Sec. 21.09, Penal Code.	
"Magistrate" means any officer as defined in Article 2.09/2A.151, C.C.P., except that the term does not include justices of the supreme court, judges of the court of criminal appeals, or courts of appeals, judges or associate judges of statutory probate courts, or judges or associate judges of district courts that give preference to family law matters or family district courts unders Subchapter D, Chapter 24, G.C.	Sec. 821.0211, H.S.C.
"Owner" includes a person who owns or has custody or control of an animal.	Sec. 821.021(3), H.S.C.
❒ 1. Seizure of Cruelly Treated Animal(s):	Sec. 821.022, H.S.C.
❒ a A peace officer or an animal control officer may apply to municipal court in the municipality in which the animal is located for a warrant to seize the animal.	Sec. 821.022(a), H.S.C. See *TMCEC 2024 Forms Book*: Affidavit for Warrant to Seize Cruelly Treated Animal(s).
❒ b. On a showing of probable cause to believe that the animal has been or is being cruelly treated, the court shall issue the warrant and set a time within 10 calendar days for a hearing in the municipal court to determine whether the animal has been or is being cruelly treated.	Sec. 821.022(b), H.S.C. See *TMCEC 2024 Forms Book*: Seizure Warrant for Cruelly Treated Animal(s).
❒ c. The officer executing the warrant impounds the animal and must give written notice to the owner of the animal of the time and place of the hearing.	Sec. 821.022(c), H.S.C.

❒ 2. Hearing to Determine if an Animal has been Cruelly Treated:

❒ a. Each interested party is entitled an opportunity to present evidence at the hearing.

Sec. 821.023(c), H.S.C.
There is no definition of "interested party."

Sec. 821.023(a-1), H.S.C.
A finding in a court of competent jurisdiction that a person is guilty of an offense under Section 21.09, Penal Code (Bestiality), is prima facie evidence that any animal in the person's possession has been cruelly treated, regardless of whether the animal was subjected to conduct prohibited by Section 21.09, Penal Code.

❒ b. If the court finds that the animal's owner has cruelly treated the animal, the owner shall be divested of ownership of the animal, and the court shall:

Sec. 821.023(d), H.S.C.
See *TMCEC 2024 Forms Book*: Order: Cruelly Treated Animal(s) Hearing.

❒ (1) Order a public sale of the animal by auction;

❒ (2) Order the animal be given to a municipal or county animal shelter or a nonprofit animal welfare organization; or

"Nonprofit animal welfare organization" means a nonprofit organization that has as its purpose (A) the prevention of cruelty to animals; or (B) the sheltering of, caring for, and providing homes for lost, stray, and abandoned animals. Sec. 821.021(2), H.S.C.

❒ (3) Order the animal be humanely destroyed if the court decides that the best interests of the animal or the public health and safety would be served by doing so.

❒ c. After a court that finds that an animal's owner has cruelly treated the animal, the court shall order the owner to pay all court costs, including costs of:

Sec. 821.023(e), H.S.C.

❒ (1) the administrative costs of:

❒ (A) investigation;

❒ (B) expert witnesses; and

❒ (C) conducting any public sale ordered by the court; and

❒ (2) the costs incurred by a municipal or county animal shelter or a nonprofit animal welfare organization in:

❒ (A) housing and caring for the animal during its impoundment; and

❒ (B) humanely destroying the animal if destruction is ordered by the court.

❒ d. After a finding that an owner has cruelly treated the animal, the court shall determine the estimated costs likely to be incurred by a municipal or county animal shelter or a nonprofit animal welfare organization to house and care for the impounded animal during the appeal process.

Sec. 821.023(e-1), H.S.C.

❒ e. When entering the judgment, the court shall set an amount for an appeal bond equal to the sum of the costs ordered under Subsection (e) and the amount of estimated costs under Subsection (e-1).

Sec. 821.023(e-2), H.S.C.
The court may **not** require a person to provide a bond in an amount greater than or in addition to the amount determined by the court under subsection (e-2). Sec. 821.023(e-3), H.S.C.

The amount of court costs that a court may order and the amount of bond that a court determines are excluded in determining the court's jurisdiction under the Government Code. Sec. 821.023(e-4), H.S.C.

❒ f. The court may order that an animal subject to public sale or given to a municipal or county animal shelter or nonprofit animal welfare organization be spayed or neutered at the cost of the receiving party.	Sec. 821.023(f), H.S.C.
❒ g. The court shall order the animal returned to the owner if the court does not find that the animal's owner has cruelly treated the animal.	Sec. 821.023(g), H.S.C.
❒ 3. Sale or Disposition of Animal:	
❒ a. Notice of an auction must be posted on a public bulletin board where other public notices are posted for the county or municipality.	Sec. 821.024, H.S.C.
❒ b. At the auction, a bid by the former owner of a cruelly treated animal or the owner's representative may not be accepted.	
❒ c. Proceeds from the sale of the animal shall be applied first to any costs owed by the former owner. The officer conducting the auction shall pay any excess proceeds to the court ordering the auction. The court shall return the excess proceeds to the former owner of the animal.	
❒ d. If the officer is unable to sell the animal at auction, the officer may cause the animal to be humanely destroyed or may give the animal to a municipal or county animal shelter or nonprofit animal welfare organization.	
❒ 4. Appeal:	
❒ a. An owner divested of ownership of an animal under Sec. 821.023, H.S.C., may appeal the order to a county court or county court at law in the county in which the justice or municipal court is located.	Sec. 821.025(a), H.S.C. Notwithstanding any other law, a county court or county court at law has jurisdiction to hear an appeal filed under this section. Sec. 821.025(g), H.S.C.

❒ b. As a condition of perfecting an appeal, not later than the 10th calendar day after the date the order is issued, the owner must file a notice of appeal and a cash or surety bond in an amount determined by the court under Sec. 821.023(e-2), H.S.C.	Sec. 821.025(b), H.S.C. See *TMCEC 2024 Forms Book*: Appeal Bond: Cruelly Treated Animal(s) Case.
❒ c. A person filing an appeal is not required to file a motion for new trial to perfect an appeal.	Sec. 821.025(f), H.S.C.
❒ d. Not later than the fifth calendar day after the date the notice of appeal and bond is filed, the court shall deliver a copy of the clerk's record to the county court or county court at law to which the appeal is made.	Sec. 821.025(c), H.S.C.
❒ e. Not later than the 10th calendar day after the date the county court or county court at law receives the record, the court shall consider the matter de novo and dispose of the appeal. A party is entitled to a jury trial on request.	Sec. 821.025(d), H.S.C.
❒ f. The decision of the county court or county court at law under this section is final and may not be further appealed.	Sec. 821.025(f), H.S.C.
❒ g. While an appeal under this section is pending, the animal may not be:	Sec. 821.025(h), H.S.C.
❒ (1) sold or given away as provided by Secs. 821.023 and 821.024, H.S.C.; or	
❒ (2) destroyed, except under circumstances which would require the humane destruction of the animal to prevent undue pain to or suffering of the animal.	

CHAPTER 18 EXPUNCTIONS (CHAPTER 55/55A, C.C.P.)

Chapter 55 of the Code of Criminal Procedure allows an acquitted person and certain others to petition for an expunction of criminal records. Prior to the 85th Legislature, only district courts had jurisdiction to accept these petitions. The ability to order expunctions in municipal courts was considerably more restrained, generally limited to certain juvenile convictions or dismissals. An individual that was acquitted or that had charges dropped for a Class C misdemeanor in a municipal court had to file an expunction petition in district court. In an effort to ease the administrative burden on the persons seeking such an order, H.B. 557 (2017) created concurrent jurisdiction for the expunction of Class C misdemeanors between district court, municipal courts of record, and justice courts. Notably absent from courts given expunction authority under Chapter 55 are non-record municipal courts. Effective January 1, 2025, Chapter 55 will become 55A with re-organized and re-numbered provisions (See H.B. 4504, 88th Legislative Session). Statutory references in this chapter reflect the current citation in Chapter 55 and the future citation in Chapter 55A.

1. Chapter 55/55A Expunction in Municipal Courts of Record

Checklist 18-1	Script/Notes
❒ 1. A municipal court of record may expunge all records and files relating to the arrest (in the county) of a person under the procedure established under Article 55.02/55A.201 if:	Art. 55.02/55A.201, C.C.P.
❒ a. A person charged with a fine-only misdemeanor is acquitted by the trial court;	Art. 55.01(a)(1)(A)/55A.002, C.C.P. If the offense arose out of a criminal episode, and the person was convicted of or may still be prosecuted for another offense during the criminal episode, then the person is not eligible for expunction. Art. 55.01(c)/55A.151, C.C.P. See *TMCEC 2024 Forms Book*: Admonishment for Expunction on Acquittal.
❒ b. A person convicted of a fine-only misdemeanor is subsequently pardoned, including on the basis of actual innocence;	Art. 55.01(a)(1)(B)/55A.003, 55A.004, C.C.P.
❒ c. A person charged with a fine-only misdemeanor is released, has no final conviction, and a charge is no longer pending;	Art. 55.01(a)(2)/55A.051, C.C.P.

❒ d. A person is tried and convicted of a fine-only misdemeanor and acquitted by the Court of Criminal Appeals, court of appeals, or if before trial expunction is recommended by the prosecutor; or

Art. 55.01(b)/55A.101, C.C.P.

❒ e. A person complies with an order of deferred disposition, and the complaint is dismissed.

Art. 45.051(e)/45A.305(d), C.C.P.

❒ 2. After acquittal, the trial court should notify the acquitted of expunction.

See *TMCEC 2024 Forms Book*: Admonishment for Expunction on Acquittal and Order of Expunction. Art. 55.02. Sec. 1 /55A.201(b), C.C.P.

While no petition is required, the requesting party must provide all of the information required of a petition to the court. See the list in Step 4 below.

❒ a. Expunction can be requested in the trial court by either the defendant or the prosecutor.

❒ (1) If the defendant requests expunction, the prosecutor must be notified.

❒ (2) If the prosecutor requests expunction, the acquitted person must consent.

❒ b. If the defendant has an attorney, the attorney must prepare the expunction order. For pro se defendants, the prosecutor shall prepare the order for the court's signature.

❒ c. Upon request of the acquitted person, an order of expunction shall be entered not later than the 30th day after the date of acquittal.

❒ 3. A person requesting expunction under Chapter 55/55A for a fine-only misdemeanor (other than after acquittal in the trial court) must file a petition for expunction in a district court, a justice court, or a municipal court of record in the county in which:

Art. 55.02, Secs. 2(a) and (a-1) /55A.252, C.C.P.

Additionally, an ex parte petition may also be filed by a Department of Public Safety representative. Art. 55.02, Sec. 2(e)/55A.257, C.C.P.

❒ a. The petitioner was arrested; or

❒ b. The offense was alleged to have occurred.

❒ 4. A petitioner seeking expunction shall pay a fee of $100 for filing a petition for expunction to defray the cost of notifying state agencies of orders of expunction.

Art. 102.006(a-1), C.C.P.

❒ a. The fee shall be waived if the petitioner seeks expunction for an offense of which the person was acquitted, and the petition is filed not later than the 30th day after the date of acquittal.

Art. 102.006(b), C.C.P.

❒ 5. A petition must be verified and include the following or an explanation for why one or more of the following is not included:

Art. 55.02 Sec. 2(b)/55A.253, C.C.P. A verified petition is one that is confirmed or substantiated by oath. *Black's Law Dictionary*.

❒ a. The petitioner's:

❒ (1) Full name;

❒ (2) Sex;

❒ (3) Race;

❒ (4) Date of birth;

❒ (5) Driver's license number;

❒ (6) Social security number; and

❒ (7) Address at the time of arrest;

❒ b. The offense charged against the petitioner;

❒ c. The date the offense charged was alleged to have been committed;

❒ d. The date of arrest;

❒ e. The name of the county where the petitioner was arrested and if the arrest occurred in a municipality, the name of the municipality;

❒ f. The name of the agency that arrested the petitioner;

❒ g. The case number and court of offense; and together with the applicable physical or e-mail addresses, a list of all:

❒ (1) Law enforcement agencies, jails or other detention facilities, magistrates, courts, prosecuting attorneys, correctional facilities, central state depositories of criminal records, and other officials or agencies or other entities of this state or of any political subdivision of this state;

❒ (2) Central federal depositories of criminal records that the petitioner has reason to believe have records or files that are subject to expunction; and

❒ (3) Private entities that compile and disseminate for compensation criminal history record information that the petitioner has reason to believe have information related to records or files that are subject to expunction.

❒ 6. The court shall set a hearing no sooner than 30 days from the filing of the petition and shall give each official or agency or governmental entity named in the petition reasonable notice of hearing by:

Art. 55.01 Sec. 2(c)/55A.254, C.C.P. See *TMCEC 2024 Forms Book*: Notice of Expunction Hearing.

❒ a. Certified mail, return receipt requested; or

❒ b. Secure electronic mail, electronic transmission, or facsimile transmission.

❒ 7. If the court does not find that the petitioner is entitled to expunction, enter an order denying expunction.

See *TMCEC 2024 Forms Book*: Order Denying Expunction.

❒ 8. If the court finds that the petitioner is entitled to expunction of any records and files that are the subject of the petition, enter an order of expunction.

Art. 55.01 Sec. 2(c)/55A.255, C.C.P. See *TMCEC 2024 Forms Book*: Order of Expunction.

❒ 9. When the order of expunction is final, the clerk of the court shall send a certified copy of the order to the Crime Records Service of the Department of Public Safety and to each official or agency or other governmental entity of this state or of any political subdivision of this state named in the order. The certified copy of the order must be sent by secure electronic mail, electronic transmission, or facsimile transmission or otherwise by certified mail, return receipt requested. In sending the order to a governmental entity named in the order, the clerk may elect to substitute hand delivery for certified mail under this subsection, but the clerk must receive a receipt for that hand-delivered order.	Art. 55.02 Sec. 3(c)/55A.351, C.C.P.
❒ 10. If an order of expunction is issued under this article, the court records concerning expunction proceedings are not open for inspection by anyone except the person who is the subject of the order unless the order permits retention of a record. The clerk of the court issuing the order shall obliterate all public references to the proceeding and maintain the files or other records in an area not open to inspection.	Art. 55.02 Sec. 5(c)/55A.356, C.C.P.
❒ 11. Except in the case of a person who is the subject of an expunction order on the basis of an acquittal, the clerk of the court shall destroy all the files or other records maintained not earlier than the 60th day after the date the order of expunction is issued or later than the first anniversary of that date unless the records or files were released.	Art. 55.02 Sec. 5(d)/55A.356(c), C.C.P.
❒ 12. Not later than the 30th day before the date on which the clerk destroys files or other records, the clerk shall provide notice by mail, electronic mail, or facsimile transmission to the attorney representing the state in the expunction proceeding. If the attorney representing the state in the expunction proceeding objects to the destruction not later than the 20th day after receiving notice under this subsection, the clerk may not destroy the files or other records until the first anniversary of the date the order of expunction is issued or the first business day after that date.	Art. 55.02 Sec. 5(d-1) /55A.356(d), C.C.P.
❒ 13. The clerk shall certify to the court the destruction of files or other records under Subsection (d) of this section.	Art. 55.02 Sec. 5(e)/55A.356(e), C.C.P. See *TMCEC 2024 Forms Book:* Certification of Destruction of Records Subject to Expunction Order.

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