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## INSIDE THIS ISSUE

### Clear as Mud:

*Ex Parte Clear* and the Need for Legislative Clarification  
of Procedures Pertaining to Magistrate Duties in Texas

Hon. Stephen Vigorito and Hon. Ryan Kellus Turner

Page 3



Check out the  
CHAPTER 45A, CCP  
Conversion Chart at the  
TMCEC Online Store

Page 20

### Railroad Law & Safety

Elizabeth De La Garza,  
TxDOT Grant Administrator  
Ned Minevitz, Program Attorney &  
Senior TxDOT Grant Administrator

Page 13

### Impaired Driving Symposium

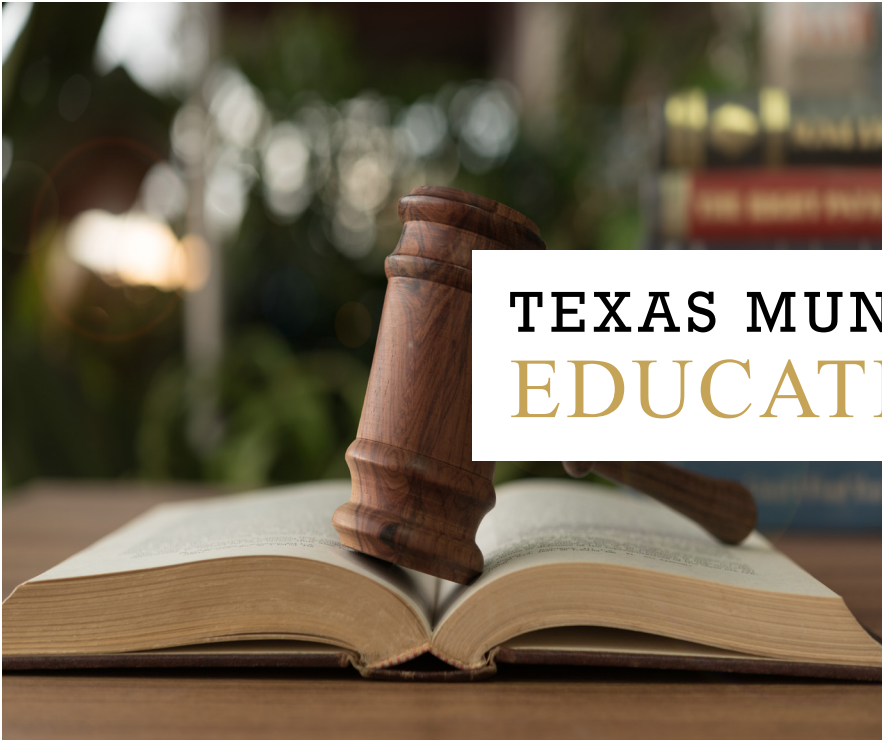
August 1-2, 2024 - College Station

Page 5

### C3 Fines and Fees Forum

October 3, 2024 - Waco

Page 11



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# CLEAR AS MUD: EX PARTE CLEAR AND THE NEED FOR LEGISLATIVE CLARIFICATION OF PROCEDURES PERTAINING TO MAGISTRATE DUTIES IN TEXAS



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In the last few years, the Texas bail system has been the subject of considerable scrutiny by policy makers, judges, interest groups, and the public. On the one hand, efforts have been made to ensure that the bail system takes into consideration the limited financial resources of the accused when setting bail. At the same time, the Texas Legislature passed a statute (S.B. 6) requiring that a defendant’s criminal history be taken into account when considering bail and prohibiting personal bonds in certain cases involving violence. These measures highlight the challenges involved in attempting to fashion a bail system that both preserves the rights of the accused to a fair trial while also protecting the safety of the community.

One area that is arguably in need of legislative attention is the unusual legal regime represented by *Ex parte clear*,<sup>1</sup> a Texas Court of Criminal Appeals case that governs which judges can change bail amounts and bond conditions after the initial setting of bail following arrest. The Court held that only the court which initially sets bail in a criminal case may modify that bail amount or the conditions of release during the initial stages of a case—a period that can last for months. This can be an important concern, particularly where information comes to light after the initial setting of bail that suggests the bail amount should be reconsidered. It also can be controversial where very serious felony charges are involved and the felony trial court judge pre-assigned to the case disagrees with the initial bail set by a local magistrate such as a justice of the peace or municipal judge.

This article will examine the current prevailing legal doctrine of *Ex parte clear* governing the authority of judges to change bail amounts and bond conditions initially set by a magistrate.<sup>2</sup> It will also include some observations

about the legal coherence and practical application of this doctrine and offer some ideas on ways that the Texas Legislature can bring needed clarity in this area to more effectively accomplish the goals of the criminal justice system.

## **I. Texas Landscape for Dealing with Persons upon Arrest**

### **A. What Is Magistration?**

When a person is arrested, Texas law requires that the person be brought before a magistrate within 48 hours of arrest to inform the person of the charges against him, notify him of his rights under the Constitution (popularly known as *Miranda* rights), and set appropriate bail amounts and bond conditions governing release from jail.<sup>3</sup> Texas law contains no specific term or phrase for the presentation of the accused before a magistrate after arrest. The lack of a statutory term has resulted in the use of various terms (e.g., magistration, 15.17 hearing). In 2008, the U.S. Supreme Court in *Rothgery v. Gillespie County* noted this lack of a formal term for what the parties acknowledged as “magistration.”<sup>4</sup>

During magistration, the judge conducting the proceeding will review a “complaint” submitted by a law enforcement officer which details the legal basis of the arrest and the circumstances surrounding the offense. This complaint (often called a “probable cause affidavit”) is the initial document charging a person with a crime.<sup>5</sup> It is generally filed by the arresting officer with the magistrate who conducts the magistration, or in cases of a warrant, with the court which issued the warrant.

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After reviewing the complaint and affidavit and considering the criminal record, financial resources, citizenship status, and bond compliance history of the accused, the magistrate will set an appropriate bail amount and issue bond conditions governing the behavior of the accused while out on bail (e.g., GPS monitor, random drug testing, protective orders).<sup>6</sup> The magistrate will also decide on whether to release the accused on a personal bond—a bond which does not require the posting of any money prior to release and is based on the accused’s promise to appear in court.<sup>7</sup>

## **B. Regional Variations**

Magistration is done in a multitude of ways in Texas’ 254 counties. This diversity depends on many factors such as the size of the county, the routine number of arrests made daily, whether it is a rural or urban area, the distance between the city where the person is arrested and the county seat where the jail is located, and the resources that may be available to assist the judge in his or her decisions.

Perhaps the greatest diversity involves *which judges* conduct magistration in a particular county. A county may use county or district court judges, justices of the peace, municipal judges of municipalities within the county, special magistrate judges or hearing officers appointed by the county or district courts, or a combination thereof. Article 2.09 of the Code of Criminal Procedure identifies which public officials are magistrates.<sup>8</sup> It mostly consists of judicial officers with a few notable exceptions, including mayors.

In many counties, a justice of the peace will conduct magistration for all arrests within their jurisdiction. Those who are not granted a personal bond or who otherwise do not post bail are handed over to the county jail to await their court dates. In other locales, a municipal judge will magistrate all persons arrested within that municipality’s city limits, set bonds on their cases, and transfer persons who have not posted bond promptly to the appropriate county jail. Finally, some counties may have the county or district judges rotate in conducting magistration for persons arrested in their county. Usually, these are less populated jurisdictions where the number of persons arrested on a particular day is low enough that magistration can be conducted daily before or after regular trial court dockets.

The frequency of arrests matters. In some smaller municipalities and in less-populated counties, a judge may come to the city or county jail each morning to magistrate people arrested in the previous 24 hours. In more populated areas, magistration hearings may be conducted all day. In

the largest cities, magistration occurs 24 hours per day, seven days a week, due to the high number of arrests that occur each day.

There are also variances in terms of the methods and personnel involved in the magistration process. Some counties conduct in-person magistration where the judge and the person arrested are both present in a courtroom whereas others may conduct magistration by videoconference.<sup>9</sup> In terms of obtaining criminal background information, most jurisdictions’ resources are limited to accessing the Public Safety Report provided by the Office of Court Administration.<sup>10</sup> However, some counties, mostly in urban areas, have pretrial service offices that conduct comprehensive criminal record checks and report on whether the person has a history of compliance or non-compliance with bond conditions. A pretrial service office may also contact victims in domestic violence cases to assist the judge in determining whether a magistrate’s order of emergency protection or other bond conditions are necessary.

Through legislative enactments, some jurisdictions have made decisions to disperse their judicial resources in ways that uniquely fit the needs of that jurisdiction and the considerable number of arrests. Harris County, for example, has “criminal law hearing officers” with delegated responsibility from the district and county courts to conduct all magistration in the county.<sup>11</sup> Other localities utilize interlocal agreements. For example, in Travis County, the Austin municipal judges staff the Travis County jail 24 hours per day and conduct magistration on all persons arrested within the county, regardless of whether the arrest occurred in the Austin city limits.

## **C. Questions Regarding Authority to Modify Bail**

Variations among counties relating to who conducts magistration raise important questions about who has the authority to modify bail amounts and bond conditions after the initial setting of bail. This is because in many instances (perhaps most), the official who magistrates the defendant and sets bail is not a judge of a court that will have trial court jurisdiction over the merits of the criminal charge. Rather, the magistrate is often a justice of the peace or municipal judge assigned to perform magistration duties for all arrests within the city or county, no matter how serious the charge. The complaint/affidavit submitted by the law enforcement officer initially charging the offense will remain pending before this magistrate until a more formal charging instrument (such as a grand jury indictment or information) is officially filed by the local prosecutor in a county or district court with trial court jurisdiction over the

case—a period that can last weeks, months, or even years.

During this time, prosecutors, defense attorneys and judges often seek to revisit the bail amount and bond conditions initially set in the case. The accused after being released on bail may have failed to comply with bond conditions, threatened an alleged victim or witness in the case, or is arrested on different charges. The accused may feel that the bail amount is too high and arguably oppressive because of his or her limited financial resources. Even the trial court judge where the case has been pre-assigned may wish to make modifications of the bail amount on his or her own motion. However, as will be further explained, under current precedent of the Texas Court of Criminal Appeals, the court where the criminal complaint (or “probable cause affidavit”) is initially filed at the time of arrest or issuance of a warrant will generally be the only court that can make needed changes to bond amounts and bond conditions during this initial period.

Such jurisdictional concerns are neither problematic nor controversial in cases where the complaint is filed directly in the county or district court with trial court jurisdiction over the case and where that same court conducts the magistration of the accused after arrest. However, in instances where the initial complaint establishing probable cause is filed with a municipal judge or justice of the peace acting as a magistrate, confusion can arise regarding which judges have jurisdiction to modify bail amounts and bond conditions in the initial stages of the case. This can be a

particularly controversial subject in certain felony cases and in offenses involving violence where the judge with trial court jurisdiction over a charge disagrees with the initial bail amount or bond conditions set by the magistrate.

## II. *Ex parte Clear* and its Progeny

### A. *Ex parte Clear*

The seminal Court of Criminal Appeals case addressing the subject of magistrate jurisdiction over bail amount and bond condition modifications is the 1978 case, *Ex parte Clear*.<sup>12</sup> In *Clear*, a felony complaint requesting an arrest warrant was filed in Justice of the Peace Court Precinct 2 in Harris County accusing the defendant, David Clear, of the offense of Assault on a Peace Officer. In his capacity as a magistrate, the justice of the peace issued a warrant for Clear’s arrest and set bail at \$1,000. The defendant was arrested a couple of days later, brought before the justice of the peace for a probable cause hearing and magistration, and released after posting a bail bond.

The next day, Clear appeared before Judge George L. Walker, presiding judge of the 185th District Court of Harris County, for a “48-hour hearing.” This hearing was required to be conducted by order of the district judges of Harris County in all felony arrests pre-assigned to a district court. The principal stated purpose of the hearing was “to review and set bonds and appoint attorneys in felony case complaints.”<sup>13</sup> This involved inquiring into whether the accused had obtained legal representation, and in cases

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where the accused had not retained an attorney and was not indigent, admonishing to promptly retain counsel.

Clear appeared at this hearing without an attorney. Judge Walker adjourned the hearing until the following day and instructed Clear to return at that time with retained counsel. The following day, Clear appeared again without counsel. The record reflects that Judge Walker's perception was that Clear was not earnestly seeking to hire an attorney and was making light of the court's admonitions to retain counsel. Reasoning that the accused was not taking the charge and the court's admonitions seriously, Judge Walker determined that Clear was unlikely to appear in court as required. The judge revoked the \$1,000 bond, raised the bail to \$2,000, and immediately ordered Clear to be taken into custody.

Clear posted the higher bond and subsequently filed a writ of habeas corpus with the Court of Criminal Appeals arguing that District Judge Walker was without jurisdiction to revoke his bond and that Clear had been illegally confined. Clear requested the Court to issue an order prohibiting Judge Walker and all other Harris County criminal district judges from interfering with the pre-indictment jurisdiction of the Harris County justice court. The case thus squarely presented to the Court the question of which judges have jurisdiction to modify bail amounts after a magistrate initially sets them.

The Court of Criminal Appeals took note of Article 2.09 of the Code of Criminal Procedure which lists various judges who can serve as a "magistrate" in Texas.<sup>14</sup> This list includes, among others, all district and county judges, justices of the peace, and judges of incorporated cities and towns. The Court drew a distinction between a judge's trial court jurisdiction, which may differ among different courts, and a judge's magistrate duties to deal with preliminary issues such as issuing arrest warrants, setting bail amounts, and conducting magistrations hearings.

Specifically, the Court noted that previous precedent held that when a justice of the peace functions as a magistrate as opposed to a trial court, their functions and the rules governing their conduct are the same as any other judge serving as a magistrate, and their jurisdiction is coextensive with the limits of the county.<sup>15</sup> In other words, though a district judge, county judge, justice of the peace, or municipal judge may differ sharply in their trial court jurisdiction within a county, these judges all share the same duties and functions when functioning as magistrates regardless of the seriousness of the charge.

The Court stated that "all the magistrates of a given county

have co-equal jurisdiction." Thus, in Clear's case, the Court held that "a justice of the peace acting as a magistrate has jurisdiction concurrent with that of a district judge who also seeks to exercise magisterial powers."<sup>16</sup>

To resolve the remaining question of whether the district judge had jurisdiction to change the bail amount set by the justice of the peace, the Court rested its decision on Article 4.16 of the Texas Code of Criminal Procedure. That article states:

"When two or more courts have concurrent jurisdiction of any criminal offense, the court in which an indictment or a complaint shall first be filed shall retain jurisdiction, except as provided in Article 4.12."

The Court observed that, in Clear's case, the criminal complaint was first filed in the Justice of the Peace Court Precinct 2 and that same justice court also magistrated Clear after his arrest. Accordingly, applying Article 4.16, the justice court obtained "sole jurisdiction" of the complaint to the exclusion of all other courts until such time as the complaint was either dismissed or was superseded by an indictment of the grand jury. Thus, in Clear's case, the district judge had no jurisdiction to revoke the bond or change the bond amount until an indictment was filed in his court by the grand jury.<sup>17</sup> Until that time, the justice of the peace had sole authority to amend the bail amount.

Thus, *Ex parte Clear* establishes the general rule governing jurisdiction of judges to change bail amounts set by a magistrate. When a court exercises jurisdiction over a case through the filing of a complaint and the magistration of the defendant, that court has sole jurisdiction over any changes in the bail amount until a charging instrument is filed in a court with trial court jurisdiction (i.e., a "complaint" in a municipal or justice court, an "information" in a county court, or an "indictment" in a district court).<sup>18</sup>

### **B. *Guerra v. Garza*: The Reaffirmation of *Ex parte Clear***

Nearly 21 years later, in 1999, the Court of Criminal Appeals was presented with a case reminiscent of *Ex parte Clear*, but with starkly different facts. In *Ex parte Clear*, a district judge raised the bail amount set by a justice of the peace acting as a magistrate and had the accused rearrested. In *Guerra v. Garza*,<sup>19</sup> a statutory county judge changed the status of bonds set by a municipal judge acting as a magistrate and had county inmates awaiting formal charges released on personal bonds. The case reaffirmed the principles laid down in *Ex parte Clear* and provides additional insight into the Court's rationale for its holding.

To address the county's chronic jail over-crowding

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problem, Hidalgo County Judge Homero Garza routinely conducted “bail review” hearings at the jail every Friday to review the circumstances of inmates who had been incarcerated for ten days or more and were unable to post bail. In certain circumstances where he deemed release appropriate, Judge Garza changed the bond status from surety to personal bonds and ordered release. Hidalgo County District Attorney Rene Guerra argued to the Court of Criminal Appeals that this practice exceeded Judge Garza’s lawful authority.

Though the Court of Criminal Appeals found Judge Garza’s motives laudable, his actions were deemed premature. Citing *Ex parte Clear*, the Court reaffirmed its general rule that, where a court has already exercised magistrate jurisdiction over a case, that court retains sole authority to make changes until a charging instrument is filed in the trial court.<sup>20</sup> Accordingly, Judge Garza had no jurisdiction to change the bonds already set by the municipal judge acting in his capacity as a magistrate. In explaining its decision, the Court stated that if it were to ratify Judge Garza’s actions, “it could lead to a chaotic bail system, where unilateral, unbidden judicial actions abound, where all judges have jurisdiction over all things at all times, and where forum shopping to reduce or increase bail amounts flourishes.”<sup>21</sup>

### III. *Ex parte Clear* Is Problematic in Theory and Practice

#### A. The Vesting of Jurisdiction

The Court in *Ex parte Clear* attempted to harness Article 4.16 of the Code of Criminal Procedure to establish a simple and straightforward bright-line rule regarding the exclusive vesting of magistrate jurisdiction. Article 4.16 is unambiguous that when two or more courts have concurrent jurisdiction of any criminal offense (as is the case with all the magistrates within a county for arrests in that county), “the court in which an indictment or a complaint shall first be filed shall retain jurisdiction” to the exclusion of all other courts.

Unfortunately, applying *Ex parte Clear* in actual magistrations scenarios often leads to significant problems. This is because, at least in cases involving arrest warrants, the court where the complaint is first filed is often—perhaps usually—not the court that conducts the magistrations. A discussion of the procedures involving arrest warrants is instructive.

In a particular county, any number of judges acting as magistrates may issue warrants of arrest for criminal offenses, from district and county judges to municipal

judges and justices of the peace.<sup>22</sup> They do so when a law enforcement officer appears before them and submits a complaint (more commonly referred to as a “probable cause affidavit”) swearing to facts showing the commission of a criminal offense.<sup>23</sup> The complaint is generally filed in the court issuing the warrant. Thus, in a typical Texas county, the criminal complaints incorporated in the arrest warrant application may be filed in either a district court, county court, justice court, or municipal court in that county and will generally be assigned their own case numbers unique to that court.

However, once a person is arrested on that warrant, they will generally be brought before a magistrate who regularly conducts most or all the magistrations hearings in the city where the arrest was made or at the central booking facility or detention center appurtenant to the county jail.<sup>24</sup> The judge who sets bonds on these cases may not be a judge of the court that issued the warrant. In a particular county, for instance, a justice of the peace may arrive at the county jail every morning to conduct magistrations of all persons arrested in the county the previous day, regardless of what court originally issued the arrest warrant. In Travis County, for example, the Austin municipal judges staff the county central booking facility and set bonds on nearly all arrests, whether by warrant or otherwise, regardless of which judge within the county issued the warrant.

Thus, as a matter of day-to-day practice, the judge acting as a magistrate who officially sets bail on warrant arrests is often not the judge of the court where the original complaint and arrest warrant is filed. And this is understandable. Consider the potential chaos if every court in a county had to dispatch one of its judges to the local jail seven days a week to magistrate defendants arrested on its warrants. In larger counties, such as Dallas County or Travis County, with thousands of outstanding warrants from multiple courts, this would be an administrative quagmire. Moreover, meeting the 48-hour deadline to conduct magistrations<sup>25</sup> would be a challenge, particularly on weekends, potentially resulting in unnecessary delays affecting the due process of arrested persons.

Interestingly, the Court in *Ex parte Clear* makes room for this distinction between the court where the complaint is filed and the court which conducts the magistrations hearing but resolves the distinction in an unexpected manner. The Court explicitly emphasizes the difference between jurisdiction that vests at the time of the filing of the complaint (what it calls “subject matter jurisdiction”) and jurisdiction that vests at the time the accused appears before a magistrate for a hearing after arrest (“jurisdiction over the person”).<sup>26</sup> However, the Court declares that

Article 4.16 “is concerned primarily with jurisdiction over the person (rather than subject matter jurisdiction)” and that, in *Clear*’s case, jurisdiction vested with the justice court when *Clear* “appeared first before that court” after arrest, not when the complaint was filed.<sup>27</sup>

Hence, in *Clear*, the gravamen of jurisdiction is not which court first received a filed complaint (though that is what Article 4.16 states), but which court conducts the magistration hearing after arrest. Perhaps to further drive home this point, the Court cites a case from 1928 where a person had a complaint for the same charge filed against him in two different courts in the county, one filed two days after the other.<sup>28</sup> The Court upheld the conviction in the court which had the later-filed complaint, observing that it was this court that first successfully arrested the accused and therefore exercised not only jurisdiction over the complaint but also jurisdiction over the person.<sup>29</sup>

The bright-line rule entailing Article 4.16 in *Ex parte Clear* is arguably not clear at all in either theory or practice. At best it is opaque. This is in part due to the conflation of subject matter jurisdiction with jurisdiction over the person in the Court’s opinion, as well as the realities of arrest and magistration of defendants on the ground level, particularly in heavily populated jurisdictions. The statute utilized in *Clear* to determine magistrate jurisdiction simply is not written in a way to address the nuances that tend to uniquely arise in the magistration context.

This leads to a more fundamental observation about the *Ex parte Clear* line of cases: They rely on a statute that was never designed to deal with magistrate jurisdiction at all, and thus, the jurisprudence is rooted in a statute that is incapable of accounting for the meaningful nuances and policy goals relevant to magistrate jurisdiction.

## **B. Article 4.16 and Trial Court Jurisdiction**

When the Court in *Ex parte Clear* was faced with the controversy over whether a district judge could modify a bail amount set by a justice of the peace, there was no Texas statute that explicitly addressed the issue of magistrate jurisdiction. The only statute that conceivably addressed situations where two criminal courts share concurrent jurisdiction was (and still is) Article 4.16 of the Code of Criminal Procedure. Hence, the Court of Criminal Appeals harnessed that provision to guide its resolution of the case. However, Article 4.16 is clearly about *trial court jurisdiction*, not magistrate jurisdiction. Consequently, the statute is not capable of effectively accounting for the nuances of the Texas magistration process.

Chapter 4 of the Code is titled, “Courts and Criminal Jurisdiction.” Articles 4.03 and 4.04 establish the appellate jurisdiction of the Courts of Appeals and Court of Criminal Appeals. Articles 4.05-4.10 address the original trial court jurisdiction and limited appellate jurisdiction of the county and district courts. Articles 4.11-4.13 and 4.15 deal with the trial court jurisdiction of justice courts, and Article 4.14 addresses the trial court jurisdiction of municipal courts. None of these statutes address the duties or jurisdiction of magistrates.

There are some instances where the previously listed articles grant concurrent jurisdiction in criminal cases, and these instances all relate to shared trial court jurisdiction between justice courts and municipal courts over fine-only offenses.<sup>30</sup> Article 4.16 establishes the rule governing how such concurrent jurisdiction should operate. Specifically, in cases where concurrent jurisdiction exists, “the court in which an indictment or complaint shall first be filed shall retain jurisdiction...” This rule is necessary to enable courts to identify when a court vests jurisdiction over a case and to ensure that a defendant does not face trial on the same criminal charge for the same criminal episode in multiple courts.

Thus, Article 4.16 appears solely designed to govern instances where two courts share original *trial court jurisdiction* over a case. There appears to be no intent on the part of the Legislature for Article 4.16 to speak to the administration of magistrate duties that these various court judges share as part of their designation as magistrates in Article 2.09—duties which are addressed comprehensively in other parts of the Code of Criminal Procedure.<sup>31</sup>

At the same time, it is easy to understand why the Court of Criminal Appeals in *Ex parte Clear* and its progeny latches on to Article 4.16 for guidance in resolving magistrate jurisdiction disputes. After all, the Code of Criminal Procedure is silent on how to resolve disputes where all the judges of a particular county share magistrate duties over criminal charges in that county. In the absence of legislation, the Court was left with no other statutes to provide guidance, and Article 4.16 at least provided some relevant principles.

Moreover, Article 4.16 embodies the Legislature’s intent to ensure that multiple courts are not presiding over the same criminal charges at the same time and functioning in conflict with one another. The Court of Criminal Appeals shares these very same concerns with respect to the conduct of magistrate duties. As the Court stated in *Guerra v. Garza*, a system “where all judges have jurisdiction over all things at all times, and where forum shopping



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to reduce or increase bail amounts flourishes” is simply “unacceptable.”<sup>32</sup>

While the Court’s interpretation of Article 4.16 may help prevent forum shopping in the magistrate context, the statute is designed to address conflicts between two courts who share trial court jurisdiction over a particular charge (i.e., concurrent jurisdiction). A bright line rule granting sole jurisdiction to the “court where the complaint is first filed” makes sense in the trial court context. Consider municipal and justice courts which have concurrent trial court jurisdiction of most Class C misdemeanors and where the “complaint” operates as a charging instrument that vests trial jurisdiction (similar to an indictment in felony case). Once such a charging instrument is filed in either a municipal or justice court, the prosecutor can see that case to its conclusion in that court.

But the same is not true in the magistration context. The court where the complaint (for arrest) is filed and where the magistration of the accused is conducted is often not the court that conducts the trial on the merits. Rather, the case remains in a “holding pattern” before a magistrate while a prosecutor decides whether to seek a grand jury indictment or otherwise file formal charges in a trial court. In the meantime, important interests may arise relating to the bail amount and bond condition modifications, concerns that may have considerable bearing on the due process rights of the accused as well as the safety of the community. Article 4.16 and its application in *Ex parte Clear* fails to adequately address these interests in a manner that efficiently and effectively meets the goals of the criminal justice system.

#### **IV. Obstacles to Effective Oversight of Pending Criminal Cases**

*Ex parte Clear* has arguably imposed unnecessary restraints on a county’s ability to efficiently oversee pending criminal cases. In some instances, it has hampered the very courts that possess the expertise and resources to best ensure that bail-related matters adequately address both public safety concerns and the due process rights of defendants. A discussion of the procedural realities of how bail and bond conditions are modified at the trial court level is instructive.

After a person is arrested, there is a period during which the case is pending before the magistrate while the local prosecutor determines whether to file a formal charging instrument. In some Texas counties, the case is “pre-assigned” to a court with trial court jurisdiction even before a charging instrument is filed. For instance, a district court

may have a docket of unindicted cases pre-assigned to it. Defendants may be required to appear periodically before the district court, and in some instances, cases are resolved through plea negotiations even before an indictment is filed. The same process applies to county courts presiding over Class A and Class B misdemeanors.

Prior to formal charging, important interests may arise that require the court’s attention. These include concerns of prosecutors about public safety and the pre-trial compliance of the accused with bond conditions, concerns of the defense bar where new information might justify reducing the bail amount so a defendant can more easily bond out of jail, and concerns of trial court judges that the bail amount or bond conditions set by the initial magistrate in cases pre-assigned to their court are insufficient or overly restrictive. However, trial courts are often hampered in their ability to respond to these concerns because, under *Ex parte Clear*, jurisdiction to make needed changes rests with the judge that conducted the magistration.

This is problematic from a criminal justice policy perspective because often trial courts are better equipped for the task. District courts, for example, regularly preside over violent offenses, drug offenses, and serious sexual assault cases. Prosecutors and defense attorneys specializing in these types of cases practice daily before these courts and can offer vital information that may have bearing on the pretrial status and conditions of a defendant. Pretrial services officers who monitor defendants out on bond have routine contact with the trial court and can provide up-to-date information about whether a defendant has complied with conditions of release such as random drug testing, vehicle alcohol-monitor installations, GPS monitors, etc. They can also update the court when a defendant is re-arrested on other charges and when concerns over the safety of alleged victims arise.

Certainly, the information at the disposal of the district court can be passed on to the judges performing magistrate functions. However, fostering a prompt flow of information and arranging for all interested parties to appear before a magistrate to address a bail matter can be challenging. In many instances, the judge with magistrate jurisdiction has offices outside the county courthouse. Indeed, sometimes the judge who conducted the original magistration may be in an entirely different city on the other side of the county.

Over the years, counties have made various arrangements to manage these challenges, such as conducting Zoom meetings, conference calls, or group email chains where magistrates can receive input from all parties. However, given the easy access to information and routine daily

proximity of the trial court to all interested parties, bail-related matters may be more efficiently and effectively overseen by the trial court pre-assigned to the case while awaiting the filing of a formal charging instrument.

This centralization and specialization of trial court personnel is perhaps best illustrated in the domestic violence context. Some counties have specially designated courts to manage domestic violence cases and the attendant bond conditions and protective orders that so often arise in such cases. These courts often have prosecutors and judges with specialized training and experience in domestic violence, as well as social workers trained to interact with alleged victims and provide feedback on victim safety concerns. This can be particularly helpful in the initial stages of a domestic violence case, where prosecutors have concerns about witness intimidation or repeated violations of “stay away” orders, or where the accused is seeking the removal of bond conditions to accommodate reconciliation. However, *Ex parte Clear* will often require that these bail-related matters be addressed by another magistrate who does not have such resources readily available. As a result, when this happens, the judicial system potentially operates as an obstacle to the efficient and effective oversight of sensitive cases.

## V. Past Legislative and Local Fixes

Over the years, some counties have sought to address the problems created by *Ex parte Clear* through legislation. For example, Harris County successfully lobbied the Texas Legislature to pass a statute that enabled them to create a centralized magistrate court with delegated authority from the district and county judges to conduct all magistration in the county.<sup>33</sup> The county appoints “criminal law hearing officers” to perform those functions under the delegated authority of the county trial courts, and legal complaints related to arrests are filed directly in the county and district courts. As a result, trial courts can immediately exercise magistrate jurisdiction to amend bail amounts and bond conditions when the need arises. Denton County, on the other hand, successfully lobbied the Legislature to pass a statute that expressly allows for magistrate jurisdiction over Denton County criminal charges to vest with a specially-created Criminal Law Magistrate Court once a person is released on bail or committed to custody in the Denton County Jail.<sup>34</sup>

Although some counties have obtained special legislative accommodations for their jurisdictions, most of Texas’ 254 counties still must contend with the strictures of *Ex parte Clear*. A few of these remaining counties have created interlocal agreements, approved by all the

judges and courts, to transfer magistrate jurisdiction to a trial court once a case is pre-assigned. However, these interlocal agreements could face legal challenges for being unenforceable, as they attempt to transfer jurisdiction without explicit statutory authorization.

## Conclusion

While case law is important to Texas judges performing magistrate duties, it is the Legislature's responsibility to address deficiencies and to enact statutes that account for the practical complexities involved. Given the diverse ways judicial resources are utilized and how magistration of arrested persons is conducted in Texas, a statute that brings both clarity and flexibility would be welcomed—particularly one that provides clarity regarding how magistrate jurisdiction is vested and transferred, and flexibility allowing individual counties to craft procedures and utilize judicial resources optimally for their unique needs and priorities.

As a starting point, it would be helpful to have a default statutory rule that magistrate jurisdiction over changes in bail amounts and bond conditions transfers immediately to a court with trial jurisdiction once the case is pre-assigned to that court after the arrest of the accused. Additionally, the law could include provisions allowing the governing body of a county to “opt-out” of such a default rule and either continue under the existing system, where magistrates retain sole jurisdiction until a charging instrument is filed, or adopt other alternatives like those in Harris, Bexar, and Denton Counties.

There may be differing views on what a statutory solution should look like. However, statutory clarity and flexibility are needed to optimally accommodate the goals of the Texas criminal justice system.

<sup>1</sup> *Ex parte Clear*, 573 S.W. 2d 224 (Tex. Crim. App. 1978).

<sup>2</sup> *Ex parte Clear* governs the jurisdiction of magistrates to modify bail amounts and bond conditions in the normal routine practice in Texas criminal courts. It is worth noting that certain “extraordinary” remedies are occasionally utilized to bypass *Ex parte Clear*, and invoke the jurisdiction of a court that would not otherwise have magistrate jurisdiction, to make bail-related changes in the case. The State, for example, has used Article 16.16 of the Code of Criminal Procedure on rare occasions to argue that the bail amount set by a magistrate is too low and to ask a county or district court (or even an appellate court) to intervene accordingly. Likewise, counsel for the accused may file a writ of habeas corpus in a county or district court under Chapter 11 of the Code of Criminal Procedure seeking to lower a bail amount or address strict conditions of bond. However, these remedies are cumbersome to pursue and often inadequate to address routine bail issues that are arguably within the broad discretion of a magistrate. Accordingly, this article is intended to address the legal regime that governs the majority of bail-related modifications in

Texas.

<sup>3</sup> Tex. Crim. Proc. Ann. § 15.17.

<sup>4</sup> *Rothgery v. Gillespie Cnty., Tex.*, 554 U.S. 191 (2008) (“Texas law has no formal label for this initial appearance before a magistrate.... which is sometimes called the “article 15.17 hearing”; it combines the Fourth Amendment’s required probable-cause determination with the setting of bail, and is the point at which the arrestee is formally apprised of the accusation against him.”[citations omitted]); *Id.* at 233 (Thomas, J., dissenting) (Noting that the parties refer to this proceeding as “magistration”).

<sup>5</sup> Article 15.04 of the Code of Criminal Procedure states: “The affidavit made before the magistrate or district or county attorney is called a “complaint” if it charges the commission of an offense.” It is this definition and usage that is referenced when using the term “complaint” in this article. That stated, the inexact use of the term “complaint” has long been a source of confusion for Texas courts and criminal law practitioners. As explained by luminary law professors, George Dix and Robert Dawson, a “discussion of complaints is complicated by the Code’s unfortunate failure to carefully distinguish between the various ways in which this and related terms are used.” 41 George E. Dix & Robert Dawson, *Criminal Practice and Procedure* § 19.01 (2d ed. 1999). “Care must be taken to avoid confusing case law dealing with complaints in one context with legal requirements applicable when complaints are relied upon for other purposes. Some overlaps and requirements undoubtedly exist but the law applicably is nevertheless different and distinguishable.” *Id.* See also Ryan Kellus Turner, “Complaints, Complaints, Complaints: Don’t Let the Language of the Law Confuse You,” *The Recorder* (July 2004).

<sup>6</sup> Tex. Crim. Proc. Ann. § 17.15 sets forth the factors that must be considered by a magistrate when setting the bail amount and determining the conditions of bond.

<sup>7</sup> Tex. Crim. Proc. Ann. § 17.028.

<sup>8</sup> Tex. Crim. Proc. Ann. § 2.09

<sup>9</sup> Article 15.17(a) of the Code of Criminal Procedure explicitly authorizes the use of videoconference technology to conduct magistration hearings.

<sup>10</sup> Tex. Crim. Proc. Ann § 17.022.

<sup>11</sup> Sections 54.856 and 54.858 of the Government Code outline the magistrate duties of these “criminal law hearing officers.”

<sup>12</sup> *Ex parte Clear*, 573 S.W. 2d 224 (Tex. Crim. App. 1978).

<sup>13</sup> *Clear*, 573 S.W. 2d at 226.

<sup>14</sup> *Clear*, 573 S.W. 2d at 228.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 229.

<sup>18</sup> The accused in a felony court can choose to waive the necessity of a grand jury indictment and be charged by information. Tex. Crim. Proc.

Ann. § 1.141.

<sup>19</sup> *Guerra v. Garza*, 987 S.W.2d 593 (Tex. Crim. App. 1999).

<sup>20</sup> *Guerra*, 987 S.W.2d at 593-594.

<sup>21</sup> *Guerra*, 987 S.W.2d at 594.

<sup>22</sup> Tex. Crim. Proc. Ann. § 15.03.

<sup>23</sup> Tex. Crim. Proc. Ann. § 15.03(a)(2). An affidavit made before the magistrate is called a “complaint.” Tex. Crim. Proc. Ann. § 15.04. See also Turner, *Complaints, Complaints, Complaints: Don’t Let the Language of the Law Confuse You*, *supra* note 5.

<sup>24</sup> Tex. Crim. Proc. Ann. § 15.17.

<sup>25</sup> Tex. Crim. Proc. Ann. § 15.17(a).

<sup>26</sup> *Clear*, 573 S.W. 2d at 229.

<sup>27</sup> *Id.* at 229. n.6.

<sup>28</sup> *Bragg v. State*, 109 Tex. Crim. 632, 6 S.W.2d 365, 366 (1928).

<sup>29</sup> *Id.* The Court in *Ex parte Clear* did not have to reconcile its comments about subject matter jurisdiction and jurisdiction over the person to resolve the controversy involving Mr. Clear. This is because the magistrate court which issued the arrest warrant for him (Harris County Justice of the Peace, Precinct Two) was the same court which conducted the magistration hearing after his arrest. However, in perhaps most instances where arrest warrants are executed in Texas, this will not be the case. The Court implies in footnote six of its opinion that, because the court which conducts the magistration hearing after arrest has first exercised jurisdiction over the person of the accused, that court should retain sole magistrate jurisdiction over the case. But again, this application of the law is inconsistent with the literal reading of Article 4.16.

<sup>30</sup> See Tex. Crim. Proc. Ann. § 4.11(c) (concurrent jurisdiction of justice court and municipal court over certain fine-only offenses in the extraterritorial jurisdiction of the municipality); Tex. Crim. Proc. Ann. § 4.14(b) (concurrent jurisdiction of justice courts and municipal courts over certain fine-only offenses within the territorial limits of the municipality); Tex. Crim. Proc. Ann. § 4.14(f) (authorizing contiguous municipalities to enter into agreements to share concurrent jurisdiction over certain fine-only offenses committed near the shared boundary lines of the municipalities); Tex. Crim. Proc. Ann. § 4.14(g) (authorizing contiguous municipalities to enter into agreements to share concurrent jurisdiction over certain fine-only offenses committed within either municipality).

<sup>31</sup> Magistrate duties addressed in other areas of the Code include issuing search warrants (Chapter 18), issuing arrest warrants (Chapter 15), conducting magistration (Chapters 14-15), and setting bail and bond conditions on criminal cases (Chapter 17).

<sup>32</sup> *Guerra*, 987 S.W.2d at 594.

<sup>33</sup> Tex. Gov’t. Code Ann. Chapter 54, Subchapter L.

<sup>34</sup> See Tex. Gov’t Code Ann. Chapter 54, Subchapter SS, specifically § 54.2803(c).

## MENTAL HEALTH CONFERENCE

August 1-2, 2024

Marriott Hotel at Champion's Circle  
Fort Worth, Texas



**The TMCEC Mental Health Conference focuses on mental health and its impact on municipal courts. It helps equip judges, magistrates, court personnel, and prosecutors with information and resources to impact their communities by changing the way the criminal justice system responds to mental illness.**

**Registration is \$150. Participants who live and work at least 30 miles from the conference location are eligible for a private, single-occupancy hotel room at no additional charge for up to two nights. Travel reimbursement (miles and meals) up to \$300 is available, pursuant to grant terms.**

SAVE THE DATE!  
Registration  
opens  
September 2024

# C3 Fines and Fees Forum

October 3, 2024  
AC Hotel Waco  
Downtown

Waco, Texas



## C3 FINES AND FEES FORUM

The C3 Fines and Fees Forum will be held on Thursday, October 3 from 8 a.m. to 5 p.m. in Waco, Texas, at the AC Hotel Waco Downtown.

This TMCEC event will only be held one time this year and participation is limited to only 90 participants. We anticipate that this event will sell out quickly.

This forum, an encore presentation from AY 24, is an exceptional opportunity for municipal judges and court personnel (clerks, court administrators, prosecutors, juvenile case managers) to "come to the table" and share common issues, openly discussing fines and fees matters in a guided setting. Participants will identify challenges and best practices pertaining to procedural issues regarding the imposition of fines and fees, including ability to pay, community service, and enforcement.

**REGISTRATION & HOUSING FEES AVAILABLE FOR REGISTRATION** September 2024, subject to funding. Registration is \$150. The housing fee for eligible participants is \$50 per night per participant (for up to 2 nights).

**CREDIT** Attendance at the C3 Fines and Fees Forum counts for 8 hours of judicial education/clerk certification credit. CLE reporting is available for \$100.

### FORUM TOPICS

Since 2016, fines, court costs, inability to pay, and matters pertaining to bail and jail commitments have occupied a more prominent role in criminal justice legislation in Texas. TMCEC believes that facilitating small group conversations amongst judges and court personnel throughout Texas is essential to understanding and implementing these new laws.

This event combines our popular Regional Roundtables conversational format with our C3 initiative (Councils, Courts, and Cities), which aims to bridge the info gap between city halls and municipal courts in Texas.

## TRAVEL REIMBURSEMENT\*

ALL REGISTRANTS WHO LIVE AND WORK 30+ MILES FROM WACO, AND WHO ATTEND THE ENTIRE EVENT, ARE ELIGIBLE FOR TRAVEL REIMBURSEMENT (E.G., FLIGHTS, MILEAGE, AND MEALS) PURSUANT TO GRANT TERMS.

[\\*CLICK FOR COURT OF CRIMINAL APPEALS RULES OF REIMBURSEMENT](#)

# Staying on Track: Railway Law and Safety



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Railways play a central role in everyday life in much of the Lone Star State, which leads the nation with 10,539 miles of railroad track.<sup>1</sup> Furthermore, streetcar and other types of tracks are enmeshed into the fabric of certain Texas cities such as Austin, Dallas, and El Paso. Texas has the most highway-rail grade crossings (where tracks intersect with a road) with 9,179.<sup>2</sup> While the rail system has undeniable economic and societal benefits, preliminary data indicates that Texas suffered 246 collisions, 16 deaths, and 75 injuries at highway-rail grade crossings in 2023.<sup>3</sup> There are numerous criminal laws in Texas aimed at preventing these tragedies, many of which are Class C misdemeanors within municipal court jurisdiction. Along with this adjudicative function, municipal courts can play a role in educating the public on railway safety.<sup>4</sup> This article will provide municipal courts with information and tools to improve Texas railway safety both in and out of the courtroom.

## I. Do Municipal Courts Have Jurisdiction over Trains?

It's complicated. Municipal courts have jurisdiction over certain criminal conduct by pedestrians and vehicles that occurs on or near train tracks. But municipal courts, with a few exceptions, do not have

jurisdiction over the trains and operators themselves. Train tracks are not public highways.<sup>5</sup> This takes the "Rules of the Road"<sup>6</sup> off the table for train operators when they are operating a train. For example, a train operator should not be charged with speeding under Section 545.351 of the Transportation Code for driving a train too fast because this law only applies on public highways.<sup>7</sup> Train operator behavior on the tracks is primarily governed by the Federal Railroad Administration and any criminal allegations are not filed in municipal courts.

For the offenses outlined in Sections II and III below that municipal courts have jurisdiction over, only those occurring within a city's territorial limits may be filed in that city's municipal court.<sup>8</sup> Therefore, railway-related Class C misdemeanor complaints will typically only be filed in cities that have train or streetcar tracks.

## II. What Train-related Cases May Be Filed in Municipal Courts?

There are numerous state and federal criminal offenses and regulations that involve trains. The following is a non-exhaustive list. Each offense listed bears some relation to public safety and may be charged as a Class C misdemeanor within municipal court

| <b>Transportation Code (unless otherwise noted) Section</b> | <b>Illegal Conduct<sup>9</sup></b>   | <b>Fine Range</b> |
|---|--|-------------------|
| 471.005   | Dismantling warning signals at railroad grade crossings  | \$0-\$500         |
| 544.004   | Failure to obey traffic-control device (e.g., a “Do Not Stop on the Tracks” sign)  | \$1-\$200         |
| 544.005   | Altering, damaging, or removing a railroad sign  | \$1-\$200         |
| 544.006(a)  | Placing an unauthorized railroad sign  | \$1-\$200         |
| 545.056   | Driving on the left side of the road within 100 feet of a railroad crossing  | \$1-\$200         |
| 545.251(a)  | Failure to stop 15-50 feet from a rail if railroad signal or flagger warns of an approaching train, <sup>10</sup> a crossing gate is lowered, or the train emits an audible signal | \$50-\$200        |
| 545.251(b)  | Failure to remain stopped under 545.251(a) before permitted to proceed   | \$50-\$200        |
| 545.251(c)  | Failure to yield the right of way to train in hazardous proximity where there is no flagger or automatic/ electric/mechanical signal   | \$50-\$200        |
| 545.251(d)  | Driving around, under, or through a railroad crossing gate or barrier that is closed, being closed, or being opened  | \$50-\$200        |
| 545.252(b)  | Failure to stop at a stop sign or traffic-control device erected by the Texas Department of Transportation <sup>11</sup>   | \$50-\$200        |
| 545.253(a)  | Failure of motor bus operator carrying passengers to stop at railroad crossing, look both ways, and not proceed until safe <sup>12</sup>   | \$50-\$200        |
| 545.253(b)  | Motor bus operator shifting gears while crossing railroad tracks <sup>13</sup>   | \$50-\$200        |
| 545.2535(a)   | Failure of school bus operator to stop at railroad crossing, look both ways, and not proceed until safe <sup>14</sup>  | \$1-\$200         |
| 545.2535(b)   | School bus operator shifting gears while crossing railroad tracks <sup>15</sup>  | \$1-\$200         |
| 545.254   | Failure to stop or reduce speed at railroad crossing by vehicle carrying explosives  | \$50-\$200        |
| 545.255(b)  | Crossing railroad tracks in certain heavy vehicles <sup>16</sup> without timely notice to the station agent  | \$50-\$200        |
| 545.255(c)  | Failure of operator of certain heavy vehicles <sup>17</sup> at a railroad crossing to stop, look both ways, and not proceed until safe <sup>18</sup>                               | \$50-\$200        |
| 545.255(d)  | Disregarding signal of approaching train by operator of certain heavy vehicles <sup>19</sup>   | \$50-\$200        |

|                         |  |            |
|-------------------------|--|------------|
| 545.302(a)              | Parking on train tracks  | \$1-\$200  |
| 545.302(c)              | Parking vehicle longer than needed to unload merchandise or passengers within 50 feet of a railroad grade crossing   | \$1-\$200  |
| 545.427                 | Driving on or crossing a railroad grade crossing without sufficient undercarriage clearance  | \$50-\$200 |
| 552.011                 | Pedestrian moving in front of, under, between, or through the cars of a moving or stationary train occupying any part of a railroad grade crossing <sup>20</sup> | \$1-\$200  |
| 647.010                 | Failure to stop at railroad crossing by an operator transporting migrant workers   | \$5-\$50   |
| 28.07(b)(2), Penal Code | Trespassing on, tampering with, obstructing, or causing derailment on <sup>21</sup> railroad property <sup>22</sup>  | \$0-\$500  |

Importantly, different motor vehicles have different duties when driving over or near train tracks. When handling these cases, it is important to ascertain whether the defendant was operating a vehicle, such as a bus or oversized vehicle, with heightened duties related to railroads.

While the Rules of the Road generally do not apply to train operation, there are offenses within municipal court jurisdiction that may only be committed by the railroad or a railroad representative. See the table below.

| Transportation Code Section | Illegal Conduct <sup>23</sup>   | Fine Range  |
|-----------------------------|---|-------------|
| 111.051                     | Failure or refusal by railroad company officer, agent, or employee to exhibit any book or paper upon demand by TxDOT  | \$125-\$500 |
| 111.053                     | Failure or refusal to complete a questionnaire by an officer or employee of a railroad company; giving a false answer or evading the answer to any question in a questionnaire to be submitted to TxDOT | \$500       |
| 112.103                     | Failure of train operator to stop at scene of a collision or render aid to an injured person  | \$0-\$500   |

Two fine-only offenses, one related to the use of bells and whistles by a train operator and one related to trains obstructing railroad crossings, were repealed in 2015.<sup>24</sup>

### III. What About Streetcars and Light Rails?

Although streetcars and trains share some characteristics, they are treated differently under state law. Texas law defines “streetcar” as a “car, other than a railroad train, used to transport persons or property and operated on rails located primarily within a municipality.”<sup>25</sup> Streetcars are sometimes



referred to as trolleys, although not all trolleys are necessarily streetcars.<sup>26</sup> Streetcars are distinct from light rails or other locally operated commuter rail systems, which are generally considered “trains.” Because there is no portion of the Transportation Code dedicated to light/commuter rails, they may generally be treated the same as trains under the law.



A significant difference between streetcars and trains is that streetcar tracks, as the name suggests, are laid on public streets. Consequently, other vehicles are, in many situations, legally permitted to drive on top of streetcar tracks. But that does not mean that streetcar tracks are treated the same as regular streets under the law. Subchapter E of Chapter 545 of the Transportation Code is dedicated to streetcars. It contains offenses related to vehicle operation near streetcars and their tracks. The below offenses do not apply to trains or light rails.

| <b>Transportation Code Section</b> | <b>Illegal Conduct<sup>27</sup></b>  | <b>Fine Range</b> |
|------------------------------------|--|-------------------|
| 545.201                            | Passing streetcar to the left when unauthorized or passing streetcar to the left when authorized but without reducing speed, exercising caution, or giving passengers the right-of-way | \$1-\$200         |
| 545.202(a)                         | Failure to stop or remain stopped when streetcar passengers are loading or unloading or stopping at the wrong place  | \$1-\$200         |
| 545.202(b)                         | Passing streetcar to the right without stopping when no safety zone; unreasonably passing streetcar to the right   | \$1-\$200         |
| 545.203(a)                         | Failure to move vehicle off streetcar tracks upon signal from streetcar operator   | \$1-\$200         |
| 545.203(b)                         | Driving on or across a streetcar track in front of a streetcar   | \$1-\$200         |
| 545.203(c)                         | Turning in front of a streetcar  | \$1-\$200         |

Subchapter E also contains three offenses that apply to streetcar operators and passengers.

| <b>Transportation Code Section</b> | <b>Illegal Conduct<sup>28</sup></b>                         | <b>Fine Range</b> |
|------------------------------------|---|-------------------|
| 545.204                            | Failure of streetcar operator to stop for emergency vehicle | \$1-\$200         |
| 545.205                            | Streetcar operator driving over a fire hose without consent | \$1-\$200         |
| 545.206                            | Streetcar passenger interfering with streetcar operator     | \$1-\$200         |

For cities that have tracks of any sort, it is crucial to determine which category they fall under when filing criminal charges. This determination is primarily the responsibility of law enforcement and the prosecution.



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## IV. How Can Municipal Courts Promote Railway Safety?

The criminal offenses provided in Sections II and III exist, at least in part, to deter and punish unsafe behavior on and around tracks. But for many people, the fear of being fined and having a criminal record is not enough to compel safe walking, riding, and driving behavior around trains. Municipal courts can play an active role in educating the public on railway safety to both save lives and prevent future criminal behavior. The below tips may be integrated into presentations, publications, conditions of deferred disposition, and general traffic safety outreach such as during Operation Lifesaver's national *See Tracks? Think Train* Week from September 23-29, 2024.

### **Pedestrians**

- Always expect a train. Trains are quiet and fast and often do not run on a set schedule.
- The only safe place to cross tracks is at a designated public crossing with a crossbuck, flashing red lights, or a gate.
- Never pass flashing lights or go around/under lowered gates at highway-rail grade crossings. Always wait until the lights have stopped flashing and gates are completely raised to proceed.
- Never cross tracks unless you can see clearly in both directions. Multiple tracks may mean multiple trains.
- Unless there is a clear pedestrian walkway, stay off railroad bridges/trestles and out of railroad tunnels. There is only room for the train in these areas.
- Do not attempt to hop aboard railroad equipment at any time. Never climb on, under, or through railroad cars. Never jump on or off a train, especially when it is in motion.
- Never play near or on train tracks.
- Never take selfies or pictures on or near train tracks.
- For children, it is best to have an adult present, preferably holding the child's hand, when near any type of track.

### **Commuter Train, Light Rail, and Streetcar Users**

- Keep adequate distance between yourself and the tracks until it is safe to board.
- Wait until the train/streetcar stops to approach the door. Let others exit before you board.
- Watch your step and mind any gaps between the platform and the train/streetcar door when getting on or off.
- Remain seated while the train/streetcar is in motion; if standing, hold the handholds or handrails.

### **Cyclists**

- Walk your bike—don't ride—across the tracks once safe to do so.
- Turn off music and remove earphones at all rail crossings.

### **Motor Vehicle Operators**

- Cross legally and safely. The only safe and legal place for anyone to cross railroad tracks is at designated crossings. Always obey warning signs and signals. Look for a train approaching before proceeding even if the signals are not activated.
- Even if the warning signals are not activated, never stop on train tracks. Make sure there is ample

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space for your vehicle beyond the track before proceeding.

- Eliminate any distractions, such as a loud radio, when approaching tracks.
- Use extreme caution when crossing railways with no automated alarms or gates. Private roads that intersect with train tracks may not have these and are extremely dangerous, especially during inclement weather.
- Never drive along train tracks.
- If you get stuck on the tracks, everyone should get out of the vehicle as fast as possible, even if you do not see a train. Call the number on the blue and white Emergency Notification System (ENS) sign hanging near the crossing and share the crossing ID number with the dispatcher. No sign? Call 911.



## Commercial and Oversized Vehicle Operators

- Know your route and be aware of where railroad crossings exist. Seek prior consent to cross, if necessary. Not all large vehicles may physically be able to cross tracks.
- Track heights vary. If you drive a low clearance vehicle, be aware of raised crossings.
- Eliminate all distractions when approaching and crossing the train tracks.
- Know the law: certain commercial motor vehicles have additional duties that regular vehicle drivers do not.
- Cross the tracks without stopping or hesitation. Do not shift gears while crossing.

## V. Where Can My Court Find More Resources?

For further information about railway safety, visit:

Operation Lifesaver

<https://oli.org/about-us/public-awareness-campaigns/see-tracks-think-trainr-week>

Texas Department of Transportation

<https://www.txdot.gov/safety/driving-laws/railroad-crossing-tips.html>

Texas Department of Motor Vehicles

<https://www.txdmv.gov/motor-carriers/railroad-crossing-safety>

Federal Railroad Administration

<https://railroads.dot.gov/railroad-safety>

National Highway Traffic Safety Administration

<https://www.nhtsa.gov/campaign/railroad-crossing>

You can also check out TMCEC's 2023 webinar, *Don't Get Railroaded: What Municipal Courts Need to Know About Railway Laws & Safety*, presented by Elizabeth De La Garza and Ned Minevitz, on TMCEC's Online Learning Center. If you still cannot find what you are looking for, give TMCEC a call and ask to speak to a member of the Municipal Traffic Safety Initiatives grant staff.

<sup>1</sup> Rail and Transit Safety, Texas Department of Transportation 2023-2024 Educational Series, available at <https://ftp.txdot.gov/pub/txdot/sla/education-series/rail.pdf>.

<sup>2</sup> *Id.*

<sup>3</sup> Collisions & Fatalities by State, Operation Lifesaver: Rail Safety Education, updated May 16, 2024, available at <https://oli.org/track-statistics/collisions-fatalities-state>.

<sup>4</sup> See Canon 4(B)(1) of the Texas Code of Judicial Conduct.

<sup>5</sup> Section 28.07 of the Penal Code is titled “Interference with Railroad Property.” Unlike public roadways, people that unlawfully access train tracks are subject to criminal trespass.

<sup>6</sup> Title 7, Subtitle C of the Transportation Code comprises the “Rules of the Road.” Most traffic cases filed in municipal court are located here.

<sup>7</sup> Tex. Transp. Code Ann. § 542.001.

<sup>8</sup> Tex. Gov’t Code Ann. § 29.003(a).

<sup>9</sup> This column is simplified for readability. The offenses provided are also sometimes abridged to only include the portions related to trains. Practitioners should consult the primary source law in the left column in assessing the elements of each crime.

<sup>10</sup> In H.B. 1759 (2021), the Texas Legislature added the phrase “or other on-track equipment” any time the word “train(s)” appears in Sections 545.251, 545.253, 545.2535, 545.254, and 545.255 of the Transportation Code. In this list of offenses, “train” means a train or any on-track equipment. “On-track equipment” is defined in Section 545.001(1) of the Transportation Code as “any car, rolling stock, equipment, or other device that, alone or coupled to another device, is operated on a railroad track.” This definition also came from H.B. 1759 in 2021.

<sup>11</sup> Section 545.252(a) of the Transportation Code authorizes the Texas Department of Transportation to erect signs or traffic-control devices at railroad grade crossings that they deem “particularly dangerous.”

<sup>12</sup> Do you ever wonder why bus and large vehicle operators always come to a complete stop and look both ways—often with an open door or window—at railroad tracks before proceeding? The origin of this law, which is standard nationwide, is a 1938 tragedy in Sandy, Utah. A severe snowstorm reduced visibility to close to zero. A school bus driver came to a stop at a set of train tracks but did not see or hear an oncoming freight train. The driver and 27 students perished. While oncoming train signals have improved since 1938, this law remains. Opening the door or window improves visibility, especially during wet or foggy weather.

<sup>13</sup> Shifting gears may cause a vehicle to stall or reduce speed, which would pose a significant safety hazard on a train track.

<sup>14</sup> *Supra* note 12.

<sup>15</sup> *Supra* note 13.

<sup>16</sup> The heavy vehicles this offense applies to are a crawler-type tractor, steam shovel, derrick, roller, any equipment or structure with a normal operating speed of 10 miles per hour or less or a vertical body or load clearance of less than one-half inch per foot of the distance between two adjacent axles or less than nine inches measured above the level surface of a roadway. Tex. Transp. Code Ann. § 545.255(a).

<sup>17</sup> *Id.*

<sup>18</sup> *Supra* note 12.

<sup>19</sup> *Supra* note 16.

<sup>20</sup> Interestingly, the Legislature did not include “on-track equipment” to this offense when it was enacted in 2019 (H.B. 2775). It only applies to trains.

<sup>21</sup> If a person tampers with, obstructs, or causes derailment on railroad property and causes pecuniary damages of \$100 or more, the offense is a Class B misdemeanor or higher and thus outside municipal court jurisdiction. Tex. Penal Code Ann. § 28.07(e).

<sup>22</sup> “Railroad property” is defined as “a train, locomotive, railroad car, caboose, work equipment, rolling stock, safety device, switch, or connection that is owned, leased, operated, or possessed by a railroad” or “a railroad track, rail, bridge, trestle, or right-of-way owned or used by a railroad.” Tex. Penal Code Ann. § 28.07(a)(1).

<sup>23</sup> *Supra* note 9.

<sup>24</sup> Sections 471.006 and 471.007 of the Transportation Code were both repealed in 2015 by H.B. 2946.

<sup>25</sup> Tex. Transp. Code § 541.202(3).

<sup>26</sup> Although streetcars are often referred to as “trolleys,” not all vehicles that are referred to as “trolleys” are streetcars. Some “trolleys” have wheels (i.e., are not on a rail) and thus would be treated like cars and trucks under the law. Other “trolleys” operate on tracks and are subject to streetcar law under Subchapter E of Chapter 545 of the Transportation Code.

<sup>27</sup> *Supra* note 9.

<sup>28</sup> *Supra* note 9.

## TMCEC ACADEMIC SCHEDULE FOR REMAINDER OF AY 24

| Seminar                    | Date(s)          | City            | Venue                                 |
|----------------------------|------------------|-----------------|---------------------------------------|
| New Judges Seminar         | July 8-12, 2024  | Austin          | DoubleTree by Hilton                  |
| Mental Health Conference   | August 1-2, 2024 | Fort Worth      | Marriott Hotel at Champions Circle    |
| Impaired Driving Symposium | August 1-2, 2024 | College Station | Texas A&M Hotel and Conference Center |

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**MISSION STATEMENT**

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

On Jan. 1, 2025, most of Chapter 45 of the Texas C.C.P. will be replaced with Chapter 45A.

To help with the transition, TMCEC has created the

**45A Conversion Chart**

A 2-sided, 8.5"x14" laminated sheet with 45 to 45A corresponding provisions on one side and 45A to 45 provisions on the other

| Quantity  | Price per chart | S&H    |
|-----------|-----------------|--------|
| 1         | \$10            | \$4.87 |
| 2 - 4     | \$8             | \$4.87 |
| 5 or more | \$6             | \$4.87 |

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**Chapter 45 to 45A, C.C.P. Conversion Chart**  
Chapter 45 effective through 12/31/2024

| SUBJECT                        | Ch 45              | Ch 45A                  | SUBJECT                                 | Ch 45              | Ch 45A           |
|--------------------------------|--------------------|-------------------------|---|--------------------|------------------|
| Chapter Objectives             | 45.001             | 45A.001                 | Perfecting Appeal                       | 45.0426(a)-(b)     | 45A.203(a)-(b)   |
| Chapter Applicability          | 45.002             | 45A.003                 | Perfecting Appeal                       | 45.0426(c)         | 45A.202(c)       |
| "Day" Definition               | 45.003             | n/a                     | Effect of Appeal                        | 45.043             | 45A.204          |
| "Cost" Definition              | 45.004             | 45A.002(2)              | Forfeiting Cash Bonds; New Trials       | 45.044             | 45A.256          |
| Rules of Evidence              | 45.011             | 45A.004                 | Reconsideration of Fine/Costs           | 45.0445            | 45A.258          |
| Electronically Created Records | 45.012(a)-(f), (h) | 45A.051(a)-(b), (d)-(h) | Capias Pro Fine                         | 45.045             | 45A.259          |
| Court Seats                    | 45.012(g)          | 45A.052                 | Commitments                             | 45.046             | 45A.261          |
| Filing by Mail                 | 45.013             | 45A.054                 | Civil Collection                        | 45.047             | 45A.263          |
| Arrest Warrants                | 45.014             | 45A.104                 | Jail Discharge                          | 45.048             | 45A.262          |
| Jail                           | 45.015             | 45A.106                 | Community Service                       | 45.049(a)-(f), (i) | 45A.254          |
| Bail                           | 45.016             | 45A.107                 | Community Service; Deferred Disposition | 45.049(g)-(h)      | 45A.255          |
| Dockets                        | 45.017(a)          | 45A.053                 | Waiver of Fine/Costs                    | 45.0491            | 45A.257          |
| Dockets                        | 45.017(b)          | 45A.051(c)              | Community Service; Juveniles            | 45.0492            | 45A.456; 45A.460 |
| "Complaint" Definition         | 45.018(a)          | 45A.002(1)              | Fail to Pay/Appear                      | 45.050             | 45A.461          |
| Complaints                     | 45.018(b)          | 45A.101(g)              | Deferred Disposition                    | 45.051(a)          | 45A.302          |
| Complaint Requisites           | 45.019(a)-(e), (g) | 45A.101(a)-(f)          |   |                    |                  |

**Chapter 45A to 45, C.C.P. Conversion Chart**  
Chapter 45A effective 1/1/2025

| SUBJECT                        | Ch 45A                  | Ch 45              | SUBJECT                                 | Ch 45A  | Ch 45              |
|--------------------------------|-------------------------|--------------------|---|---------|--------------------|
| Chapter Objectives             | 45A.001                 | 45.001             | Community Service; Deferred Disposition | 45A.255 | 45.049(g)-(h)      |
| "Complaint" Definition         | 45A.002(1)              | 45.018(a)          | Forfeiting Cash Bonds; New Trials       | 45A.256 | 45.044             |
| "Cost" Definition              | 45A.002(2)              | 45.004             | Fine and Cost Waivers                   | 45A.257 | 45.0491            |
| Chapter Applicability          | 45A.003                 | 45.002             | Reconsideration of Fine/Costs           | 45A.258 | 45.0445            |
| Rules of Evidence              | 45A.004                 | 45.011             | Capias Pro Fine                         | 45A.259 | 45.045             |
| Justice Court Prosecutions     | 45A.005(a)-(b)          | 45.101             | Telephone/Video Appearances             | 45A.260 | 45.0201            |
| Municipal Prosecutions         | 45A.005(c)-(e)          | 45.201(a)-(c)      | Commitments                             | 45A.261 | 45.046             |
| Municipal Attorney Duty        | 45A.006                 | 45.201(d)          | Jail Discharge                          | 45A.262 | 45.048             |
| Electronically Created Records | 45A.051(a)-(b), (d)-(h) | 45.012(a)-(f), (h) | Civil Collection                        | 45A.263 | 45.047             |
| Dockets                        | 45A.051(c)              | 45.017(b)          | Collections                             | 45A.264 | 45.203             |
| Court Seats                    | 45A.052                 | 45.012(g)          | Deferred Disposition Eligibility        | 45A.301 | 45.051(f)          |
| Dockets                        | 45A.053                 | 45.017(a)          | Deferred Disposition                    | 45A.302 | 45.051(a)          |
| Filing by Mail                 | 45A.054                 | 45.013             | Deferred Disposition Requisites         | 45A.303 | 45.051(a)-(b), (g) |
| Confidentiality                | 45A.055                 | 45.0218            | Deferred Disposition                    | 45A.304 | 45.051(b)-(3)      |
| Complaint Requisites           | 45A.101(a)-(f)          | 45.109(a)-(e), (g) | Deferred Disposition                    |         |                    |
| Complaints                     | 45A.101(g)              | 45.018(b)          | Deferred Disposition                    |         |                    |