

# THE RECORDER

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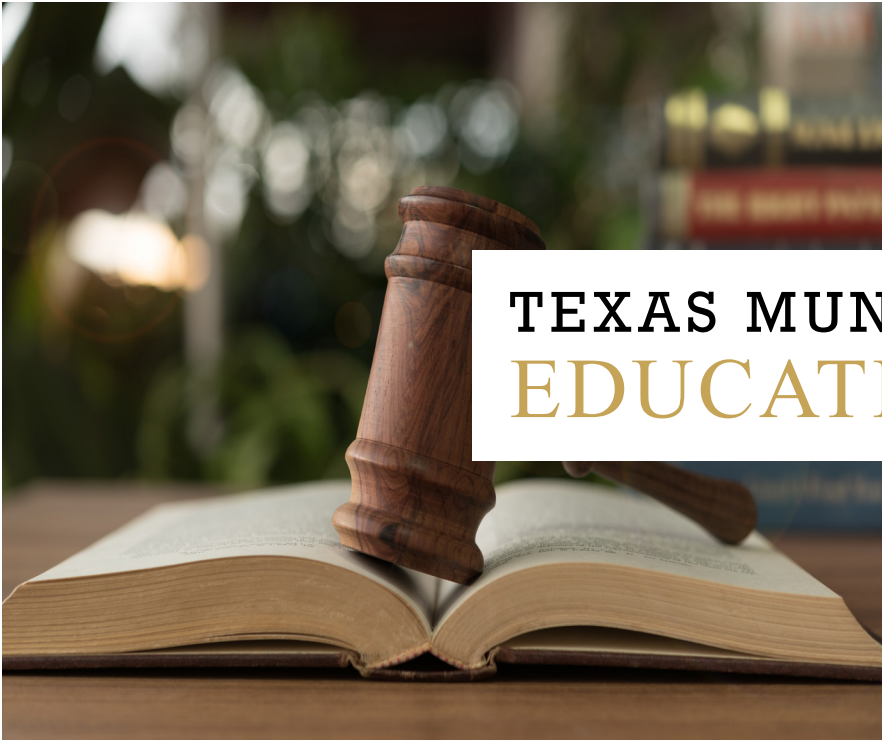
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# AROUND THE STATE

## TMCA Celebrates 50 Years at Annual Awards Banquet



BACK ROW: Hon. Brian Holman, President; Hon. Teresa Evans, Region II Director; Hon. Ed Spillane, Region VII Director; Hon. Robert Barfield, Region IX Director; Hon. Michael Acuña, First Vice President; Ms. Landra Solansky, Treasurer; Hon. Hyattye Simmons, Region III Director FRONT ROW: Hon. Gary Ellsworth, Immediate Past President; Hon. Henrie Morales, Region X Director; Hon. Hilda Cuthbertson, Secretary; Chief Justice Nathan Hecht; Hon. Kathleen Person, Second Vice President; Hon. Bonnie Townsend, President-Elect; Hon. Wayne Frost, Region V Director

The annual meeting and awards ceremony of the Texas Municipal Courts Association (TMCA) was held the evening of Thursday, July 18, 2024. TMCA members celebrated their 50-year anniversary at the event.

Hon. Hilda Cuthbertson read the Proclamation from Governor Abbott honoring the organization's 50 years of service to the municipal court community.

Hon. Bonnie Townsend of the City of Luling chairs TMCA's Annual Meeting Committee. "The Awards Banquet was a great success," she reports. "Chief Justice Nathan Hecht

was our keynote speaker and everyone enjoyed having him with us." In the above picture the Chief Justice poses with TMCA board members.

Some attending expressed an interest in TMCA volunteer opportunities. "It will be great to have people getting more involved," Judge Townsend said.

Four individuals were recognized for their outstanding service to Texas municipal courts.

### TMCA 2024 AWARD WINNERS

**Jurist of the Year:** Hon. Danielle Dulaney, Arlington

**Court Support Person of the Year:** Jennifer Bozorgnia, Irving

**Prosecutor of the Year:** Luke Cochran, Bovey & Cochran PLLC

A special award for **Exemplary Service** was given to **Judge Barbara Hervey** of the Court of Criminal Appeals, acknowledging more than 20 years of service as the liaison administering the Judicial and Court Personnel Training Fund.

Outgoing Board members were thanked for their service.

Judge Townsend wrapped up the special night: "We had a wonderful dinner, good music, and good fellowship throughout the evening."

*For information about becoming a member of TMCA, visit <https://txmca.com/>.*

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# AROUND THE STATE

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## Promoting Traffic Safety This Fall During National Night Out and Municipal Courts Week

“Deadliest U.S. Highways: Texas Has 3 of Them, Study Says”<sup>1</sup>

“Texas Has America’s Most Dangerous Highways, This Is How Deadly They Are”<sup>2</sup>

“Texas is Among the Worst States for Distracted Drivers, New Study Finds”<sup>3</sup>

Headlines like these show up on news feeds across Texas seemingly every day. While traffic safety is a complex global problem, municipal courts across Texas can do their part locally through innovative traffic safety initiatives for both the general public and traffic case defendants. If your city wants to help prevent avoidable roadway death and injury in the Lone Star State, TMCEC encourages you to take advantage of two upcoming events: National Night Out and Municipal Courts Week.

### National Night Out (NNO)

NNO began in the 1970s in the western suburbs of Philadelphia by a community watch volunteer, Matt Peskin. The initial goal was to encourage a positive relationship between the public and law enforcement to make neighborhoods in Philadelphia safer places to live and work. These humble beginnings have grown into a nationwide community-building campaign that promotes traffic safety, the rule of law, public safety group partnerships, and a positive relationship between the public and not only the police, but all emergency responders as well as the judiciary.

Most of the nation celebrates NNO on the first Tuesday of August. In Texas, however, NNO is celebrated on the first Tuesday of October, which will be October 1st this year. According to the NNO website (natw.org), 250 cities in Texas celebrate NNO.<sup>4</sup> In many cities, municipal court representatives do not only participate in the event, they spearhead it.

There is no one way to celebrate NNO. Cities might choose to host a block party, parade, festival, cookout, or movie nights. There are often safety demonstrations, seminars, youth events, visits from first responders, and exhibits from health care professionals. Check out TMCEC’s [NNO webpage](#) for additional specific municipal court resources.



2023 National Night Out, City of Arlington



# AROUND THE STATE



## Municipal Courts Week

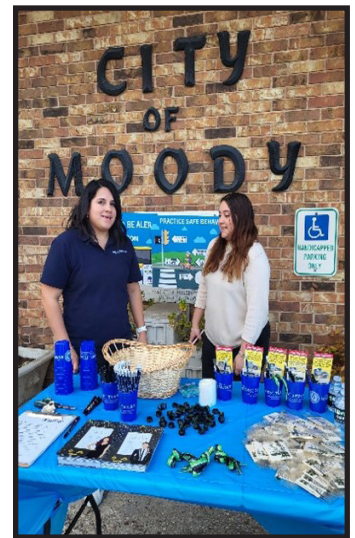
In 2023, the 88th Texas Legislature passed House Concurrent Resolution 75, which designates the first week of November as Municipal Courts Week every year from 2023 through 2032. “First week” has been interpreted as the first full Monday through Friday of the month. This year, that will be November 4th-8th.



2023 Municipal Courts Week,  
City of South Padre Island

MCW is a time to recognize the vital role municipal courts play in their communities and show appreciation for the dedicated individuals that work in courts. Much like National Night Out (NNO), many cities choose to celebrate Municipal Courts Week by engaging the public in a conversation about traffic safety.

Check out the [TMCEC MCW resource page](#) for ideas on how to celebrate.



2023 Municipal Courts Week,  
City of Moody

*Continued from Page 4*

<sup>1</sup> Annasofia Scheve, Deadliest U.S. highways: Texas has 3 of them, study says, San Antonio Express-News, <https://www.expressnews.com/news/texas/article/texas-deadliest-highways-united-states-19500385.php>.

<sup>2</sup> Joel Leal, Texas Has America’s Most Dangerous Highways, This Is How Deadly They Are, Digg, <https://digg.com/digg-vids/link/Texas-Dallas-Houston-most-dangerous-highways-video>.

<sup>3</sup> Suzanne Townsend, Texas is among the worst states for distracted drivers, new study finds, San Antonio Current, <https://www.sacurrent.com/news/texas-is-among-the-worst-states-for-distracted-drivers-new-study-finds-35233928>.

<sup>4</sup> This website is an excellent resource. It is full of information and resources about how cities can celebrate NNO. Membership (\$35 annually) comes with discounted prices on NNO materials, eligibility to receive awards, and a newsletter.

# CITATIONS REVISITED



## Tickets Are for Concerts and Sporting Events

**Ryan Kellus Turner, Executive Director, TMCEC**

In 2007, *The Recorder* featured a two-part article exploring a wide array of issues related to the use of citations in lieu of arrest in criminal cases. Structured around 25 frequently asked questions by judges, lawyers, and law enforcement, the piece aimed to provide insight into related issues that, at the time, spanned the gamut from the fundamental to the somewhat controversial. The response to the article was overwhelmingly positive, reflecting a surprisingly broader interest in exploring and understanding the nuances of the topic.

Seventeen years have passed since that original publication, and the landscape of criminal justice has continued to shift. Legal precedents have been established, policies have been revised, and the balance between public safety and individual rights has remained a focal point of ongoing debate. While some aspects of the subject matter have remained constant, others have undergone significant changes, shaped by new legislation, court rulings, and societal attitudes.

This updated version of the article revisits those 25 questions, providing a fresh analysis that highlights both the continuity and the change in the use of citations as an alternative to arrest. By examining what has endured and what has evolved, this article aims to offer a comprehensive perspective that is as relevant today as it was in 2007.

Rarely does a writer have an opportunity to revisit their prior written work. It is a privilege. Whether a seasoned practitioner or new to the field, this updated analysis is intended to serve as a valuable resource for judges and court personnel.

### Introduction

A citation is defined as “[a]n order, issued by the police, to appear before a magistrate or a judge at a later date. A citation is commonly used for minor violations (*e.g.*, traffic violations) to avoid taking the suspect into immediate physical custody.”<sup>1</sup>

During Fiscal Year 2022, roughly 3.4 million Class C

misdeemeanor cases were filed in Texas municipal courts.<sup>2</sup> During the same period, approximately 1.3 million cases were filed in Texas justice courts.<sup>3</sup> It is hard to fathom the enormousness of a combined 4.7 million Class C misdemeanor filings.<sup>4</sup> There is nothing comparable elsewhere in the Texas judicial system. If you were to combine criminal filings in county and district courts, it would take nearly a decade of filings to equal the number of Class C misdemeanors filed in municipal and justice courts in just a year.<sup>5</sup>

How is it possible for municipal and justice courts to handle nearly 5 million cases a year?

There is a simple answer: citations. Almost all these cases began with the filing of a citation.

Citations are such a common staple in the Texas criminal justice system that their purpose and utility are seldom contemplated, let alone appreciated. To be clear, no one appreciates being issued a citation. However, that does not mean that citations should not be appreciated. In terms of the collective good of society, citations deserve to be lauded. Citations are amazing devices of efficiency. From the government’s perspective, they save time and money while providing a way to initiate criminal cases. From the perspective of the accused, every year in Texas, citations spare myriads of people the experience of being arrested, booked, incarcerated, and released on bail. From a court process perspective, when defendants do not contest the charges filed against them, citations serve as a substitute for a formal charging instrument (*i.e.*, a complaint).<sup>6</sup>

In terms of public policy, citations are crucial not just for avoiding the trauma or inconvenience of arrest, but for managing the logistical and financial burden of enforcing laws. Arresting, booking, incarcerating, and setting bail for people accused of frequently occurring law violations would overwhelm the system. The use of citations is essential for

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maintaining public safety and quality of life.

It is ironic. Relatively few Texans are ever arrested. However, millions of Texans are issued citations every year. There are many articles regarding full custodial arrest. However, nearly 17 years after the original publication of this article, there is still a dearth of literature and understanding regarding citations.

Citations, like most things in law, are seldom as simple as they seem. The following questions touch on issues ranging from the basic to the advanced. The answers range from the definite to the unknown.

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

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

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

Chapter 543 of the Transportation Code similarly does not define the term. In fact, the term citation is not even used. In its place, the Transportation Code uses a descriptive phrase: “written notice to appear in court.”<sup>7</sup> Section 543.003 contemplates issuing a written promise to appear for offenses contained in Subtitle C, Rules of the Road. Most misdemeanors contained in Subtitle C are generally punishable by a fine ranging from \$1 to \$200.<sup>8</sup>

Written promise to appear or citation? It is not surprising that the Transportation Code is inconsistent in its use of terminology. It evolved piecemeal. The Uniform Vehicle Code (UVC), published in 1926, provided a model set of traffic laws that many states, including Texas, used as a basis for their own regulations. In 1995, as part of the broader effort to organize and codify Texas law, these traffic regulations were consolidated into the Transportation Code Rules of the Road

The only definition of a citation in the Transportation Code is contained in Section 703.001. It states that the term’s meaning is assigned by Article II, Section (b) of the Nonresident Violator Compact of 1977: “any summons, ticket, or other official document issued by a police officer for a traffic violation containing an order which requires the motorist to respond.”<sup>9</sup> The Nonresident Violator Compact of 1977 is a U.S. agreement that helps states enforce traffic laws on nonresidents who commit violations while traveling outside their home state.

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

Article 14.06 of the Code of Criminal Procedure contains five requirements. Citations must contain (1) written notice of the time and place the person must appear before a magistrate; (2) the name and address of the person charged; (3) the offense

charged, (4) information regarding alternatives to full payment of any fine or cost if a person is convicted and unable to pay; and (5) the following domestic violence admonition, in bold face or underlined type or in capital letters:

“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.”

The first three requirements in Article 14.06 have been part of the statute since its inception. The latter two requirements reflect legislative initiatives. One is aimed at providing procedural safeguards for defendants unable to pay fines or court costs.<sup>10</sup> The other was necessary to ensure that Texas remains eligible for federal money aimed at deterring family violence.<sup>11</sup>

Section 543.003 of the Transportation Code, last amended in 1999, is simpler. It states that the written notice to appear in court must contain: (1) the time and place the person is to appear; (2) the offense charged; (3) the name and address of the person charged; and (4) if applicable, the license number of the person’s vehicle.

The Legislature has occasionally expanded the required information on citations. Before electronic ticket writers, fitting all this information onto one citation was as intricate as painting on a grain of rice. Now, with electronic ticket writer systems, some citations resemble comically long CVS receipts.

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

#### “The 10 Day Rule”

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

Surprisingly, there is no similar parallel rule for citations issued under the Code of Criminal Procedure specifying the period in which a defendant must appear. Rather, Article 14.06(b)(1) only requires that a citation specify “the time and place the person must appear before a magistrate.”

The assumption that people issued citations under Article

14.06(b) also have at least 10 days is widespread but not always correct. To be clear, many jurisdictions provide ten days. However, it can vary. Additionally, while it is logical that the specific time frame within which the person must appear or enter a plea is set by a court, such authority is not expressly stated in Article 14.06(b).

### **Notice to Appear: CMVs, CDLs, and the “Social Security Number Rule”**

Section 543.007 of the Transportation Code provides that a notice to appear for violating a law regulating the operation of vehicles on highways issued to a commercial motor vehicle (CMV) operator, commercial driver’s license (CDL) holder, or commercial learner’s permit (CLP) holder must contain “the information required by [Department of Public Safety (DPS)] rule,” to comply with Chapter 522 [of the Transportation Code] and the federal Commercial Motor Vehicle Safety Act of 1986.<sup>12</sup>

The proposition that a citation issued to a CDL or CLP holder must contain the driver’s social security number is widely accepted but not expressly stated in federal or state law. 49 U.S.C. 31308(4)(B) requires CDLs to contain social security numbers (or other numbers or information the Secretary of Transportation decides is appropriate to identify the individual). Section 543.201 of the Transportation Code requires courts to keep records when a person is charged with a violation of law regulating the operation of vehicles on highways. Following conviction, such records are submitted to DPS.<sup>13</sup> Section 543.202(b)(4) requires these records to include, among other things, “the person’s social security number, if the person was operating a commercial motor vehicle or was the holder of a [CDL] or [CLP].” Because such defendants are not always required to appear in court to handle their case,<sup>14</sup> sometimes the only way a court can obtain this required social security number information is via citation. This is likely why the “social security number rule” is widely accepted and followed.

### **Specification of the Speeding Charge**

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

### **Notice of Potential Suspension**

Section 601.233(a) of the Transportation Code states that a citation for an offense under Section 601.191 (Operation of Motor Vehicle in Violation of Motor Vehicle Liability Insurance Requirement; Offense) issued as a result of Section 601.053 (Evidence of Financial Responsibility) must include, in type

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

### **Contract for Enforcement of Certain Arrest Warrants**

It is a tenet of statutory construction that a header or title of a statute should not be considered when determining the meaning of a law.<sup>15</sup> Chapter 702 (Contract for Enforcement of Certain Arrest Warrants) is a good example. Contrary to its title, Chapter 702 is not just about arrest warrants (i.e., active criminal enforcement). A lot of it has to do with passive enforcement. Passive enforcement measures, created by the Legislature to reduce reliance on arrest warrants, are alternatives to criminal or civil enforcement that involve the denial of a privilege to compel a defendant to appear in court or comply with the judgment of a court.<sup>16</sup>

Section 702.004 pertains to the notice required on a citation if a municipality contracts with the county in which the municipality is located or the Texas Department of Motor Vehicles for refusal of vehicle registration. (This is often referred to as the Scofflaw Program).<sup>17</sup> Section 702.004(b) states, “The warning must state that if the person fails to appear in court as provided by law for the prosecution of the offense or fails to pay a fine for the violation, the person might not be permitted to register a motor vehicle in this state.” A similar warning is required pursuant to Section 706.003 when a citation is issued for a traffic offense and a municipality contracts with the Department of Public Safety under the Failure to Appear/Failure to Pay Program.<sup>18</sup>

### **Data for Racial Profiling**

Article 2.132 of the Code of Criminal Procedure provides that each law enforcement agency in this state shall adopt a detailed written policy on racial profiling. One of the seven requirements is for collection of information relating to traffic stops in which a citation is issued and arrests resulting from those traffic stops, including information relating to: (A) the race and ethnicity of the individual detained; (B) whether a search was conducted and, if so, whether the person detained consented to the search; (C) whether the peace officer knew the race or ethnicity of the individual before the detention; (D) whether the peace officer used physical force that resulted in bodily injury (E) the location of the stop; and (F) the reason for the stop. The data is then



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submitted to the local governing body as part of an annual report on racial profiling.<sup>19</sup>

Similarly, Section 543.202 of the Transportation Code requires courts to report race or ethnicity and additional information to DPS.

### **Right to a Driving Safety Course or Motorcycle Operators Course**

Article 45.0511(q) of the Code of Criminal Procedure states, “A notice to appear issued for an offense to which this article applies must inform a defendant charged with an offense under Section 472.022, Transportation Code, an offense under Subtitle C, Title 7, Transportation Code, or an offense under Section 729.001(a)(3), Transportation Code committed while operating a motor vehicle of the defendant’s right under this article to complete a driving safety course or, if the offense was committed while operating a motorcycle, of the defendant’s right to complete a motorcycle operator training course.”

The required notice must read substantially as follows: “You may be able to require that this charge be dismissed by successfully completing a driving safety course or a motorcycle operator training course. You will lose that right if, on or before your appearance date, you do not provide the court with notice of your request to take the course.”

### **“The Address Obligation”**

Article 45.057(h) of the Code of Criminal Procedure imposes an obligation of a child and/or parent to keep the court informed of the child’s current address. For the obligation to become effective, notice must be provided to the child, parent, or both. One of the three ways that a person may be placed under such an obligation is by being provided with a copy of the language of the subsection at the time they are issued a citation. If local governments intend on holding young adults responsible for offenses committed while they were children, understanding this area of the law, and dispersing this information at the time a citation is issued is essential.<sup>20</sup>

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

Texas law provides no authoritative answer to this question. However, based on practical experience and the roles of different entities within the justice system, the responsibility can be seen as a collaborative effort between law enforcement and court administration.

Peace officers are generally the ones who issue citations. They gather the information related to the violation and fill out the citation, which serves as a formal notice of the offense. Since state law authorizes peace officers to issue citations, they play a

significant role in the initial compilation of the document.

While law enforcement is responsible for issuing the citation, court administration often has a role in the processing and management of citations once they are received by courts. This may include subsequent data reporting or ensuring that the citation meets other legal requirements.

Since the first version of this article was published there have been several changes to what is required to be contained in a citation. Without collaboration, it is unlikely that either law enforcement or courts can successfully shoulder the responsibility alone.

### **4. Does Texas statutory law consider a person “under arrest” at the time a citation is issued?**

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

Section 543.003, Transportation Code states:

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

Chapter 14 of the Code of Criminal Procedure is entitled “Arrest Without Warrant.” Article 14.06 provides:

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

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

of the person charged, and the offense charged.

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

For a person to be lawfully arrested there must be probable cause.<sup>21</sup> Probable cause exists where the facts and circumstances known by the officer stemming from reasonable trustworthy information are sufficient in themselves to warrant a person of reasonable caution in the belief that a particular person has committed or is committing an offense.<sup>22</sup>

Nothing in Texas law authorizes the issuance of a citation without probable cause. However, because Texas criminal procedure lacks a mechanism to dismiss citations not based on probable cause, defendants must contest their guilt to raise such arguments.

#### **5. Does the “investigatory stop” of a motorist constitute a “seizure” under the Fourth Amendment?**

Yes. The stopping of a motorist is always a seizure, whether the officer’s purpose is to make a full custodial arrest or arrest and release with a citation<sup>23</sup>

A “seizure” occurs when (1) a suspect’s freedom of movement is restricted, and (2) the suspect is brought under the officer’s control either by submission to a show of legal authority or physical restraint.<sup>24</sup>

“Investigatory stops” and “arrests” are both seizures. But not all investigatory stops are arrests. An “investigatory stop” is a seizure of limited scope and duration in which a peace officer is required to have reasonable suspicion that the suspect is involved in criminal activity.<sup>25</sup> An “arrest” is a seizure of broader scope that can occur either intentionally or because of its duration or intrusiveness exceeds the boundaries of an investigatory stop.<sup>26</sup> As the Court of Criminal Appeals explained in *Amores v. State*, a peace officer is required to have probable cause to make an arrest.<sup>27</sup>

Despite popular misconception, since the Supreme Court’s ruling in *Delamare v. Prouse*, peace officers do not have the authority to stop motorists at random without reasonable suspicion to see their driver’s license or vehicle registration.<sup>28</sup> The narrow exception to the ruling involves checkpoint stops that are governed by special rules.<sup>29</sup> Section 521.025(b) of the Texas Transportation Code states that a peace officer may stop and detain a person operating a motor vehicle to determine if the person has a driver’s license. While this statute could be read to authorize exactly what *Prouse* prohibits, the statute should be read considering case law. The Court of Criminal Appeals,

though refusing to apply it retroactively, acknowledged *Prouse* as it relates to Section 521.025(b).<sup>30</sup> Most subsequent case law can be distinguished because the stop was coupled with probable cause for another offense. The Court of Criminal Appeals, and subsequently the courts of appeals, generally have not responded positively to peace officers’ efforts to use Section 521.025(b) as a subterfuge to stop drivers.<sup>31</sup>

#### **6. Under state law, who has the legal authority to issue a citation?**

The same people who have the legal authority to make arrests. Texas statutory law only authorizes “peace officers” to issue citations.<sup>32</sup>

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

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

However, some municipalities have adopted local ordinances authorizing non-peace officers, such as code enforcement personnel, to issue citations.<sup>33</sup> Code enforcement citations, while similar in purpose, are distinct from those issued pursuant to state law.<sup>34</sup> In large cities where the number of code violations would easily overwhelm local peace officers and in small towns where local law enforcement may be nonexistent, or limited by interlocal agreements with county government, the adoption of such an ordinance is necessary to effectively enforce ordinances relating to public safety and maintaining quality of life for its citizens. In adopting such an ordinance, some cities cite Section 51.001 of the Local Government Code, which states that a city has general authority to adopt an ordinance or police regulation that “is for the good government, peace, or order of the municipality” and is “necessary or proper for carrying out a power granted by law to the municipality[.]”<sup>35</sup>

A word of caution: the manner in which such citations are issued must be distinguished from those issued by peace officers. As explained in an opinion by the Office of the Texas Attorney General, “[w]hile the actions of ‘Code Enforcement Officers’ in stopping people [and] questioning them may not *per se* constitute arrests, very little more force may be necessary before such a situation becomes one in which a ‘person’s liberty of movement is restricted or restrained.’”<sup>36</sup> Accordingly, cities adopting such ordinances should establish clear guidelines and provide training for key personnel regulating the manner in which such citations are issued.

#### **8. May a Texas peace officer issue a citation for offenses other than Class C misdemeanors?**

Yes, for a limited number of offenses. H.B. 2391 (2007),

amending Article 14.06 of the Code of Criminal Procedure, authorizes peace officers to issue citations instead of arresting individuals for specific Class A and Class B misdemeanors. Article 14.06(d) includes:

1. Possession of Marijuana: Up to 4 ounces (Class B misdemeanor for up to 2 ounces, Class A for more than 2 ounces but less than 4 ounces).
2. Possession of a Controlled Substance: In Penalty Group 2-A, up to 2 ounces (Class B misdemeanor).
3. Criminal Mischief: If the amount of loss is between \$100 and \$750 (Class B misdemeanor).
4. Graffiti: When the damage is between \$100 and \$750 (Class B misdemeanor) or between \$750 and \$2,500 (Class A misdemeanor).
5. Theft: When the value of the property stolen is between \$100 and \$750 (Class B misdemeanor) or between \$750 and \$2,500 (Class A misdemeanor).
6. Theft of Service: When the value of the service is between \$100 and \$750 (Class B misdemeanor).
7. Tampering with a Government; Document Temporary Tag: (Class A misdemeanor).
8. Contraband in a Correctional Facility by an Employee or Volunteer (Class B misdemeanor).
9. Driving While License Invalid: When the individual has previously been convicted of the same offense (Class B misdemeanor).

More than 17 years after becoming law, the issuance of citations for the above enumerated offense is not mandatory and the decision to make an arrest is discretionary.<sup>37</sup> Arguably, the utility of Article 14.06(d) is hampered because it only applies, when the person being charged resides in the county where the offense occurred.<sup>38</sup>

What if the offense is in the Transportation Code? The answer is less clear. Chapter 543 of the Transportation Code does not limit the issuance of citations to Class C misdemeanors. Rather in referencing Subtitle C (Rules of the Road), Section 543.002 merely makes references to “persons arrested for a violation of this subtitle punishable as a misdemeanor.” While most offenses in Subtitle C are fine-only offenses, it also contains Class A and B misdemeanors, as well as some felonies.<sup>39</sup> However, here is no case law addressing the issuance of citations for such offenses, presumably because defendants in such cases are either subject to full custodial arrest or summoned to court.

## **9. Are peace officers required to issue citations in lieu of arrests for most Class C misdemeanors?**

No. Section 543.004 of the Transportation Code states that an officer may only issue a citation (rather than make a full custodial arrest) in three instances: if the offense charged is (1) speeding, (2) use of a wireless communication device while driving, or (3) open container of alcohol. All other Class C misdemeanors are eligible for full custodial arrest.<sup>40</sup> Allowing peace officers such broad discretionary arrest powers is a point of controversy.

In 2001 the U.S. Supreme Court in an appeal of a civil rights lawsuit was asked to adopt a construction of the Fourth Amendment that would have classified all full custodial arrests for non-breach of the peace, fine-only offenses as unreasonable seizures. The appeal of the dismissed lawsuit, *Atwater v. City of Lago Vista*, stemmed from an arrest in which multiple Class C misdemeanors were filed in a Texas municipal court and the plaintiff was subject to full custodial arrest, rather than issued citations. The Court in a 5-4 decision rejected the contention that a peace officer’s discretionary authority to either issue a citation or make a full custodial arrest violated the Fourth Amendment.<sup>41</sup>

Because Class C misdemeanors are “fine-only offenses” punishable by the imposition of a fine, not a sentence of incarceration, some contend that the issuance of a citation should be mandatory and that peace officers should have no discretion to make arrests. During the 78th Texas Legislature of 2003, Senate Bill 1597 was passed in response to the dissent in *Atwater*. The bill would have required peace officers issue citations for fine-only offenses, excluding breach of the peace offenses. In his veto proclamation, Governor Rick Perry explained that the legislation would require a supervisor’s review of a Class C misdemeanor arrest, impeding an officer’s ability to make arrests. Governor Perry further explained that he had consistently opposed efforts to restrict a peace officer’s discretionary arrest powers and those arrests for Class C misdemeanor offenses were supported by the Supreme Court’s decision.<sup>42</sup> Although S.B. 1597 did not become law, it helped to establish the groundwork for similar future legislative efforts, including those in the 2010s and 2020s. However, unlike S.B. 1597, no such similar efforts have made it as far as the governor’s desk.

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

Section 543.008 of the Transportation Code states that “[a] violation by an officer of a provision of Sections 543.003-543.007 is misconduct in office and the officer is subject to removal from the officer’s position.” Presumably, this provision

is designed to be a safeguard to protect drivers from capricious or discriminatory arrests by law enforcement. However, it does not specify who is responsible for its enforcement. Consequently, how this statute operates is unclear. Although it has been on the books since 1995, there is no case law or secondary source addressing the practical application of this provision. Similarly, efforts to locate a record of a peace officer being removed for requiring a person accused of a fine-only offense to provide more information than the law requires, or for illegally subjecting a person to full custodial arrest, were fruitless.

### 11. Under what circumstances is a peace officer legally authorized to issue a citation?

Ostensibly, under the same circumstances where a peace officer is authorized to make an arrest.

Because both the Code of Criminal Procedure and the Transportation Code describe the issuance of a citation as being incident to an arrest, presumably a citation can only be issued under the same circumstances that a peace officer can make a warrantless arrest.

As all arrests (including warrantless arrests) require probable cause, the peace officer issuing a citation must have probable cause that the suspect has committed an offense. The probable cause presumably must be coupled with a valid exception to the warrant requirement. Statutory exceptions to the warrant requirement contained in the Code of Criminal Procedure: (1) offense within presence or view if classed as an offense against the public peace;<sup>43</sup> (2) offense within the view of a magistrate;<sup>44</sup> (3) Class C offense involving family violence;<sup>45</sup> (4) preventing the consequences of theft;<sup>46</sup> and (5) the cacophony of confusion known as “suspicious places.”<sup>47</sup>

While most of the statutory authorization for warrantless arrests are relatively straight forward, suspicious places is not.<sup>48</sup> Article 14.03(a)(1) states that “[a]ny peace officer may arrest, without warrant[,] persons found in suspicious places and under circumstances which reasonably show that such persons have been guilty of some felony, violation of Title 9, Chapter 42, Penal Code (Disorderly Conduct and Related Offenses), breach of the peace, or offense under Article 49.02, Penal Code (Public Intoxication), or threaten, or are about to commit some offense against the laws[.]”

Assuming that citations can be issued only under the same circumstances as a peace officer can make warrantless arrest, one instance where Article 14.03(a)(1) appears applicable is where a suspect is alleged to have engaged in disorderly conduct but not within the view of a peace officer. A peace officer presumably could issue a citation for disorderly conduct after conducting an investigation and determining probable cause.

Because the Code of Criminal Procedure does not define a suspicious place, the meaning of the term has largely been left to the courts. Appellate courts have not held that any place is inherently suspicious. Therefore, courts should use the totality of the circumstances test in deciding if Article 14.03(a)(1) is appropriate.<sup>49</sup>

It is not uncommon for peace officers to show up at the location of an automobile accident and, after investigating, issue a citation to one or more persons involved in the accident. Assuming probable cause exists, the peace officer’s authority to issue a citation in such instances (despite not having seen the accident) presumably comes from the notion that the scene of the accident is a suspicious place.

### 12. Are there any circumstances where a peace officer is not authorized to issue a citation?

Yes. The law does not authorize peace officers to issue citations for public intoxication, traffic offenses committed on private roadways, and for school offenses.

**Public intoxication.** While public intoxication is listed as one of the statutory exceptions to the warrant requirement,<sup>50</sup> the Code of Criminal Procedure provides a specific rule governing the arrest and release of individuals accused of public intoxication. Citations are not listed as an option. This is presumably due to the danger that an intoxicated person may pose to themselves or others.

Rather, Article 14.031 provides that the individual may be released if: (1) the officer believes that incarceration is unnecessary for the protection of the individual or others; and (2) either the individual is released to the care of an adult who agrees to assume responsibility for the individual or the individual verbally consents to voluntary treatment for substance use in a treatment facility or voluntary admission to a facility that provides a place for individuals to become sober under supervision. Both options in (2) require the facility to “admit” the individual.

Presumably, when public intoxication cases are handled pursuant to Article 14.031, such individuals are to be charged by the filing of a sworn complaint.

**Private roadways.** A peace officer generally has no authority to issue a citation for a traffic offense on private streets because a typical traffic offense element is that it must occur on a “highway” or “street.” Section 541.302(5) defines these as “the width between the boundary lines of a *publicly* maintained way any part of which is open to the public for vehicular travel” (emphasis added). Furthermore, an Attorney General Opinion from 1999 interprets Article III, Section 52 and Article XI, Section 3 of the Texas Constitution to prohibit the use of

public monies to enforce state and municipal traffic laws on its private streets.<sup>51</sup>

**School offenses.** In response to allegations of misuse of citations by some schools and school law enforcement, the Legislature in S.B. 393 (2013) changed the law to require that certain charges (school offenses) be instigated by the filing of a complaint by a person with personal knowledge, in lieu of issuing a citation.<sup>52</sup> A school offense is a Class C misdemeanor, other than a traffic offense, committed by a child enrolled in a public school while on property under the control and jurisdiction of a school district.<sup>53</sup> Under Section 37.143 of the Education Code, a peace officer is not authorized to issue a citation to a child (a person who is younger than 18 years of age) for certain school-related offenses. Specifically, this section applies to offenses that occur on school property during regular school hours or at school-sponsored or school-related activities on or off school property.

### 13. What happens if a peace officer attempts to issue a citation, but the suspect refuses to sign the citation?

Rather than being an “arrest and release,” the arrest becomes a “full custodial arrest.”

If the offense is a Subtitle C, Rules of the Road violation, Section 543.005 of the Transportation Code provides that “[t]o secure release, the person arrested must make a written promise to appear in court by signing the written notice prepared by the arresting officer.”

Section 543.002(a)(2) of the Transportation Code states that a person arrested for a violation of Subtitle C shall be immediately taken before a magistrate if the person either demands an immediate appearance before a magistrate or refuses to make a written promise to appear in court.

Notably, the Code of Criminal Procedure contains no language parallel to Sections 543.002 or 543.005 of the Transportation Code. Article 14.06 of the Code of Criminal Procedure requires peace officers to present arrested persons before a magistrate within 48 hours. Despite specific language, it is logical to assume that someone refusing to sign a citation for a non-traffic offense would be subject to a full custodial arrest as they would be if charged with a traffic offense. Other than Chapter 543 of the Transportation Code, which is limited in scope to Subtitle C Rules of the Road violations, Article 14.06(b) of the Code of Criminal Procedure is the only other statutory authority for the issuance of a citation. Article 14.06(b) does not require a person to make any promise to appear nor does it expressly require the defendant to sign the citation. While this potentially could pose a proof problem in the event the case goes to trial, persons issued citations pursuant to Article 14.06(b) may nonetheless be prosecuted for Failure to Appear (FTA) under Section 38.10 of

the Penal Code.<sup>54</sup> The distinction between FTA and its Rules of the Road counterpart in Section 543.009 Transportation Code (Violation Promise to Appear) were at issue in *Azeez v. State*.<sup>55</sup>

The provisions relating to citations contained in the Transportation Code and the Code of Criminal Procedure appear to be inconsistent. However, in *Berrett v. State*, the Houston 1st Court of Appeals held that in the context of a seat belt violation there is no discrepancy between Article 14.06(b) and the requirement of Chapter 543 of the Transportation Code.<sup>56</sup> Rather, the two provisions should be read in unison, and Chapter 543 merely builds upon the framework of Article 14.06(b).

An alternative available to peace officers encountering a suspect who refuses to sign a citation is to have the peace officer or another person with knowledge file a sworn complaint in court. Upon a request from a prosecuting attorney, the defendant may be summonsed to appear in court.<sup>57</sup>

### 14. Does the law authorize citations to be issued via mail?

No. Remember, a citation is best analogized to an “arrest and release.” You cannot arrest someone by mail, nor can they promise to appear. A citation should be issued under the same circumstances where a peace officer can make a warrantless arrest. Otherwise, the Code of Criminal Procedure contemplates that a peace officer may attest to a probable cause affidavit and either a warrant may be issued or, with a prosecutor’s motion, a summons shall be issued to order the accused to appear in court.

In *Carson v. State*, the Fort Worth Court of Appeals declined to hold that “the mailing or receipt of a Class C misdemeanor citation constitutes an arrest.”<sup>58</sup>

While a defendant who responds to a mailed citation presumably submits to the authority of the court and waives the ability to make any meaningful arguments about service of process, it is interesting to imagine what would happen if a defendant refused to respond to a mailed citation and was subsequently arrested.

The practice of mailing citations should not be condoned. It is not rooted in the law. Rather than mailing a citation, law enforcement should procure a summons.

### 15. Is a person’s obligation to appear in court following the issuance of a citation in anyway affected by the addition of protest words, e.g., “forced to sign under threat, duress, and coercion?”

No. The issuance of a citation is not a civil contractual matter.<sup>59</sup> This is, however, one of the favorite maneuvers of sovereign defendant groups such as the Republic of Texas.

**16. If an individual is arrested and taken to jail, can the citation alone serve as probable cause for the defendant's arrest?**

No. A citation does not provide enough information for a magistrate to determine probable cause. It is not sworn to or under oath. More is required.

Despite this fact, many judges have encountered individuals arrested for Class C misdemeanors and placed in jail with nothing more to substantiate the arrest than a manila folder containing a citation with the word "INSTANTER" written on it. Such arrests, long part of Texas criminal justice folklore, are not authorized by statutory or case law.

In 1975, the U.S. Supreme Court held in *Gerstein v. Pugh* that a suspect arrested without a warrant is entitled under the Fourth Amendment to a prompt determination of probable cause.<sup>60</sup>

Seven years later, in *Sanders v. City of Houston*, a federal district court enforced the general mandate stated in *Gerstein* and held that a probable cause determination must occur at the Article 15.17 presentation before a magistrate.<sup>61</sup> The court enjoined the City of Houston for detaining arrested persons for longer than 24 hours.<sup>62</sup>

Finally in 1991, in *County of Riverside v. McLaughlin*, the U.S. Supreme Court created a right to have probable cause determined generally within 48 hours of any warrantless arrest.<sup>63</sup>

Probable cause determinations during the presentation before a magistrate have become a matter of local practice.<sup>64</sup> Article 15.17 of the Code of Criminal Procedure does not contain any such requirement.

While it would have been logical to assume that the constitutional right created by *County of Riverside v. McLaughlin* would be codified in the Code of Criminal Procedure (presumably in Article 15.17) during the next regular session of the Texas Legislature, it did not happen. In fact, it took nearly 10 years for the right provided in *County of Riverside v. McLaughlin* to find its way into the Code of Criminal Procedure.

As part of the Texas Fair Defense Act of 2001, Article 17.033(b) of the Code of Criminal Procedure was amended to require that misdemeanants be released on a \$5,000 personal recognizance bond if probable cause has not been determined by a magistrate within 24 hours of arrest.<sup>65</sup> While this amendment is not part of Article 15.17, to a certain degree it codifies the essence of *Gerstein* and its progeny.

**17. Without more, can a citation be the basis for issuing an arrest warrant?**

No. A sworn complaint (a.k.a. a probable cause affidavit) is

required before a warrant is issued. The Court of Criminal Appeals has held however, that a citation can be the basis from which an affiant may attest to information that may suffice as probable cause and justify the issuance of a warrant.<sup>66</sup>

Beware of the confusion over the word "complaint" that is unique to Texas criminal law. Though it is easy to do, do not confuse the complaint (probable cause affidavit) with the complaint which is the charging instrument.<sup>67</sup>

**18. If the issuance of a citation is an "arrest and release," can a peace officer search a person's automobile?**

No. In *Knowles v. Iowa*, the U.S. Supreme Court decided not to extend the "search incident to arrest" doctrine<sup>68</sup> to circumstances where a peace officer elects to issue a citation in lieu of making a full custodial arrest.<sup>69</sup> The state law authorizing a "search incident to citation" was deemed a violation of the Fourth Amendment. In the decision, the Court emphasized that: (1) the threat to a peace officer issuing a citation is less than that of a peace officer making a full custodial arrest; (2) there were less invasive measures available to peace officers issuing citations that could minimize the danger they experience while issuing citations; and (3) once a peace officer has all of the information necessary to issue a citation, there is presumably no need to preserve and protect evidence.<sup>70</sup>

**19. Is a citation an "arrest" for Fifth Amendment self-incrimination purposes?**

No. In *Berkemer v. McCarty*, the Court explained:

Two features of an ordinary traffic stop mitigate the danger that a person questioned will be induced 'to speak where he would not otherwise do so freely'. First, detention of a motorist pursuant to a traffic stop is presumptively temporary and brief. The vast majority of roadside detentions last only a few minutes. A motorist's expectations, when he sees a policeman's light flashing behind him, are that he will be obliged to spend a short period of time answering questions and waiting while the officer checks his license and registration, that he may then be given a citation, but that in the end he most likely will be allowed to continue on his way. In this respect, questioning incident to an ordinary traffic stop is quite different from stationhouse interrogation, which frequently is prolonged, and in which the detainee often is aware that questioning will continue until he provides his interrogators the answers they seek.<sup>71</sup>

**20. Is it legal for an issuing agency to "void" a citation?**

It depends on when it is voided and what you think "voided"

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means. In *City of Houston v. Cotton*, the Houston 14th Court of Appeals held that a former sanitarian’s alleged ticket fixing scheme did not constitute a whistleblower action because she failed to provide substantial proof that a violation of law occurred<sup>72</sup>. In dicta, the court accepted the proposition that if the sanitarian’s supervisor or any other person “destroyed” a citation once it was “in the system,” there would have been a violation of the law. In this instance, however, citations were being voided and placed in a folder for voided citations. One witness testified, and the court did not disagree, that a document was officially designated a “government document” once “it goes through the system.” Accordingly, under the unambiguous language of Section 37.10 of the Penal Code (tampering with a governmental document), if managers in the City of Houston Health Department—in the course of their official duties—marked citations as void or decided not to pursue them further without destroying, concealing, removing, or otherwise impairing the verity, legibility, or availability of the citations, their conduct would not violate Section 37.10.

While a plain reading of Section 37.10 of the Penal Code reveals other possible ways that a citation could be the basis of an alleged violation of the statute (e.g., selling, stealing, or otherwise fraudulently using citations), the Court of Criminal Appeals decision in *State v. Vasilas*, rejected the notion that a “governmental record” excludes documents filed with courts.<sup>73</sup> Debatably, this lends credence to the notion that a citation is a governmental record when filed in municipal court. It should not, however, be construed to mean that a document such as a citation cannot be a governmental record until it is filed in court.

### **21. Is a citation a formal charging instrument?**

No. As the Court of Criminal Appeals explains in *Huynh v. State*, “[t]here are three types of charging instruments — indictments, informations, and complaints. Indictments and informations are provided for and defined in the Texas Constitution. They are also defined in the Code of Criminal Procedure. Complaints are not addressed in the Constitution, but are provided for in the Code of Criminal Procedure in a variety of contexts.<sup>74</sup>

### **22. Under any circumstances, can a citation serve as a complaint?**

Yes, but only in two limited circumstances: (1) when the defendant is not contesting guilt and (2) when the defendant waives the right to be charged by sworn complaint.

Article 27.14(d) of the Code of Criminal Procedure states, “[i]f written notice of an offense for which maximum possible punishment is by fine only or of a violation relating to the manner, time, and place of parking has been prepared, delivered, and filed with the court and a legible duplicate copy has been given to the defendant, the written notice serves as a complaint to which the defendant may plead ‘guilty,’ ‘not guilty,’ or ‘*nolo contendere*.’ If the defendant pleads ‘not guilty’ to the offense or fails to appear based on the written notice, a complaint shall be filed that conforms to the requirements of Chapter 45 of this Code, and that complaint serves as an *original* complaint” (emphasize added).<sup>75</sup>

Article 27.14(d) also states, “[a] defendant may waive the filing of a sworn complaint and elect that the prosecution proceed on the written notice of the charged offense if the defendant agrees in writing with the prosecution, signs the agreement, and files it with the court.”<sup>76</sup>

Otherwise, a case in a municipal court commences with the filing of a sworn complaint. The purpose of a complaint in a municipal court is to commence the proceedings and confer jurisdiction upon the court.<sup>77</sup>

Outside of the two limited circumstances mentioned above, if a case is initiated by citation but a complaint is never filed, there is a good argument that the court has no jurisdiction.

### **23. Does the filing of a citation toll the statute of limitations?**

No. The Code of Criminal Procedure does not state that the filing of a citation tolls the statute of limitations.

Prior to 2009 there was some confusion regarding the answer to this question because there was no express answer in the Code of Criminal Procedure.<sup>78</sup> However, the law is now clear.

Per Article 12.02 of the Code of Criminal Procedure only the filing of a complaint or information can toll the two-year statute of limitations in a Class C misdemeanor case (or the three-year statute of limitations for Class C assault with family violence).

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## 24. Do defects in a citation invalidate a criminal charge?

It depends on the circumstances.

Data entry errors (*i.e.*, typos) and other erroneous information made in the citation by peace officers can generally be corrected subsequently in the filing of a complaint.

The question is who is going to be the complainant? TMCEC commonly receives telephone calls from clerks who are given citations that are defective or ambiguous in stating an offense. Ethically, court clerks should not be expected by peace officers to “fill in the blanks.” Peace officers or prosecutors should remedy the defects.

Ambiguous citations that fail to state a specific offense would likely be deemed an insufficient source of information for an affiant to attest to when obtaining a warrant<sup>79</sup>. Nor, presumably, can a citation that fails to state an offense satisfy Article 45.019(a)(4) of the Code of Criminal Procedure that requires that a complaint “must show that the accused committed an offense against the law of this state, or state that the affiant has good reason to believe and does believe that the accused has committed an offense against the law of this state.”

A trial court, in very limited circumstances, can dismiss a charging instrument.<sup>80</sup> However, as previously explained, the charging instrument in municipal and justice courts is a sworn complaint, not the citation. Accordingly, it would be inappropriate for a court to dismiss a defective citation without giving the State an opportunity to be heard or remedy the defect. Under Article 27.14(d), a citation is intended only as an interim complaint and time saving device. The exception to this, of course, would be the rare situation where the defendant waived the right to be charged by a sworn complaint. In such limited instances where a valid waiver has occurred and the citation is the charging instrument, case law suggests (in a footnote) that a court has the power to dismiss a case without the State’s consent if it contains a defect.<sup>81</sup>

However, it is hard to imagine many circumstances where a prosecutor would ask the defendant to waive being charged by a sworn complaint. If the defendant waives the right to be charged by a formal complaint and elects to proceed on the written notice of the charged offense, pursuant to Article 27.14(d), any defect in the citation could prove fatal to the prosecution (*e.g.*, instances where the citation states the wrong day, month, year, location, *etc.*).

## 25. Can a citation be admitted as evidence at trial?

Yes, in limited circumstances. Generally, under Rule 803(8) of the Texas Rules of Evidence, public records and reports are not excluded by the hearsay rule, regardless of whether the declarant is available as a witness. Rule 803(8)(A)(ii) allows admission of a public record or statement if it sets out matters observed while under a duty to report. However, this specifically does not apply to public records and statements in a criminal case that set out “a matter observed by law enforcement personnel.”<sup>82</sup> Even if such a record satisfies the requirements of the business records exception under Rule 803(6) (or another exception), it cannot be admitted.<sup>83</sup> The exclusions do not apply, however, if the record or report is offered by the accused.

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1. Black’s Law Dictionary (6th ed. 1990).

2. Office of Court Administration, Annual Statistical Report for the Texas Judiciary Detail 164 (2022).

3. *Id.* at 161.

4. Yet, at the same time, these numbers reflect a stark decline of more than 50 percent from 2007 when this article was first published. Varying explanations have been offered for the decline, which began prior to the COVID-19 pandemic. *See*, Robert Avila, Mark Denman, Ryan Kellus Turner, “One Decade Down: Possible Explanations for the Decrease in Traffic Citations in Texas,” *The Recorder* (May 2018).

5. In FY 22, county courts had 296,813 new Class A and Class B misdemeanor filings. OCA, *see note 2*, at 155. District courts had 229,142 felony filings. *Id.* at 151.

6. *See*, Tex. Crim. Proc. Code Ann. § 27.14(d).

7. Tex. Transp. Code Ann. § 543.003.

8. Tex. Transp. Code Ann. § 542.401.

9. Tex. Transp. Code Ann. § 703.003(b)(1).

10. Summary of H.B. 351/S.B. 1913, *The Recorder* (August 2017) at 44.

11. Summary of S.B. 1236, *The Recorder* (August 2009) at 9.

12. Section 543.007 incorrectly provides that the Commercial Motor Vehicle Safety Act still begins at Title 49, U.S.C. Section 2701. Due to renumbering, the Act currently begins at Title 49, U.S.C. Section 31100.

13. Tex. Transp. Code Ann. § 543.203.

14. Neither those operating CMVs nor CDL/CLP holders are excepted from Article 27.14(b) of the Code of Criminal Procedure., which allows municipal court defendants to mail pleas and payments and dispose of their case without ever setting foot in the courthouse.

15. Tex. Gov’t Code Ann. § 311.204. The heading of a title, subtitle, chapter, or section does not limit or expand the meaning of a statute.

16. Tex. Mun. Cts. Educ. Ctr., Municipal Courts and the Texas Judicial System 202 (2022).

17. *See, e.g.*, Bill Oliver, *Bryan City Council Approves Starting A “Scofflaw” Program to Collect Millions in Unpaid Fines*, WTAW (August 21, 2024). <https://wtaw.com/bryan-city-council-approves-starting-a-scofflaw-program-to-collect-millions-in-unpaid-municipal-court-fines/>.

18. Tex. Dep’t of Pub. Safety, Failure to Appear/Failure to Pay Program, <https://www.dps.texas.gov/section/driver-license/failure-appearfailure-pay-program> (last visited August 22, 2024).



19. Tex. Crim. Proc. Code Ann. § 2.132(b)(6).
20. See, Ryan Kellus Turner, “Holding Youth Accountable: What Peace Officers, Prosecutors, and Judges Need to Know about HB 2319 and Fine-Only Offenses, and Juveniles Now Adults” 13 *Municipal Court Recorder* 1 (December 2003).
21. U.S. Const. amend. IV; Tex. Const. art. I, § 9.
22. *Amores v. State*, 816 S.W.2d 407, 413 (Tex. Crim. App. 1991) (citing *Brinegar v. U.S.*, 338 U.S. 160, 176 (1949)).
23. *U.S. v. Martinez-Fuerte*, 428 U.S. 543 (1976); *U.S. v. Brignoni-Ponce*, 422 U.S. 873 (1975).
24. *Cal. v. Hodari D.*, 499 U.S. 621 (1991).
25. *U.S. v. Cortez*, 449 U.S. 411 (1981).
26. *Kaupp v. Tex.*, 538 U.S. 626 (2003).
27. *Amores*, 816 S.W.2d at 411.
28. *Del. v. Prouse*, 440 U.S. 648 (1979).
29. *Mich. v. Sitz*, 496 U.S. 444 (1990).
30. *Luckett v. State*, 586 S.W.2d 524 (Tex. Crim. App. 1979).
31. *McMillan v. State*, 609 S.W.2d 784 (Tex. Crim. App. 1980).
32. Tex. Trans. Code Ch. 543; Tex. Crim. Proc. Code Ann. § 14.06(b).
33. See, e.g., Article 12.03 (Criminal Enforcement) Dripping Springs Code of Ordinances. [https://library.municode.com/tx/dripping\\_springs/codes/code\\_of\\_ordinances?nodeId=COOR\\_CH12LAENCO\\_ART12.03CREN](https://library.municode.com/tx/dripping_springs/codes/code_of_ordinances?nodeId=COOR_CH12LAENCO_ART12.03CREN).
34. *Id.* at Sec. 12.03.005, [https://library.municode.com/tx/dripping\\_springs/codes/code\\_of\\_ordinances?nodeId=COOR\\_CH12LAENCO\\_ART12.03CREN\\_S12.03.005RERELA](https://library.municode.com/tx/dripping_springs/codes/code_of_ordinances?nodeId=COOR_CH12LAENCO_ART12.03CREN_S12.03.005RERELA).
35. See, e.g., City of Dripping Springs Ordinance No. 2022-44. [https://library.municode.com/tx/dripping\\_springs/ordinances/code\\_of\\_ordinances?nodeId=1191395https://library.municode.com/tx/dripping\\_springs/ordinances/code\\_of\\_ordinances?nodeId=1191395](https://library.municode.com/tx/dripping_springs/ordinances/code_of_ordinances?nodeId=1191395https://library.municode.com/tx/dripping_springs/ordinances/code_of_ordinances?nodeId=1191395).
36. Tex. Att’y Gen. LO95-027 (1995) (citing *Amores v. State*, 816 S.W.2d 407, 411 (Tex. Crim. App. 1991)).
37. Ismael M. Belkoura, *Fact brief: Can Fort Worth police choose not to arrest someone for possessing marijuana?*, Fort Worth Report (Aug. 26, 2024 4:15 p.m.) [https://fortworthreport.org/fact-brief/2024/08/26/can-fort-worth-police-choose-not-to-arrest-someone-for-possessing-marijuana/?utm\\_source=Fort+Worth+Report&utm\\_campaign=99e6aa2389-EMAIL\\_CAMPAIGN\\_2024\\_08\\_26\\_01\\_12&utm\\_medium=email&utm\\_term=0\\_99e6aa2389%5BBLIST\\_EMAIL\\_ID%5D&mc\\_cid=99e6aa2389&mc\\_eid=ef8ed83bbb](https://fortworthreport.org/fact-brief/2024/08/26/can-fort-worth-police-choose-not-to-arrest-someone-for-possessing-marijuana/?utm_source=Fort+Worth+Report&utm_campaign=99e6aa2389-EMAIL_CAMPAIGN_2024_08_26_01_12&utm_medium=email&utm_term=0_99e6aa2389%5BBLIST_EMAIL_ID%5D&mc_cid=99e6aa2389&mc_eid=ef8ed83bbb)
38. Tex. Crim. Proc. Code Ann. § 14.06(c).
39. For example, Section 547.614 (knowingly installing a defective airbag) is a Class A misdemeanor, Section 548.603(a) (presenting a fictitious inspection certificate or insurance document) is a Class B misdemeanor, and Section 548.603(b) (making or possessing a fictitious inspection certificate or insurance document) is a third-degree felony.
40. Tex. Crim. Proc. Code Ann. § 14.06(b).
41. *Atwater v. Lago Vista*, 532 U.S. 318 (2001).
42. Gov. Rick Perry, Veto Proclamation, S.B. 1597 (June 20, 2003), <chrome-extension://efaidnbmnnnlbpceajpglclfindmkaj/https://lrl.texas.gov/scanned/vetoes/78/SB1597.pdf>.
43. Tex. Crim. Proc. Code Ann. § 14.01(a). In 2007, members of the Texas District and County Attorneys Association’s bulletin board service (BBS)—a system that was popular primarily in the 1980s and 1990s, allowing users to connect and communicate with each other over a network, typically via a modem connected to a phone line—engaged in a spirited conversation about whether a peace officer can issue a citation when an offense is not committed in the presence or view of a peace officer. Kudos to TDCAA for preserving the conversation: <https://tdcaa.infopop.net/eve/forums/a/tpc/f/157098965/m/5471071351>.
44. Tex. Crim. Proc. Code Ann. § 14.02.
45. Tex. Crim. Proc. Code Ann. § 14.03(a)(4).
46. Tex. Crim. Proc. Code Ann. § 18.16.
47. Tex. Crim. Proc. Code Ann. § 14.03(a)(1).
48. Tex. Crim. Proc. Code Ann. § 14.03(a)(1).
49. Tex. Att’y Gen. Op. No. JC-0016 (1999). However, contrast with Section 542.008 of the Transportation Code, which became law in 2001, creating limited authority for traffic regulation on private roadway to be enforced in private subdivisions in some municipalities.
50. Tex. Educ. Code Ann. § 37.146.
51. Tex. Educ. Code Ann. § 37.141(2).
52. The language of Section 38.10 of the Penal Code still poses serious problems for citations that are unsigned or that do not contain a promise to appear. Subsection (a) provides that “[a] person lawfully released from custody, with or without bail, on condition that he subsequently appear commits an offense if he intentionally or knowingly fails to appear in accordance with the terms of his release.”
53. *Azquez v. State*, 248 S.W.3d 182 (Tex. Crim. App. 2008). See also, Ryan Kellus Turner, “Sorting Out the Anomaly: Non-Appearance Crimes in Light of *Azquez v. State*,” *The Recorder* (June 2008).
54. *Berrett v. State*, 152 S.W.3d 600 (Tex. App.—Houston [1st Dist.] 2005, pet. ref’d).
55. Tex. Crim. Proc. Code Ann. §§ 45.018; 23.04.
56. *Carson v. State*, 65 S.W.3d 774, 782. Despite the unauthorized mailing of a citation, the court went on to grant the petitioners’ request for an expunction on the grounds that *actual submission to an assertion of authority* by appearing at the time and place indicated on the citation to dispute the charges against him was a restraint and liberally constituted an arrest for purposes of considering an expunction request.
57. Tex. Att’y Gen. Op. No. JC-0317 (2000).
58. *Gerstein v. Pugh*, 420 U.S. 103 (1975).
59. *Sanders v. City of Hous.*, 543 F. Supp. 694 (S.D. Tex. 1982).
60. *Id.* at 705.
61. *Cty. of Riverside v. McLaughlin*, 500 U.S. 44 (1991).
62. George E. Dix and Robert O. Dawson, Texas Practice Series § 15.04 (West 2006).
63. Tex. Crim. Proc. Code Ann. § 17.033(b).
64. *State v. Martin*, 833 S.W.2d 129 (Tex. Crim. App. 1992).
65. See, Ryan Kellus Turner, “Complaints, Complaints, Complaints: Don’t Let the Language of the Law Confuse You,” 13:6 *Municipal Court Recorder* 6 (2004).
66. *U.S. v. Robinson*, 414 U.S. 218 (1973).
67. *Knowles v. Iowa*, 525 U.S. 113 (1998).
68. *Id.*
69. *Berkemer v. McCarty*, 468 U.S. 420, 427-428 (1984).
70. *City of Hous. v. Cotton.*, 171 S.W.3d 541 (Tex. App.—Houston [14th Dist.] 2005, pet. denied).
71. Gerald S. Reamey, *Arrests in Texas* § “Suspicious Places”: *A Rule in Search of Reason*, 31:3 Tex. Tech L. Rev. 931.
72. *Lara v. State*, 469 S.W.2d 177 (Tex. Crim. App. 1971).
73. *State v. Vasilas*, 187 S.W.3d 486 (Tex. Crim. App. 2006).
74. *Supra*, note 74.
75. Tex. Crim. Proc. Code Ann. § 27.14(d).
76. *Id.*
77. *Bass v. State*, 427 S.W.2d 624 (Tex. Crim. App. 1968).
78. Summary of S.B. 410, *The Recorder* (August 2009) at 6.
79. See generally, *Gordon v. State*, 801 S.W.2d 899 (Tex. Crim. App. 1990).
80. *State v. Mungia*, 119 S.W.3d 814 (Tex. Crim. App. 2003). With no inherent authority for a trial court to dismiss a charging instrument without consent of the State, a court must gain its authority to do so from a constitution, statute, or common law.
81. *State v. Johnson*, 821 S.W.2d 609, 612 n. 2 (Tex. Crim. App. 1991).
82. Tex. R. Evid. 803(8)(A)(ii).
83. *Cole v. State*, 839 S.W.2d 798, 805-806 (Tex. Crim. App. 1990).



# C3 SPOTLIGHT

## What City Officials Should Know about Youth Diversion



Mark Goodner, General Counsel and Director of Education, TMCEC

The Texas Youth Diversion and Early Intervention Act, passed by the 88th Texas Legislature in 2023 as House Bill 3186 requires redirecting children accused of certain Class C misdemeanors away from formal prosecution. Until January 1, 2025, municipal judges and justices of the peace can only order child defendants to complete a class or some other program after a case has resulted in a conviction or deferral of disposition. Youth Diversion makes these strategies available at the front end of a case where they can be more effective. This aligns municipal and justice court practices with those used by juvenile probation and juvenile courts.

**What is Diversion?** “Diversion” is defined as an intervention strategy aimed at redirecting a child otherwise facing formal criminal prosecution while holding them accountable for their actions. Currently, a citation or complaint filed against a child (age 10-16) leads to a court appearance possibly followed by a trial, criminal sentence, or deferred disposition. These can result in fines and fees owed and a criminal record. Diversion allows an alternative process that focuses on preventing further criminal conduct without imposing fines or punitive measures unrelated to the child's accountability and rehabilitation.

**Effective Dates and Implementation Timeline** The new law went into effect on January 1, 2024. The ability to divert youth defendants, however, only applies to offenses committed on or after January 1, 2025. All justice and municipal courts are required to adopt a youth diversion plan by January 1, 2025. These written plans will outline the strategies and processes for diverting youth from formal criminal prosecution. To promote collaboration and the leveraging of resources, Article 45.306(d) authorizes local governments to enter into an agreement to create a regional youth diversion plan and collaborate to create a regional youth diversion plan and collaborate in the implementation of Subchapter E per Chapter 791 of the Government Code (Interlocal Cooperation Contracts). Similarly, because local governments may not have adequate staffing resources, a youth diversion plan may include an agreement with a service provider to provide services for a diversion strategy.

Court personnel across the state have begun work towards developing diversion plans and have resources and training available to them from TMCEC.

**One Size Does Not Fit All** Courts may choose to offer “intermediate diversion.” If the youth diversion plan provides for intermediate diversion, a youth diversion coordinator must advise a child and the child's parent, before a case is filed, that the case may be diverted. All courts must offer “diversion by judge,” which requires a charge to be dismissed by the court if the child does not contest the charge, is eligible for diversion, and accepts the terms of the diversion agreement.

**Local Funds Are Available for Plans and Staffing** Courts offering intermediate diversion may consider hiring a juvenile case manager. While this would certainly cost money, there are funds available. Every court has been collecting the Local Consolidated Fee since January of 2020. Five dollars of that fee went into a dedicated fund called the Local Truancy Prevention and Diversion Fund. Courts without a juvenile case manager had no way to spend that money until January 1, 2024. On that date, the fund was renamed as the Local Youth Diversion Fund. Courts with juvenile case managers can use this money to finance the salary, benefits, training, travel, supplies, and other necessary expenses related to the position of juvenile case manager. Municipalities without a juvenile case manager may use the fund to pay for support of a local mental health authority, juvenile alcohol and substance abuse programs, and other projects designated to prevent or reduce the number of juvenile referrals to court, as long as money from the fund is not used to supplement the income of an employee whose primary role is not that of juvenile case manager.

Additionally, municipal courts collect a State Consolidated Fee of \$62 on most cases. Much like the Local Consolidated Fee, that fee is divided between 19 accounts (but this time the accounts are maintained by the State). Just over 2.5% of that fee will be allocated to the State's Youth Diversion Account, in the State's general fund. Local governments may request funds from the account to provide youth diversion services.

[CLICK HERE to get on the  
EARLY NOTIFICATION LIST](#)



# C3 Fines and Fees Forum

October 2, 2024

AC Hotel by Marriott  
Waco

Waco, Texas



COUNCILS  
COURTS  
CITIES



## C3 FINES AND FEES FORUM

The C3 Fines and Fees Forum will be held on Wednesday, October 2, 2024, from 8 a.m. to 5 p.m. in Waco, Texas, at the AC Hotel by Marriott Waco.

This TMCEC event will only be held one time this year and participation is limited to only 120 participants. We anticipate that this event will sell out quickly.

This forum is an exceptional opportunity for municipal judges and court personnel (clerks, court administrators, prosecutors, juvenile case managers) from similar court sizes 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** Registrations fees are \$150. The housing fee for eligible participants is \$50 per night (for up to 2 nights). Registration will open in early September 2024. [Click here for a place on the Early Notification List.](#)

**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) FOR UP TO \$300.

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

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**MISSION STATEMENT**

**TMCEC**

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 January 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 two-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

**TMCEC Online Store**

**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; Deferred Disposition	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 Requirements	45A.302	45.051(a)
Filing by Mail	45A.054	45.013	Deferred Disposition Requirements	45A.303	45.051(a)-(b), (g)
Confidentiality	45A.055	45.0218	Deferred Disposition Requirements	45A.304	45.051(b)-(3)
Complaint Requisites	45A.101(a)-(f)	45.109(a)-(e), (g)			
Complaints	45A.101(g)	45.018(b)			