Texas Municipal Courts Education Center

Level One Guide

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Municipal Court Guide: Level I

Fourteenth Edition

Funded by a grant from the Texas Court of Criminal Appeals

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PREFACE

About this Book

This book is one of the first publications offered by TMCEC. It is an important resource for preparing to take the clerk certification test. However, it is also a reference for court clerks, judges, and prosecutors.

The Fourteenth Edition (2024-2025)

This edition reflects changes from the 88th Legislative Session. While there were many statutory changes from this session, two significant bills impacted this book and TMCEC's other publications. H.B. 4504, which goes into effect January 1, 2025, is the Texas Legislative Council's complete non-substantive revision of Chapter 45 of the Code of Criminal Procedure. On January 1, 2025, most of Chapter 45 will be repealed and replaced by the re-organized Chapter 45A. As the effective date occurs between publication cycles, TMCEC's publications include dual citations for every citation to an Article in Chapter 45. Each reference to an article in Chapter 45 will be represented with the current Chapter 45 article, followed by the corresponding future Chapter 45A article. The citations will appear in the following format: Chapter 45 Article/Chapter 45A Article, C.C.P. For example, Art. 45.057/45A.457, C.C.P. Please note that Chapters 2 and 55 also underwent the revision process created by H.B. 4504. This book incorporates dual citations to articles in 2A, 2B, and 55A as well.

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

Because many clerks not only use this book to study for the certification test, but also as a quick reference, practice notes continue to be added throughout the texts. These can be found in shaded boxes titled "Practice Note" within the chapters. Some are provided to give clerks some additional background in the subject matter, and some provide suggested practices.

This book includes an appendix. The glossary of defined terms has been expanded in Appendix A and quick legal reference cards have been added to Appendix B. These are by no means meant to be a comprehensive dictionary; rather, they are meant to be another resource to assist in understanding certain concepts. These resources are also intended to give new court clerks foundational knowledge.

Court Clerk Certification Program

The Municipal Court Clerk Certification Program celebrated its 25th anniversary in 2021. The program has grown by leaps and bounds. Part of this can be attributed to a greater understanding among municipal courts around the state of the importance of court clerk education and part to the growing perception in cities that a certified court clerk may help run the municipal court more efficiently, more professionally, and more accurately. The days of plugging in any city employee into the court are long past. Today's court clerks handle tasks that require an increasingly professional workforce. This includes handling confidential juvenile records, processing both criminal and civil cases, and accurately reporting dispositions of certain cases to the state and national criminal databases that effect a person's ability to possess firearms.

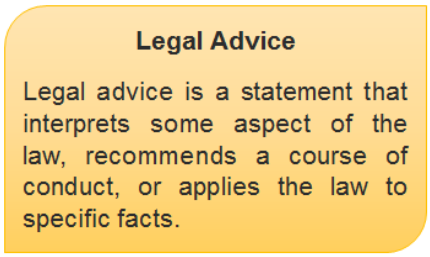
Participation in the certification program consistently increases each year. There has been nearly a 45% increase in participation in the last 10 years. Certification at the highest level, Level III, has almost tripled in the last 10 years. It is highly recommended that new court clerks, or those that are not yet certified, participate in the program.

How to Use the Study Guide

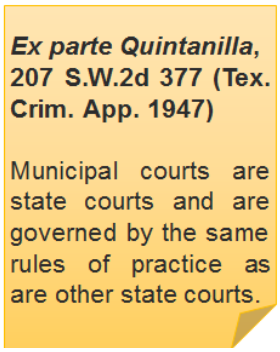
One primary goal of this book is to help municipal court clerks prepare for the court clerk certification test. Using this book as a study guide and answering the practice questions is the single best method to prepare for the certification test. The practice questions are not the exact same questions that appear on the certification test, but they test on similar concepts and are worded in a similar style as those clerks will encounter on the test. The material in the guide is divided into chapters with related questions following each topic or section. Answers to the questions may be found at the end of each chapter. To help clerks find specific topics, there is a table of contents for each chapter. The most efficient way to prepare for the Level I exam with this guide is to read and review the material in each section and work through all the questions. Upon completion of each section, check your answers with the answer key and correct your work. For any new terms introduced, or to check your understanding, reference the appendix at the end of the book.

Visual Signals

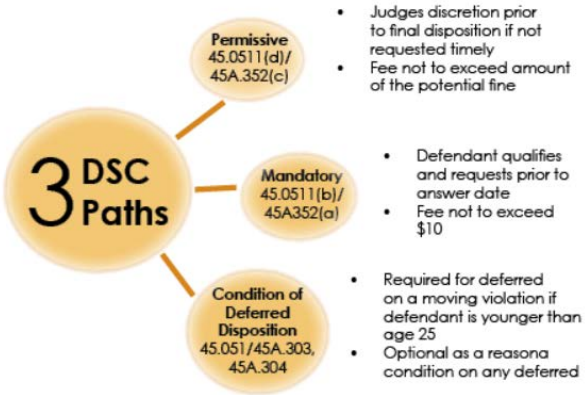
A number of visual signals, or graphic representations, indicating an important concept or helping to explain a point of law, are included in the text. The meanings of each are below:



This type of visual is meant to indicate a definition of a term or point out a specific statute that is important to note. Every definition is also included in the glossary, but the visual is meant to highlight the term while reading the text.



This type of visual indicates important caselaw and is meant to help explain where a legal concept or judicial decision originated. Generally, the quotes are taken directly from the court case, although some have been edited in the interest of space and brevity. Additional case citations are also included within the text.



This type of visual is meant to outline concepts, especially for more visual learners. They have been created to mirror what a student may create in his or her notes to understand a broad legal concept or process within his or her mind.

Not Legal Advice

Every effort has been made to ensure the accuracy and completeness of this work. However, this book is a summary of applicable law and is not an authority. Throughout the text, the law is frequently paraphrased to facilitate understanding. This study guide is for educational purposes only and may not be used as a substitute for legal advice or counsel. Should any material in this publication conflict with constitutional, statutory, or case law, the law provided by the constitution, statute, or case prevails.

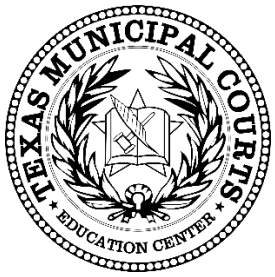
This book is intended to be a guide; and as such, it is not a substitute for thorough legal research and the advice of legal counsel or your police advisor. It is not intended to provide legal advice. If you are using this book as a secondary reference, this book should be the starting point to your research. Individual statutes may have additional requirements, including culpable mental states, specific elements, or defenses that this book does not explore in depth or as comprehensively as to be substituted for legal advice provided by an attorney. As always, consult your legal counsel for specific questions of law or application.

Acknowledgements

TMCEC is thankful for the efforts of many individuals throughout the years who have made suggestions, offered edits, or provided opinions on the use of this book. This includes the original efforts of Margaret Robbins and the court clerks that worked together to create this book.

Special thanks to the TMCEC staff that contributed to this edition: Mark Goodner, Leandra Quick, Regan Metteauer, Ned Minevitz, Elaine Riot, Ryan Kellus Turner, and Thomas Velez.

TMCEC would like to recognize and thank Berkley Breaux and Isis Woods, law students from the University of North Texas at Dallas School of Law, for their legal research and review for this project.



Municipal Court Guide: Level I

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Overview of the Courts

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INTRODUCTION

The judicial system in the United States is vast, with many courts exercising different degrees of jurisdiction at both the federal and state level. Further, the State of Texas has a complicated system of courts with limited jurisdiction that make it one of the more complex court systems in the United States. To better understand both the system as a whole and Texas municipal courts in particular, it is essential to explore the basis for the entire system. This chapter will provide a brief history of the judicial process in the United States and introduce readers to American constitutional law and the Texas court system.

PART 1
HISTORY OF THE JUDICIAL PROCESS

The American legal justice system has its origins in the English system of common law. Common law refers to the body of law that developed in England and the American colonies over the course of centuries. In short, it is a legal system based on judicial decisions rather than legislative action. These judicial decisions create precedent. Precedent is a rule set down by that decision. Case law is based on precedent. Courts thereafter look to that precedent in case law when making similar decisions. The United States Supreme Court's decision in *Brown v. Board of Education of Topeka*, for example, established the rule that state laws mandating segregated public schools were unconstitutional. Lower courts look to that case as precedent when similar facts are before them.

Common Law

The body of law derived from judicial decisions and based on precedent. A common law court will generally look to case law for its decisions in similar cases.

Today, many common law principles have been incorporated into current codes and statutes. Important rights and legal concepts such as the waiver of trial by jury (Arts. 1.13 and 45.025/45A.155, C.C.P.), the defense of necessity (Sec. 9.22, P.C.), and the defense of justification (Sec. 9.02, P.C.) all spring from English common law developed for hundreds of years prior to becoming a statute. There are other common law principles that have not become statutes, however, such as the inherent judicial power of a court. The inherent judicial power of a court is the authority that is essential to the existence, dignity, and functions of the court. "The inherent judicial power of a court is not derived from legislative grant or specific constitutional provision but from the very fact that the court has been created and charged by the Constitution with certain duties and responsibilities. The inherent powers of a court are those which it may call upon to aid in the exercise of its jurisdiction, in the administration of justice, and in the preservation of its independence and integrity." *Eichelberger v. Eichelberger*, 582 S.W.2d 395, 398 (Tex. 1979).

An important aspect of common law is the adversarial system. Generally, in an adversarial legal system, the case is ultimately viewed as a struggle between two opposing sides. In criminal cases, these sides are the State, represented by the prosecutor, and the Defense, either represented by a defense attorney, or a defendant acting as his or her own counsel. Thus, in a Texas criminal case, the prosecutor represents the interest of the State of Texas in enforcing its laws and seeing that justice is served. The defense attorney, on the opposing side, zealously represents the defendant, protecting his or her rights under the Constitution. The judge does not show preference to either the State or the Defense but remains neutral, like a referee. Notwithstanding this position, however, the judge is ultimately tasked with making important decisions at the trial level, including deciding

questions of law (disputed legal issues), and, when there is no jury, questions of fact (disputed factual issues). The theory of this process is that the trier of fact will be able to determine the truth under the law.

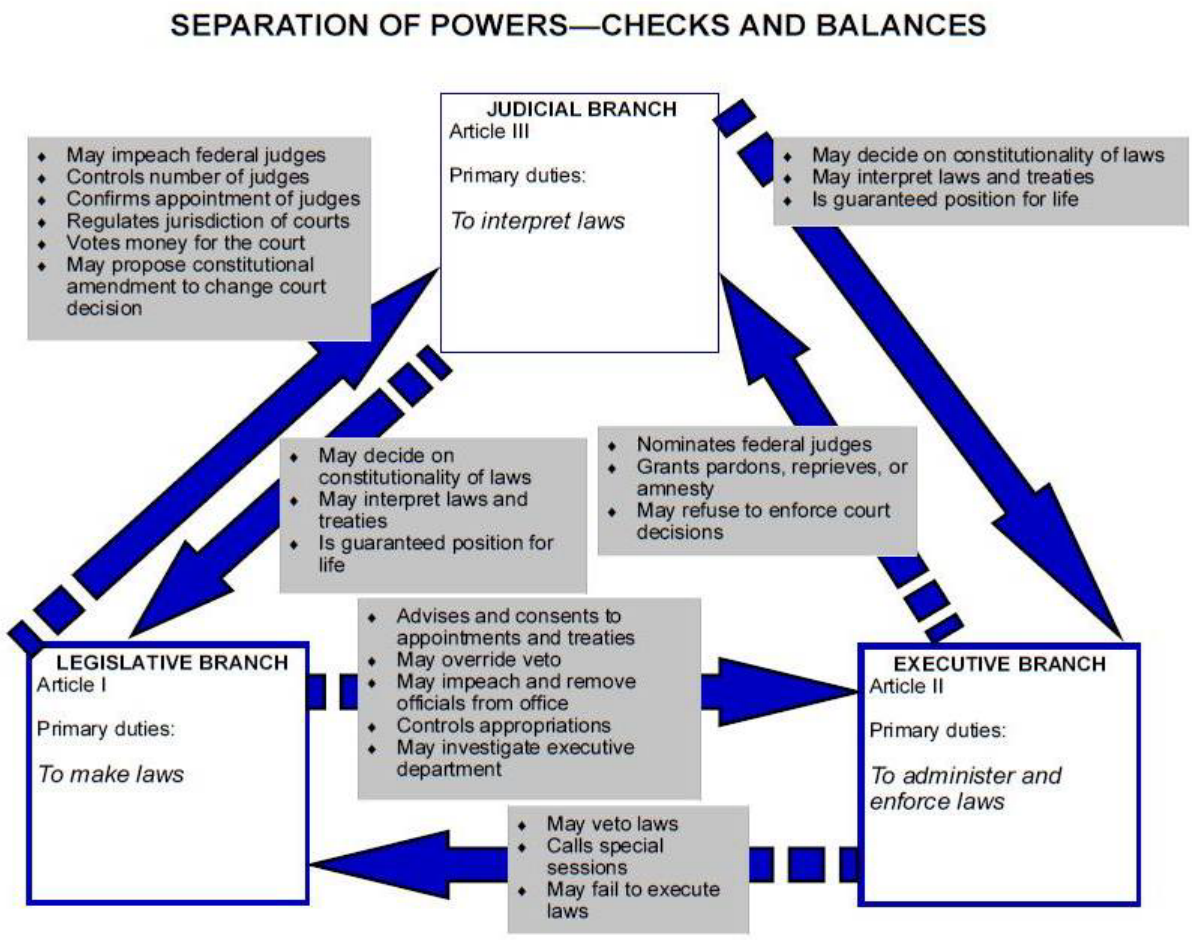
Constitutional Law

A constitution is a written document that establishes fundamental rights and principles by which a nation governs itself. The U.S. Constitution, in its original seven articles, establishes a system of government directed by laws and principles. This idea that government should operate under a set of written laws, rather than the rule of a single person or king is referred to as the "Rule of Law" in American jurisprudence. It is another basic cornerstone of the American legal system, but its origins predate the United States, going back to ideas proposed as early as the 16th century. During that time, most of Western Europe was governed by a concept known as the "Divine Right of Kings" or the "Rule of Man." This is the idea that one person is the law and is not answerable to any authority. Far from an ancient concept, even in modern times this has played out around the world in the form of dictatorial governments. To prevent this from occurring in the United States and to anticipate one part of the government becoming too powerful, the U.S. Constitution divides the government into three branches: the legislative, the executive, and the judicial branches. The legislative branch makes or enacts the law; the executive branch enforces the law; and the judicial branch interprets and applies the law. This principle is known as separation of powers. Although the three branches must function together cohesively to fulfill the obligations of government, each branch must perform its duties independently.

Rule of Law

The principle that laws should govern a nation state and every person should be subject to those laws.

Underlying the separation of powers is the theory of checks and balances. The authors of the Constitution believed that if governmental power was divided into three branches, no one branch would be able to dominate the other two or impose its own will on citizens. This theory has played out throughout American history, with one branch or the other providing a check on the power of another. The courts provide an important check on unrestrained power of Congress or the Executive branch, for example, when one of those bodies exceeds the legal authority granted to it by the Constitution. In the words of the fourth Chief Justice of the United States Supreme Court, John Marshall, "It is emphatically the province and duty of the judicial department to say what the law is. Those who apply the rule to particular cases must, of necessity, expound and interpret that rule. If two laws conflict with each other, the courts must decide on the operation of each. So, if a law be in opposition to the constitution…the court must determine which of these conflicting rules governs the case. This is of the very essence of judicial duty." *Marbury v Madison*, 5 U.S. 137, 177-178 (1803).



Amendments

Since its drafting in 1787, there have been 27 amendments to the U.S. Constitution. A constitutional amendment is a modification or addition to the document. Such an amendment to the U.S. Constitution must be ratified by three-fourths of the states to become a part of the Constitution. The most recent amendment, regarding Congressional salaries, was ratified on May 7, 1992.

The first 10 amendments to the U.S. Constitution are known as the Bill of Rights. These rights are intended to protect individual citizens against government tyranny and lawlessness. American courts are charged with interpreting the meaning of such protections. Amendments that may be commonly implicated in municipal courts are listed below:

1st Amendment: Freedom of religion, speech, press, assembly, and petition
4th Amendment: Freedom from unreasonable searches and seizures
5th Amendment: Right to remain silent, protection against double jeopardy, and due process of law
6th Amendment: Right to a speedy and public trial by an impartial jury, to be informed of the accusation, to counsel, to be confronted by your witnesses, to compulsory process to obtain witnesses in your favor
8th Amendment: Fair fines and bail, protection against cruel and unusual punishment

14th Amendment: Equal protection, incorporation of (most of) the Bill of Rights to the states, and due process of law

The U.S. Constitution specifically reserves certain powers for the states and every state has its own constitution. The current Texas Constitution took effect in 1876 and has been amended more than 500 times. Like the U.S. Constitution, the Texas Constitution establishes three branches of government and provides for the separation of powers between these branches. The Texas Constitution vests power in courts. Those courts established by the Texas Constitution, collectively referred to as constitutional courts, include the State's highest appellate courts, the intermediate courts of appeals, the district courts, the constitutional county courts, and the justice courts. The Texas Constitution also authorizes the Legislature to establish other courts and their jurisdiction by statute. Those courts established by statute are referred to as statutory courts. Municipal courts, a type of statutory courts, are unique in that they are the only part of the Texas judicial system that operates at the municipal level of government.

Article I of the Texas Constitution contains many similar provisions to those in the U.S. Constitution, including:

Section 9. Searches and Seizures: Protection from Illegal Searches
Section 10. Rights of Accused in Criminal Prosecutions
Section 13. Excessive Bail or Fines; Cruel and Unusual Punishment; Remedy by Due Course of Law
Section 15. Right of Trial by Jury

Federal and State Law

All courts in the United States are obligated to follow federal law and to give precedence to the U.S. Constitution over federal law, treatises, and state law. Accordingly, in adjudicating cases, municipal courts are required to apply common law, federal and state constitutional law, federal and state statutory law, and local ordinances. That is, undoubtedly, a large body of law. Fortunately, many of these protections and common law rights have been codified in the Texas Code of Criminal Procedure. Codify simply means that it has been organized in a written code or statute. For example, Article 1.04 of the Code of Criminal Procedure codifies rights spelled out in the 14th Amendment to the U.S. Constitution.

1. Explain the term "adversarial legal system" as it relates to American criminal courts. ____
   _____
2. Define common law and give an example applicable to municipal courts. _____
   _____
3. Identify and briefly describe the role of each branch of government. _____
   _____
   _____

4. Explain the reasoning and significance of separation of powers._____

_____

5. What are the first 10 amendments to the U.S. Constitution called? _____

_____

6. List the courts established by the Texas Constitution. _____

_____

PART 2
TEXAS JUDICIAL SYSTEM

Municipal courts occupy a unique position in the Texas judicial system. More people encounter municipal courts than all other Texas courts combined. Whether appearing as a defendant, witness, or juror, a person's experience in a municipal court may likely be their only contact with the judicial system. This contact may color their perception or future interactions with the city, misdemeanor crimes, or even the criminal justice system. As such, a day in a municipal court can form a lasting impression. It is important to understand what the larger system entails and where municipal courts fit.

A. Court Structure of Texas

The structure of the present court system was established in 1891 by an amendment to the Texas Constitution that allowed the Legislature to "establish such other courts as it may deem necessary and prescribe the jurisdiction and organization thereof and… conform the jurisdiction of the district and inferior courts thereto." In essence, the amendment modified the Constitution to allow the Legislature to statutorily create additional courts as it deemed necessary to ensure judicial efficiency.

There are two basic types of courts in Texas: trial courts and appellate courts. Which court a case is in depends on the type of case, stage of litigation, pleadings filed in the case, and the court's jurisdiction. Generally, a case will begin at the trial court level and could work its way up through the appellate system if one of the parties appeals. Texas has a bifurcated appellate system, which means two separate courts are the high appellate courts. This is not only different from the federal system, which only has one highest court, the Supreme Court of the United States, but it is also different from most other states. Oklahoma is the only other state that has a similar system. (See graphic summary of the Texas system). Note the bifurcation at the top, split between the Supreme Court of Texas (civil appeals) and the Texas Court of Criminal Appeals (criminal appeals). See Appendix A: Court Structure of Texas.

1. Appellate Courts

An appellate court is a court with jurisdiction to hear appeals and review a trial court's procedure. These courts review the actions and decisions of the lower courts on questions of law or allegations of procedural error.

The Supreme Court of Texas

The Supreme Court of Texas is composed of one Chief Justice and eight justices, who are elected in partisan elections on a statewide basis for six-year terms of office. The Supreme Court of Texas has final appellate jurisdiction statewide in civil and certain juvenile cases. A civil case usually deals with private rights of individuals, groups, or businesses. A civil lawsuit may be brought when one person is wronged or injured by another person. One example is a lawsuit for recovery of damages suffered in a car collision. From the municipal court clerk perspective, civil cases may include animal hearings regarding the disposition of a dog or cases involving juvenile truant conduct.

In addition to hearing oral arguments and writing decisions for cases on appeal, the Supreme Court of Texas is empowered to make and enforce all necessary rules of civil trial practice and procedure. The Legislature has authorized the Supreme Court of Texas and the Texas Court of Criminal Appeals collectively to promulgate or publish the rules of evidence and appellate procedure used in both civil and criminal matters. To ensure the efficient administration of justice in Texas, the Supreme Court has many administrative duties that include issuing the rules of procedure for the State Commission on Judicial Conduct; equalizing the dockets of the intermediate courts of appeals; and supervising the operations of the State Bar of Texas, including the licensure of Texas attorneys. Every licensed attorney in Texas, both civil and criminal practitioners, has the Supreme Court of Texas listed on the top of their law license.

The Texas Court of Criminal Appeals

The Texas Court of Criminal Appeals consists of one Presiding Judge and eight judges, who must have the same qualifications, and are elected in the same manner as the justices of the Supreme Court. The Court of Criminal Appeals is the highest final state appellate court for criminal cases. The jurisdiction of the Court of Criminal Appeals extends to all criminal cases heard by the intermediate courts of appeals and those criminal cases coming directly from the district courts when the death penalty has been imposed.

Additionally, the Court of Criminal Appeals administers state grant funds for the training of judges and court personnel and is the primary funding source of the Texas Municipal Courts Education Center.

The Courts of Appeals

Each of the 14 intermediate courts of appeals has at least three judges: a Chief Justice and two other justices. The Legislature, however, may increase the number whenever the workload of an individual court requires additional judges.

Courts of appeals hear the appeals from the trial courts located within their respective districts. The appeals are based upon the "record." When the term "record" is referenced in this context in court, it generally refers to the written transcript of testimony given, exhibits introduced, the documents filed in the trial court, and the supplementary written briefs and oral arguments of the appellate lawyers. The courts of appeals do not receive testimony or hear witnesses when considering cases on appeal. Those events happen at the trial court level and become part of the record for the appellate court to review. At this level, appeals are usually heard by a panel of three justices. In some cases, an en banc hearing is ordered. En banc means that a case is heard before all the judges of a court. In that case, all the justices would hear and consider the case, rather than a panel.

The map of the geographic locations of the courts of appeals and their respective boundaries can be found on OCA's website: https://www.txcourts.gov/media/10872/COA05_map2012.pdf.

The courts of appeals are located in 13 cities:

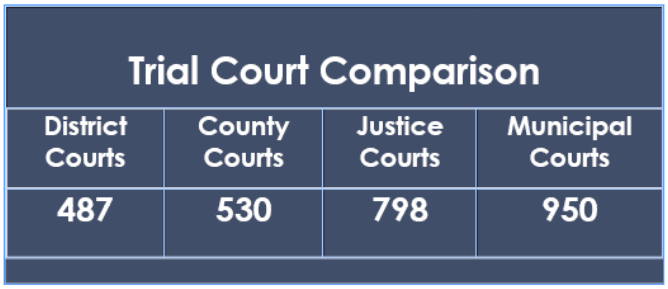
Houston (Districts 1 and 14)
Fort Worth (District 2)
Austin (District 3)
San Antonio (District 4)
Dallas (District 5)
Texarkana (District 6)
Amarillo (District 7)
El Paso (District 8)
Beaumont (District 9)
Waco (District 10)
Eastland (District 11)
Tyler (District 12)
Corpus Christi/Edinburg (District 13)

2. Trial Courts

Trial courts are those courts in which trials are held, witnesses are heard, testimony is received, and exhibits are offered into evidence. In a criminal case, the judge or the jury determines whether the defendant is not guilty or guilty beyond a reasonable doubt. Defendants in criminal cases have the right to a trial by a jury of either six or twelve local citizens, depending on whether the case is a misdemeanor or felony. With the notable exception of capital murder cases, the parties may waive a trial by jury and request a trial by judge. In the latter, called a bench trial, the judge makes the final determination of guilt or innocence.

The trial court structure in Texas has several different levels, each level handling different classifications of cases. Jurisdiction is defined as the authority and legal power to hear and decide cases. Courts created by the Texas Constitution have jurisdiction granted to them by the Constitution. Courts created by the Legislature have jurisdiction granted to them solely by the Legislature. The Legislature can expand jurisdiction for these courts, but it cannot take away jurisdiction granted by the Constitution.

The state trial courts of general jurisdiction are known as the district courts. A court of general jurisdiction has authority to hear unlimited civil and criminal cases, although the judgments remain subject to appellate review. In contrast, county, justice, and municipal courts are courts of limited jurisdiction, meaning they may only hear certain types of matters (civil, criminal, or both). The county-level courts consist of the constitutional county courts, the county courts at law, and the statutory probate courts. Municipal courts are hosted in each municipality, and justice courts exist in precincts of each county of the state. As the graphic above shows, there are more municipal courts than any other type of trial court in Texas. Further, municipal and justice courts comprise the majority of trial courts in Texas.



Original jurisdiction means that a court has authority to try a case and enter judgment on the law and facts. This is contrary to appellate jurisdiction, where the transcript of an appealed case is reviewed to determine if any error has occurred. Exclusive jurisdiction means that a court's authority to try certain cases is not shared with another court. Therefore, exclusive original jurisdiction means that the court in which a case is filed has sole jurisdiction and no other court has jurisdiction to hear and determine the case. Concurrent jurisdiction, on the other hand, means that cases may be filed in any of the courts that have authority over certain types of offenses.

District Courts

District courts are courts of general jurisdiction. They generally have original jurisdiction in all criminal offenses punishable by a year or more in prison, misdemeanors involving official misconduct, and misdemeanors transferred to the district court. The civil jurisdiction is more complex and extends to cases of divorce, suits for title to land or enforcement of liens on property, contested elections, suits for slander or defamation, and all civil matters wherein the amount in controversy is $200 or more. In addition, district courts have the power to issue writs necessary to enforce judgments. Writs seen in municipal practice may include a writ of habeas corpus, writ of mandamus, and a writ of attachment.

Appeals from judgments of district courts are to the court of appeals with jurisdiction based on the geographical region.

County-Level Courts

The Texas Constitution provides for a county court in each county. "Constitutional" county courts have concurrent jurisdiction with justice courts in civil cases and have jurisdiction over Class A misdemeanors and Class B misdemeanors. Constitutional county courts also have concurrent criminal jurisdiction with justice courts over state law fine-only offenses. In essence, this means that county courts share jurisdiction with justice and municipal courts over most fine-only offenses.

County courts generally have appellate jurisdiction over cases tried originally in the justice courts and most municipal courts.

Under its constitutional authorization to "establish such other courts as it may deem necessary," the Legislature has created statutory county courts and statutory probate courts, primarily in metropolitan counties, to provide assistance to the single "constitutional" county court.

Justice Courts

The Texas Constitution provides that each county is to be divided into at least one and not more than eight justice precincts. A justice of the peace is elected by voters of the precinct in partisan elections for a four-year term of office. There are no special statutory or constitutional requirements to hold this office.

Justice courts have original jurisdiction in misdemeanor criminal cases under state law where the punishment upon conviction may be fine only or by fine and, as authorized by law, sanctions not consisting of confinement or imprisonment (i.e., Class C misdemeanors). This jurisdiction is concurrent with the municipal courts. Justice courts also have concurrent jurisdiction over municipal ordinance violations involving the regulation of signs in a city's extraterritorial jurisdiction.

Trials in justice courts are not of record. Appeals from these courts are trial de novo in the county court, the county court at law, or the district court. Trial de novo means "new trial" in Latin. It is a term used to describe a trial court which hears a matter as though it is for the first time.

Municipal Courts

Under its constitutional authority to create courts, the Texas Legislature passed the Corporation Court Law of 1899. This created corporation courts, an old term that describes the predecessor to municipal courts, in each municipality in Texas. This law is codified in Chapter 29 of the Government Code, making municipal courts statutory courts. Sec. 29.002, G.C. As the name implies, statutory courts are those created by statute through authorization granted to the Legislature. Municipal courts are presently operating in more than 900 cities in Texas. In addition, the large metropolitan cities usually have more than one municipal court.

As statutory courts, municipal courts are granted authority to adjudicate any subject matter determined by the Legislature. "Subject matter" refers to the types of cases over which a court has jurisdiction. This type of jurisdiction is commonly called "subject matter jurisdiction." Municipal court subject matter jurisdiction is primarily criminal (Class C misdemeanors, criminal offenses where the sentence entails the imposition of a fine and court costs). The Legislature has given municipal courts limited civil jurisdiction for bond forfeitures, cruelly treated animal hearings under Chapter 821 of the Health and Safety Code, and dangerous dog hearings under Chapter 822 of the Health and Safety Code. Certain municipalities may also declare the violation of city ordinances relating to the parking and stopping of vehicles to be civil offenses and prescribe civil penalties.

A court of record is a municipal court that is required to keep a record of its proceedings. Chapter 30 of the Government Code creates a municipal court of record in 51 Texas cities. For all other cities, the governing body can choose to have a municipal court of record or a municipal court of non-record. A court of non-record does not keep a record of its proceedings. Most municipal courts in Texas are not courts of record and appeals from non-record courts go to a county court for a trial de novo.

Under the authority of Chapter 30 and the Municipal Courts of Record Act passed in 1997, a municipal court may become a court of record through passage of a local ordinance. In a court of

record, a formal record and transcript are made of the proceedings in the trial, and appeals are made on the record. Such appeals are generally heard in the county court or county court at law. The Legislature has specifically authorized two cities, El Paso and Dallas, to create municipal courts of appeals to hear appeals from those cities' municipal courts. The statutes creating these municipal courts of record require that the judges be licensed to practice law in Texas. No such provision is required of other municipal judges.

Municipal courts of record have additional jurisdiction in their territorial limits and their extraterritorial limits. Section 30.00005, G.C. This jurisdiction is concurrent with a district court or county court at law for the purpose of enforcing health and safety or nuisance abatement ordinances.

B. Municipal Court Jurisdiction

A criminal case is a legal action brought by the State of Texas against a person charged with committing a crime. There are thousands of crimes defined in both state law and local ordinances. There are more than 1,300 fine-only offenses in state law. For a list, see TMCEC's *Fine-Only Crimes* handbook (the "Green Book"). Texas has deemed traffic offenses, such as speeding or driving with no license, crimes in the state. This approach to traffic enforcement is not uniform around the country, and other states may not consider traffic violations to be a crime in that state's jurisdiction.

Municipal court jurisdiction in a criminal case is initiated when a complaint is filed with the court, charging a person with the commission of an offense. Art. 45.018(a)/45A.002(1); 45.018(b)/45A.101(g), C.C.P. Article 27.14(d) of the Code of Criminal Procedure permits the court to use a citation to initiate a case. In a criminal case, a citation is written notice to appear that is issued only by a peace officer. It may be used as the initial charging instrument in municipal court, or a complaint may be drafted by the prosecutor. Both the citation and complaint serve to give the defendant notice of the charge filed with the court. If a complaint or citation is not filed with the court, the court does not have jurisdiction over the defendant. Article 12.02(a) of the Code of Criminal Procedure provides that a complaint for any Class C misdemeanor may be presented within two years from the date of the commission of the offense, and not afterward. However, under Article 12.02(b), a complaint for assault under Section 22.01 of the Penal Code (i.e., assault by threat with family violence) may be presented within three years from the date of the offense. The "statute of limitations" for such offenses found in these provisions is the time after which prosecution is barred by law. When two or more courts have concurrent jurisdiction of a criminal offense, the court in which the complaint is first filed retains jurisdiction. Art. 4.16, C.C.P.

Exclusive Original Jurisdiction

In Texas, city ordinance violations punishable by the imposition of a fine are typically adjudicated as criminal offenses. Municipal courts have exclusive original jurisdiction over violations of city ordinances and the resolutions, rules, and orders of a joint airport board that occur in the territorial jurisdiction of the city and on property owned by the city in its extraterritorial jurisdiction. There is one exception to a municipal court's exclusive original jurisdiction over city ordinance violations, found in Article 4.11(c) of the Code of Criminal Procedure, which provides that justice courts have concurrent jurisdiction with municipal courts in certain sign ordinance violations in the city's extraterritorial jurisdiction.

State law provides caps for violations of city ordinances punishable by a fine. Sec. 54.001, L.G.C. City ordinances are generally punishable by fines of up to $500. Fines of up to $2,000 may be established for violations of ordinances relating to fire safety, zoning, or public health and sanitation. Ordinances relating to illegal dumping of refuse are punishable by fines up to $4,000. Within the limits provided by state law, a city council may proscribe by ordinance the fine or fine range for city ordinance violations.

Concurrent Original Jurisdiction

Municipal courts have concurrent original jurisdiction with justice courts for offenses under state law that (1) occur within the territorial limits of the city or on property owned by the city in the city's extraterritorial jurisdiction and (2) are punishable by fine only. Art. 4.14, C.C.P. and Sec. 29.003, G.C. Generally, a fine-only offense is a Class C misdemeanor in the Penal Code, punishable by a maximum fine of $500. Sec. 12.23, P.C. The Penal Code, however, defines a Class C misdemeanor outside of the Penal Code as any offense punishable by a fine only. Sec. 12.41, P.C. Consequently, any fine-only offense is considered a Class C misdemeanor regardless of the amount of the maximum fine determined by the Legislature. For example, this includes passing a school bus, which is defined in the Transportation Code and punishable by a maximum fine of $1,250. Courts may also impose sanctions in addition to the fine, not consisting of confinement in jail or imprisonment. The imposition of a sanction or the denial, suspension, or revocation of a privilege does not affect the original jurisdiction of the local trial courts in Texas. Arts. 4.11 and 4.14, C.C.P. and Sec. 29.003, G.C.

Appellate Jurisdiction

Municipal courts are trial courts and generally have no appellate jurisdiction; however, there are two exceptions to the general rule. A person charged with violating the civil administrative parking ordinances of a city may appeal the order of the hearing officer by filing a petition with the clerk of the municipal court. Sec. 682.011, T.C. Second, the owner of a dog who is declared to be dangerous by the animal control authority can appeal that determination to the municipal court. Sec. 822.0421, H.S.C.

Geographic Jurisdiction

The municipal court's jurisdiction is limited to those cases that occur within the territorial limits of the city. This is called geographic jurisdiction. The Legislature, at the request of local governments, has experimented with the expansion of municipal court geographic jurisdiction in the following ways:

- A city that contracts with one or more municipalities for the operation of a joint police department may conduct its municipal court proceedings within the municipal limits of any municipality that is a party to the contract.
- A city with a population of 1.19 million or more and a contiguous municipality is permitted to enter into agreements for concurrent municipal court jurisdiction (applies to fine-only offenses committed on the boundary of the municipalities or within 200 yards of the boundary, generally).
- A city is permitted to enter into an agreement with a contiguous municipality or a municipality with boundaries that are within one-half mile of the city to establish concurrent jurisdiction of the municipal courts in both cities and provide original jurisdiction to a municipal court in which a case is brought as if the municipal court

were located in the city in which the case arose for all criminal cases under state law or local ordinance that are punishable by fine only.

- Cities with a population of 700 or less are permitted to conduct their municipal court proceedings within the corporate limits of a contiguous incorporated municipality to apply to cities with a population of 3,500 or less. This applies to over half of the municipal courts in Texas.

C. Cooperation Within the Judicial System

Courts are bound to interpret laws and apply them to the facts presented in the cases tried. They must follow laws enacted by the Legislature and rules like the Texas Rules of Evidence and Texas Rules of Appellate Procedure, promulgated by bodies given rule-making authority. Other bodies may have administrative rules that courts must adhere to, including the Texas Department of Public Safety (DPS) and the Office of Court Administration (OCA). Courts regularly work with other state and federal agencies connected to the judicial system. For example, the DPS plays a crucial role in maintaining driver's license records. Although municipal courts do not control driver license records or manage the issuance of a license, municipal courts are required to report information to the DPS that may ultimately result in a license suspension.

Finally, courts must apply the doctrine of stare decisis. This legal doctrine requires courts to follow precedent, principles of law laid down in previous judicial decisions with similar issues or facts. This means that the legal precedent of higher courts is binding on lower courts. Practically speaking, it requires lower-level trial courts to respect and follow the decisions of Texas appellate courts or federal courts, even when the individual judge disagrees with the decisions.

D. Funding

The State of Texas provides full funding and salaries for the Supreme Court of Texas and the Texas Court of Criminal Appeals. In addition, it also provides the salaries for the appellate and district judges of Texas. Some counties supplement this base salary. Counties, in turn, pay the costs of constitutional county courts, county courts at law, justice courts, and the operating costs of district courts. Municipalities alone finance the operation of the municipal courts and the salaries of municipal court personnel.

7. Define jurisdiction. _____

_____

8. What are the two highest appellate courts in Texas? _____

_____

9. Explain the difference between a civil and criminal case. _____

_____

_____

10. Which is the highest Texas appellate court with jurisdiction over civil cases? _____

_____

11. How are appellate courts different from trial courts? _____

_____

12. What is meant by trial de novo? _____

_____

13. Explain how the jurisdiction of justice courts is different from municipal courts._____

_____

_____

14. What authority creates and grants authority to municipal courts? _____

15. Name the two types of municipal courts, which dictate how municipal court proceedings are conducted. _____

_____

16. What kind of cases must be initiated in municipal court and not in any other court? _____

_____

17. With which courts does municipal court share jurisdiction? _____

18. Over which type of criminal offenses does municipal court share jurisdiction with the justice courts? _____

19. What is the geographic jurisdiction of the municipal court? _____

20. What are the penalty limits of offenses over which municipal courts have jurisdiction? ___

_____

21. Can a municipal court case result in suspension of the defendant's driver's license by the Department of Public Safety? If so, why? _____

_____

22. Give an example of an offense for which the penalty requires a sanction in addition to paying a fine. _____

23. What is the maximum amount of a fine for a Class C misdemeanor offense in the Penal Code?

_____

24. What is the maximum amount of a fine for a Class C misdemeanor outside of the Penal Code?

_____

25. What is the maximum penalty that a city council can establish for ordinance offenses involving public health and fire safety violations? _____

26. If both the municipal and justice court have concurrent jurisdiction over a criminal case, which court retains jurisdiction? _____

27. Why are lasting impressions of the American justice system often formed in municipal courts? _____

_____

28. What court(s) have jurisdiction in the cases described below:

- An appeal from a district court: _____
- A divorce case: _____
- A speeding ticket: _____
- A felony murder case: _____
- An appeal from a municipal court: _____

PART 3
THE MUNICIPAL COURT ROLE IN LOCAL GOVERNMENT

A. Fine Collection and Quota Prohibition

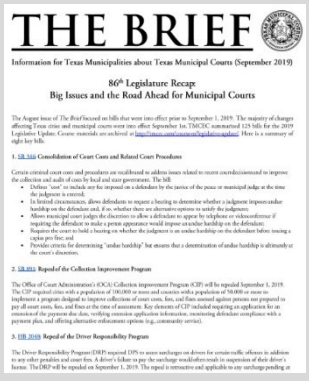
While municipal courts serve the important function of preserving public safety, protecting quality of life, and deterring future criminal behavior, the courts also collect fines and costs in relation to court cases processed. Municipal courts collect hundreds of millions of dollars in fines and costs annually. According to the OCA Activity Detail Report for municipal courts between the months of January 2022 to January 2023, approximately $520 million in fines and costs were collected by Texas municipal courts. The bulk of the court costs are remitted to the State of Texas, but fines generally stay with the city. A portion of the city's budget often comes from these fines, but this typically makes up only a small percentage of the city budget.

Regardless of the amounts and percentages, a judge may not consider the raising of revenue as an aspect of judicial duties. The judge should not increase fines for the purpose of enhancing his or her position before the city council or to act as a revenue producer for the city. Section 720.002 of the Transportation Code specifically prohibits state agencies and political subdivisions from imposing traffic revenue quotas on municipal or county court judges and justices of the peace. While the prohibition does not keep cities from getting budget information or projections from courts, it does forbid the establishment or maintenance of a system for evaluating, promoting, compensating, or disciplining these judges based on revenues collected from traffic convictions.

B. Relations with City Departments

Municipal courts should recognize the necessity for cooperating with the other departments in administrative and other areas without compromising the independence or integrity of the judiciary or public confidence in the integrity and impartiality of the judiciary. Unlike other trial courts at the county and district court level, municipal courts outside of the state's largest cities often do not have the luxury of physical separation between city management, law enforcement, court, and the office of the prosecutor. Court clerks may fulfill many roles, including city secretary or even judge. This may sometimes require careful balancing of the city's authority while respecting the essential independence of the court. The following section outlines some of the more pertinent areas of interdepartmental relations for municipal courts.

Practice Note



THE BRIEF

Information for Texas Municipalities about Texas Municipal Courts (September 2019)

86th Legislature Recap:
Big Issues and the Road Ahead for Municipal Courts

The August issue of *The Brief* focused on bills that went into effect prior to September 1, 2019. The majority of changes affecting Texas cities and municipal courts went into effect September 1st.TMCEC summarized 125 bills for the 2019 Legislative Update. Course materials are archived at http://tmcec.com/courses/legislative-update/. Here is a summary of eight key bills.

1. SB 346 Consolidation of Court Costs and Related Court Procedures

Certain criminal court costs and procedures are recalibrated to address issues related to recent court decisions and to improve the collection and audit of costs by local and state governments. The bill:

- Defines "cost" to include any fee imposed on a defendant by the justice of the peace or municipal judge at the time the judgment is entered;
- In limited circumstances, allows defendants to request a hearing to determine whether a judgment imposes undue hardship on the defendant and, if so, whether there are alternative options to satisfy the judgment;
- Allows municipal court judges the discretion to allow a defendant to appear by telephone or videoconference if requiring the defendant to make a person appearance would impose an undue hardship on the defendant;
- Requires the court to hold a hearing on whether the judgment is an undue hardship on the defendant before issuing a capias pro fine; and
- Provides criteria for determining "undue hardship" but ensures that a determination of undue hardship is ultimately at the court's discretion.

2. SB 892 Repeal of the Collection Improvement Program

The Office of Court Administration's (OCA) Collection improvement Program (CIP) will be repealed September 1, 2019. The CIP required cities with a population of 100,000 or more and counties with a population of 50,000 or more to implement a program designed to improve collections of court costs, fees, and fines assessed against persons not prepared to pay all court costs, fees, and fines at the time of assessment. Key elements of CIP included requiring an application for an extension of the payment due date, verifying extension application information, monitoring defendant compliance with a payment plan, and offering alternative enforcement options (e.g., community service).

3. HB 2048 Repeal of the Driver Responsibility Program

The Driver Responsibility Program (DRP) required DPS to assess surcharges on drivers for certain traffic offenses in addition to any other penalties and court fees. A driver's failure to pay the surcharge would often result in suspension of their driver's license. The DRP will be repealed on September 1, 2019. The repeal is retroactive and applicable to any surcharge pending at

The TMCEC initiative C3 (Councils, Courts, Cities) is aimed at filling the information gap between cities and municipal courts. The purpose of the C3 initiative is to highlight important court issues and increase awareness of municipal courts in Texas for mayors, city council members, city attorneys, and other local officials. Information is provided through seminars, resources, and a periodic email publication called *The Brief*. More information may be found at https://www.tmcec.com/cities/.

1. Mayors and City Managers

It is important for court personnel to understand that mayors and city managers tend to focus on revenues, including both expenditures and collections, because they are generally responsible for the city's budget. Some of the fines and fees collected by the court are deposited in the municipal treasury, and financial procedures must meet city approval.

Nonetheless, judicial decisions may only be made based on facts proved by evidence and should not be influenced by the city's financial needs. The clerk must be careful to avoid becoming the messenger of information, thereby unethically influencing the judge.

2. City Attorneys and Prosecutors

The municipal court and the city attorney interact not only during the prosecution of municipal court cases but also on potential legal issues that may affect the city. A city attorney provides legal advice to city council and management but balances this with his or her separate role as the representative of the State of Texas in a municipal prosecution. In addition, the law provides that a county attorney of the county in which the municipality is located may also represent the State. Most municipal court prosecutions, however, are typically conducted by an attorney either employed or contracted by the municipality.

The prosecutor decides, working with law enforcement, whether to pursue formal criminal charges in any given case. The prosecutor, not the judge or clerk, should advise and direct peace officers in preparing criminal cases. The court does not represent either the prosecution or defense and must remain separate from the investigation to preserve impartiality at trial. It is ultimately the responsibility of the State, through the prosecutor, to decide which cases to prosecute.

3. Law Enforcement

Law enforcement may include police officers, code compliance officers, and animal control. These officers may look to the city prosecutor for advice in investigating and preparing for criminal cases. In cities where the municipal court clerk also serves as police dispatcher or where the offices of the court are in the same building as the police department, conflict is possible. Judges, clerks, and police departments must exercise great care to honor the separation of each department to eliminate any suggestion or perception of impropriety.

When citizens wish to present complaints or file criminal charges, it is recommended that they go to the police department or directly to the prosecutor. The police have the power and duty to investigate, which the court lacks, and make a professional determination whether or not to recommend the filing of criminal charges. Under the law, anyone may make a complaint that could result in a criminal case. Various city department officials may also file code violation complaints in municipal courts. The acceptance of these complaints for prosecution is a matter for the prosecutor to determine, not the court. As in all cases, the court should remain impartial in hearing evidence in these cases.

True or False

29. City managers may establish traffic revenue quotas as part of evaluating the court's performance. ____

30. Judges may consider factors related to revenue for the city in determining the fine and court costs in an individual's case. ____

31. Prosecutors help investigate and decide what complaints are filed in court. ____

32. The judge and clerk may help the prosecutor, police officer, and/or code enforcement officer investigate a crime. ____

PART 4
AGENCIES AND ORGANIZATIONS

In addition to the Texas Municipal Courts Education Center, several state agencies are available to lend assistance or provide resources and information to municipal courts. These organizations are summarized below.

A. Texas Municipal Courts Education Center (TMCEC)

The Texas Municipal Courts Education Center (TMCEC) was formed in 1984 by the Texas Municipal Courts Association (TMCA) to provide extensive continuing education and training programs for municipal judges and court support personnel. TMCEC is financed by a grant from the Texas Court of Criminal Appeals out of funds appropriated by the Legislature to the Judicial and Court Personnel Training Fund. In 2006, TMCEC was incorporated as a 501(c)(3) non-profit corporation exclusively for charitable, literary, and educational purposes of providing: (1) judicial education, technical assistance, and the necessary resource material to assist municipal judges, court personnel, and city attorneys in obtaining and maintaining professional competence in the fair and impartial administration of criminal justice; and (2) information to the public about the Texas judicial system and laws relating to public safety and quality of life in Texas communities.

TMCEC conducts courses in various locations throughout the State to facilitate compliance by municipal judges with the Court of Criminal Appeals' order mandating continuing education on an annual basis. Courses are regularly offered for judges, clerks, court administrators, prosecutors, and juvenile case managers.

Court Clerk Continuing Education

Court clerk continuing education programs offered by TMCEC include regional clerk seminars, new clerks seminars, an annual court administrator seminar, and a Level III assessment clinic for the Texas Municipal Court Clerk Certification Program. Court clerks are not currently required by law to obtain continuing legal education; however, court clerk continuing legal education should be an essential part of any high performing Texas municipal court. TMCEC publishes an online academic schedule outlining educational opportunities for the year.

Additionally, court clerks who are participating in the Texas Municipal Court Clerk Certification Program are required to obtain certain educational requirements through TMCEC, TMCA, the Texas Court Clerks Association (TCCA), or other approved providers. For more information, go to the TMCEC website (www.tmcec.com/clerk-certification) or email certification@tmcec.com.

TMCEC Publications & Resources

TMCEC offers several publications that address court issues and aid in understanding municipal court procedures. These include a journal, *The Recorder*, the "Green Book," *Forms Book*, *Bench Book*, and *Municipal Courts and the Texas Judicial System*. TMCEC staff attorneys are available

to judges and court personnel to answer questions about municipal court procedures through the toll-free number 800.252.3718.

Additionally, courses, webinars, and other vital information and resources are available online at the Online Learning Center (OLC). Visit register.tmcec.com. Timely updates are also available by following TMCEC on social media.

B. Attorney General's Office (AG)

The Texas Attorney General is the chief legal officer in the State of Texas. The Attorney General's Office (AG) publishes legal opinions on how laws might be interpreted when a provision is ambiguous or contradicts another part of the law. Copies of opinions are available online at the AG's website at www.oag.state.tx.us. Although city officials do not have standing to request an AG opinion, the letter opinion process is available. Although less authoritative, it is quicker than the formal opinion process and still provides a source of guidance.

The AG also administers the Crime Victims Compensation Fund that provides benefits to crime victims. For additional information on the Crime Victims Compensation Fund, call 800.983.9933.

C. State Bar of Texas (SBOT)

The State Bar of Texas, an administrative agency of the State's judicial branch, is charged with many responsibilities, including providing educational programs for legal professionals and the public, administering the mandatory continuing education for attorneys, and managing the attorney grievance procedure.

For additional information or to learn about the grievance process against attorneys, call 512.427.1463. The State Bar sponsors the Texas Lawyers' Assistance Program (TLAP), a peer assistance program for lawyers and judges with alcohol and drug abuse problems. To refer a lawyer or judge, contact 800.343.8527.

The State Bar's website is www.texasbar.com. The website has a search function that the public can use to access public information on every attorney licensed in Texas. This includes information on whether the attorney is eligible to practice law, the attorney's business address, and practice areas.

D. State Commission on Judicial Conduct (SCJC)

The State Commission on Judicial Conduct (SCJC) investigates and resolves complaints filed against judges. The Commission will be discussed at greater length in Chapter 3 (Ethics) of this book, but it is helpful to note that staff attorneys may be able to assist clerks in working through difficult ethical situations and issues they encounter. Contact the SCJC at 877.228.5750. The SCJC's website is www.scjc.texas.gov.

E. State Comptroller of Public Accounts (CPA)

The State Comptroller of Public Account's Office is ultimately responsible for the collection of court costs and for their final distribution. Municipal courts must report quarterly to the Comptroller. See Chapter 7 (State and City Reports) of this book for details on the quarterly report. The Comptroller has staff members that are available to assist municipal courts and to answer questions about properly reporting state court costs on criminal convictions.

F. Texas Commission on Law Enforcement (TCOLE)

The Texas Commission on Law Enforcement (TCOLE) is the regulatory agency for commissioned peace officers in Texas. Many cities have city marshal offices to employ officers who are available to assist the municipal court with service of process and court security. Marshal offices must be created and regulated by TCOLE. Questions regarding peace officer certification or city marshal offices should be directed to TCOLE through its website at www.tcole.texas.gov.

G. Texas Court Clerks Association (TCCA)

The Texas Court Clerks Association (TCCA) is a non-profit organization established to increase the proficiency of judicial administrators and clerical personnel through education and networking. TCCA offers an annual meeting and training in their local chapters across the state. TCCA is also an affiliate of the Texas Municipal League (TML). It co-sponsors the Municipal Court Clerks Certification Program with TMCEC and Texas State University. For more information on TCCA, or for information on how to join a local chapter, contact the association through its website at texascourtclerks.org.

H. Texas Department of Motor Vehicles (TxDMV)

The Legislature created the Texas Department of Motor Vehicles (TxDMV) in 2009 to oversee the registration and titling of vehicles. Cities can contract with the TxDMV and their local tax assessor-collector to deny renewal of vehicle registration for certain defendants who have failed to appear in court or who have failed to pay a fine for certain traffic offenses. This program is commonly referred to as Scofflaw. More information on the TxDMV can be obtained at its website at www.txdmv.gov.

I. Texas Department of Public Safety (DPS)

The Transportation Code requires municipal courts to report all traffic convictions or bond forfeitures in traffic cases to the Texas Department of Public Safety (DPS). Sec. 543.201, T.C. This report should be made in a form acceptable to the DPS. Sec. 543.203, T.C.

Through the Nonresident Violator Compact (NVC), compliance with traffic laws may be enforced even when citations are issued to motorists who live outside Texas. The police, municipal and justice courts, and DPS must cooperate to enforce the NVC. The DPS is the Texas "licensing agency" responsible for receiving reports from local authorities on failure of out-of-state motorists to comply with the terms of traffic citations. Ch. 703, T.C.

The DPS also provides and maintains statewide driving records. Such information may be helpful to the courts in assessing punishment or prescribing rehabilitative techniques for defendants. For information on reporting, call the DPS at 512.424.2031 or email data.submission@dps.texas.gov.

Cities may contract with the DPS to deny renewal of the driver's license of a person who has failed to appear in court or who has failed to pay a fine. For information on this program, commonly referred to as Omnibase, visit the website at www.omnibase.com.

DPS forms and more information can be obtained from the DPS through its website at www.dps.texas.gov.

J. Texas Judicial Council

The Texas Judicial Council is the policy-making body for the State judiciary. The Council's membership consists predominantly of state judicial officers (including two municipal judges), legislators, and individuals appointed by the Governor and the State Bar of Texas. The Council studies methods to simplify judicial procedures, expedite court business, and better administer justice. It examines the work accomplished by the courts and submits recommendations for improvement of the system to the Legislature, the Governor, and the Supreme Court.

Judicial Council Monthly Court Activity Report

The monthly report that all Texas courts must submit to the OCA. Commonly known as "The OCA Report."

K. Office of Court Administration (OCA)

The Office of Court Administration (OCA) is a state agency and operates under the direction and supervision of the Supreme Court of Texas and its Chief Justice. The OCA is tasked by the Texas Government Code to, among other things, collect statistics on all Texas courts. Every court in Texas is required to report various statistical data to the Texas Judicial Council monthly through the OCA. This data is often used by state legislators to get a picture of what is occurring across the state in the courts. The data is also considered public information and may be searched online through the OCA website. The two primary monthly reports that courts must submit to the OCA are the Judicial Council Monthly Court Activity Report, often referred to by court clerks as the "OCA Report," and the Appointment and Fees Monthly Report that documents certain appointed attorneys. The data collected is published by the OCA in its Annual Report of the Texas Judiciary. The website for the OCA is www.txcourts.gov/oca.

The OCA also provides technical assistance and various resources to courts, including training and education on areas such as court security and reporting.

L. Texas Municipal Courts Association (TMCA)

The Texas Municipal Courts Association (TMCA) is a 501(c)(4) non-profit association of municipal judges and court personnel. It currently has more than 1,000 members across Texas. TMCA is the professional trade association of municipal judges and municipal court personnel, including prosecutors. TMCA is the parent organization of TMCEC. By being elected to the TMCA Board of Directors, board members also serve on the TMCEC Board of Directors. TMCA hosts an annual meeting, an annual awards program for outstanding judges and clerks, and an active legislative program. For additional information visit the TMCA website at www.txmca.com.

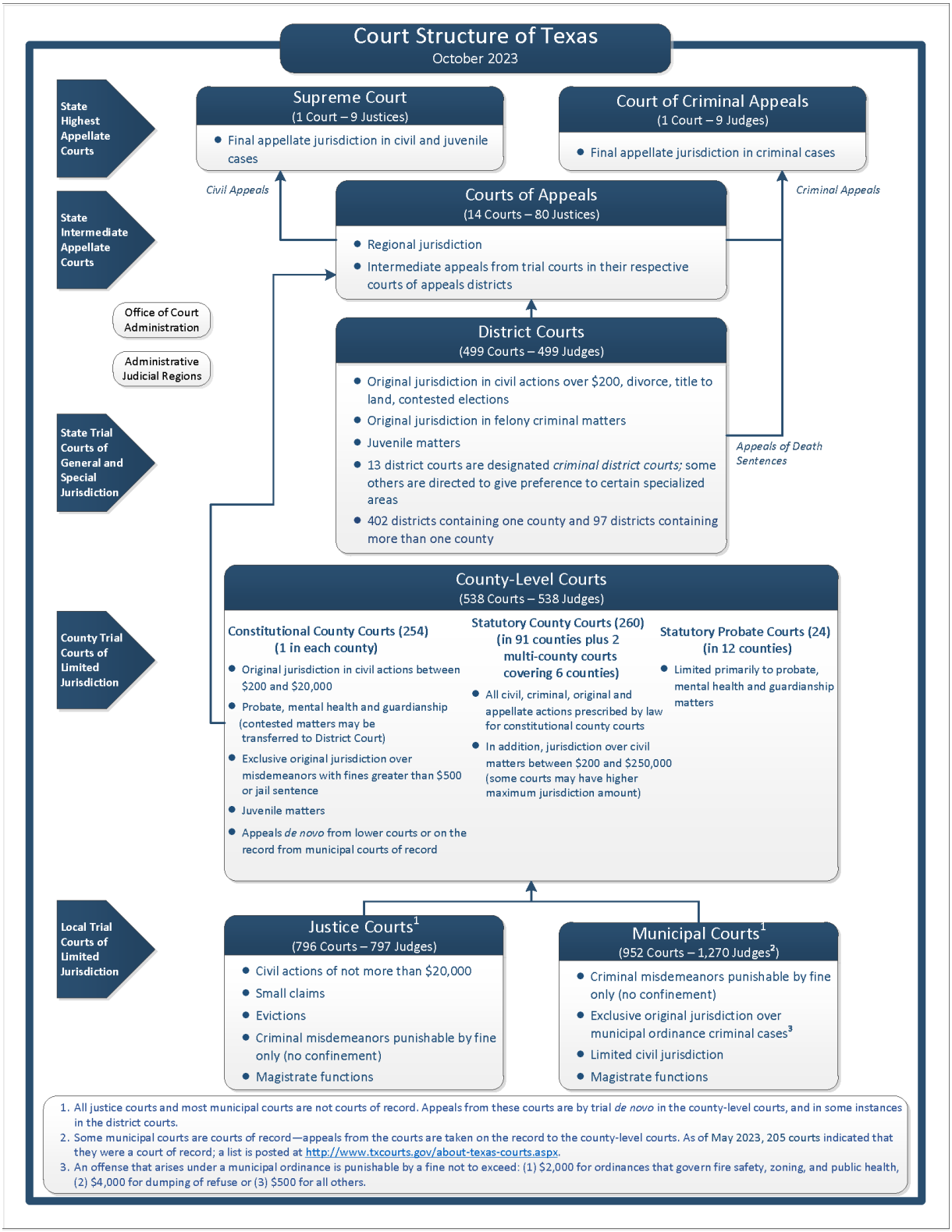
M. Texas Municipal League (TML)

The Texas Municipal League (TML) provides a variety of services to municipal courts. TML monitors legislation proposed and passed by the Legislature to assure that the interests of municipalities are represented. Contact TML at 512.231.7400. The TML website is www.tml.org.

33. Indicate which office(s) to call if you need assistance on:

- Training and written materials on court process and procedure: _____
- The proper forms to report traffic convictions: _____
- Statistical data on other courts of your size: _____
- Driving records: _____
- Help with collecting the proper court costs: _____
- General information on city government: _____
- A question about judicial ethics: _____
- A question about the crime victims program: _____
- Questions about the court clerks' certification program: _____
- A legislative proposal regarding prosecutors in municipal court: _____

APPENDIX A: COURT STRUCTURE OF TEXAS



ANSWERS TO QUESTIONS

PART 1

1. An adversarial legal system is one in which the case is viewed as a struggle between two opposing sides. Each side acts in its own interest, presenting its case in the best possible light to the court. The judge remains neutral. The theory of this process is that the trier of fact will be able to determine the truth if the opposing parties present their best arguments. Decisions are based upon the evidence presented and the applicable law.
2. Common law refers to a legal system based on judicial decisions rather than legislative action. Today, many common law principles have been incorporated into current codes and statutes. Important rights and legal concepts such as the waiver of trial by jury (Arts. 1.13 and 45.025/45A.155, C.C.P.), the defense of necessity (Sec. 9.22, P.C.), and the defense of justification (Sec. 9.02, P.C.) all spring from the English common law.
3. The legislative branch enacts the laws; the executive enforces the laws; and the judiciary interprets and applies the laws.
4. To prevent the accumulation of too much power into too few hands, the U.S. Constitution divides the government into three equal branches: the legislative, the executive, and the judicial. The theory is that if legal power is divided into three branches, no one branch will be able to dominate the other two and impose its own theory of justice on the public.
5. The Bill of Rights
6. Supreme Court of Texas, Texas Court of Criminal Appeals, intermediate courts of appeals, constitutional county courts, district courts, and justice courts.

PART 2

7. Jurisdiction is the authority and legal power to hear and decide cases.
8. Supreme Court of Texas and Texas Court of Criminal Appeals
9. A civil case usually deals with private rights of individuals, groups, or businesses. A civil lawsuit can be brought when one person is wronged or injured by another person. A criminal case is legal action brought by the State of Texas against a person charged with committing a crime.
10. Supreme Court of Texas
11. The appellate courts hear cases based upon the "record" (a written transcription of the testimony given, exhibits introduced, and the documents filed in the trial court) and the written and oral arguments of the appellate lawyers. Unlike the trial courts, the courts of appeals do not receive testimony nor hear witnesses when considering cases on appeal.
12. When a case is appealed from a non-record municipal court, it is retried at the higher level as though it is a new case since there is no record of the case from the lower court. Hence, trial de novo means trying a matter anew; the same as if it had not been previously heard before and as if no decision had been rendered.
13. Justice courts do not have jurisdiction over city ordinances, except in one instance: a violation of a city ordinance that arises in a city's extraterritorial jurisdiction involving signs. They have jurisdiction over foreclosure and forcible entry and detainer cases; municipal courts do not. Justice courts have much greater civil jurisdiction than municipal courts.
14. The Texas Legislature
15. Court of record or court of non-record

16. Violation of city ordinances and the resolutions, rules, and orders of a joint airport board that occur in the territorial jurisdiction of the city and property owned by the city in the city's extraterritorial jurisdiction (ETJ).
17. Justice courts and county courts. Some courts of record may share jurisdiction with district courts.
18. State law, fine-only offenses
19. Generally, within the territorial limits of the city
20. Fine-only or other sanctions, authorized by law, that do not consist of confinement in jail or imprisonment
21. Yes. Courts may impose sanctions in addition to the fine, not consisting of confinement in jail or imprisonment. The imposition of a sanction or the denial, suspension, or revocation of a privilege does not affect the original jurisdiction of the local trial courts in Texas.
22. Minor DUI: alcohol awareness or substance misuse education program, community service, DL suspension
23. $500
24. As long as the offense is punishable by a fine only, maximum amount is set by the Legislature.
25. $2,000
26. The court in which the complaint (or citation) is first filed retains jurisdiction.
27. More citizens come into personal contact with municipal courts than with all other Texas courts combined. Public impression of the judicial system is affected and shaped in large measure by the proceedings of the municipal court.
28. The answers to the subparts of question 28 are found below:
    - An appeal from a district court: Court of Appeals
    - A divorce case: District Court
    - A speeding ticket: Municipal or Justice Court
    - A felony murder case: District Court
    - An appeal from a municipal court: County Court

PART 3

29. False (Section 720.002 of the Transportation Code prohibits quotas on municipal courts).
30. False (judicial decisions may only be made on the basis of facts in evidence and laws).
31. True.
32. False (judges are neutral and unbiased).

PART 4

33. The answers to the subparts of question 33 are found below:
    - Training and written materials on court process and procedure: Texas Municipal Courts Education Center
    - The proper forms to report traffic convictions: Department of Public Safety
    - Statistical data on other courts of your size: Texas Judicial Council/Office of Court Administration

- Driving records: Department of Public Safety
- Help with collecting the proper court costs: State Comptroller of Public Accounts
- General information on city government: Texas Municipal League
- A question about judicial ethics: State Commission on Judicial Conduct
- A question about the crime victims' program: Attorney General's Office
- Questions about the court clerks' certification program: Texas Municipal Courts Education Center or Texas Court Clerks Association
- A legislative proposal regarding prosecutors in municipal court: Texas Municipal Courts Association or Texas Municipal League

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Role in the Court

Table of Contents

INTRODUCTION

The most important source of municipal court authority and jurisdiction is the Texas Constitution, which gives the Legislature the power to establish courts and set their jurisdiction. The Legislature exercised this power and created municipal courts in the Corporation Court Law of 1899, which has since been codified in the Government Code. The authority and jurisdiction of municipal courts can be found in various statutes and codes. In some instances, duties are prescribed by state law; in others, they are prescribed by city charter or city ordinance. Most daily work assignments, however, are generally based on policies or procedures authorized by the judge and administered by the court clerk.

In the criminal justice system, there are several different categories of duties or responsibilities that may be performed by officers of the court. These include ministerial, magistrate, judicial, and prosecutorial duties. Court clerks should know who can legitimately perform these different duties. Statutes do not provide much direction, but clerks can look at a judge's judicial authority to get a clearer picture of the relationship between the authority of a judge and that of a clerk.

This chapter serves as an overview of the role of the clerk in municipal court and introduces the "authorities and duties" of specific officers of the court.

PART 1
OFFICERS OF THE COURT

A. Basic Municipal Court Organization

Although some of the fundamental elements of municipal courts in Texas are authorized or required by law, municipalities have wide latitude in prescribing the organizational structure of the court. In Texas, cities are created under statutes that make them either home-rule or general-law cities. Home-rule cities are empowered to enact charter and ordinance provisions not inconsistent with state law. These provisions prescribe structural details of local court organization. A city must have a population of at least 5,000 in order to become a home-rule city. Texas statutes also provide for general-law cities, those with a population of less than 5,000 or more than 5,000 without a charter, with some choices regarding the organization of the court. Thus, numerous variations exist throughout the State regarding court organization. The organizational structure of a large court with dozens of clerks could be entirely different from the organizational structure of a small court with a single court clerk. In general terms, however, officers of the court in municipal courts consist of the following: judges, court clerks, prosecutors, bailiffs or court security officers, and defense counsel.

B. The Judge

The judge is responsible for presiding over trials and other court proceedings, for performing certain magistrate functions, and for the general administration of the court. Municipal judges are public officials.

1. Qualifications and Selection

Separate statutory authorization for the selection of municipal judges exists for home-rule cities and for general-law cities. A home-rule city can designate in its city charter whether the municipal judge is elected or appointed. Sec. 29.004(a), G.C. The judge and any alternate judges of a municipal court in a home-rule city are selected under the city's charter provisions. The

judge shall be known as the "judge of the municipal court" unless the municipality by charter provides for another title. Sec. 29.004(a), G.C.

In a general-law city, the mayor is the ex-officio judge of the municipal court unless the city passes an ordinance providing for the election or appointment of a judge. If the municipality authorizes an election, the judge must be elected in the same manner and for the same term as the mayor. If the municipality authorizes an appointment, the mayor ceases to be judge upon the enactment of the ordinance. The first elected or appointed judge serves until the expiration of the mayor's term. Sec. 29.004(b), G.C.

If a municipal judge of a general-law city is temporarily unable to act, the governing body may appoint one or more persons meeting the qualifications for the position to sit for the regular municipal judge. The appointee has all powers and duties of the office and is entitled to compensation. Sec. 29.006, G.C.

	High School Diploma	Degree	Advanced Degree	Required License or Certificate	Specific Training
Municipal Court Clerk	✓				
Attorney	✓	✓	✓	✓	
Judge (Non-Record Court)	✓				✓
Judge (Court of Record)	✓	✓	✓	✓	✓

There are no statutory qualifications for a municipal judge of a non-record municipal court; the municipality may establish the qualifications for the judge by charter or ordinance. However, statutory qualifications apply to a municipal court of record, in which case the judge must be a resident of Texas, a U. S. citizen, a licensed attorney in good standing, and have two or more years of experience in the practice of law in this State. Sec. 30.00006, G.C.

Both courts of record and courts of non-record may appoint multiple judges. Sections 29.007 and 30.00006, G.C. When there is more than one judge in a municipality, one judge is generally designated the presiding judge or the administrative judge. As the chief administrator for the court, the presiding judge is responsible for organizing and scheduling court activities, developing and maintaining policies and procedures, allocating the workload, assigning cases to the various courts, supervising court support personnel, and performing a variety of other administrative functions.

2. Appointment and Term of Office

The method of selection of a municipal judge depends on the individual city's charter or ordinance. Most municipal judges, unlike other state court judges, are appointed rather than elected. A municipal judge's term of office is two years unless the municipality provides for a longer term. Article XI, Section 11 of the Texas Constitution allows both home-rule and general-law cities to provide for terms not to exceed four years. Many Texas cities have provided for this, either in the city charter or by majority vote, depending on the city type. For municipal courts of record, however, the term of office for judges is established by the ordinance that created the office, for a definite term of two or four years. Sec. 30.00006, G.C.

29.005, G.C. Term of Office

The judge of a municipal court serves for a term of two years unless the municipality provides for a longer term pursuant to the Texas Constitution.

A municipal judge who is not reappointed by the 91st day following the expiration of a term of office shall, absent action by the appointing authority, continue to serve for another term of office beginning on the date the previous term of office expired. Sec. 29.005, G.C.

If the office of the municipal judge becomes vacant, the governing body of the city shall by appointment fill a vacancy for the unexpired term of office. Sec. 29.011, G.C. City secretaries are required to notify the Texas Judicial Council of the name of each person who is elected or appointed as mayor, municipal court judge, or clerk of a municipal court within 30 days of election or appointment. If the office becomes vacant, the city secretary, or person responsible for maintaining the records of the city's governing body, is required to notify the Texas Judicial Council of the vacancy within 30 days. Sec. 29.013, G.C.

More than one court of appeals has held that a municipal judge is not an employee. Regardless of whether contracts are utilized to specify compensation, benefits, and expectations, it is important for local governments to distinguish municipal judges from contract employees and at-will employees. As public officers, municipal judges may be removed from office, generally for incompetence, corruption, misconduct, or malfeasance in office. A municipal judge may also be removed from office by the Supreme Court through formal proceedings initiated by the State Commission on Judicial Conduct upon a finding of judicial misconduct. Art. V, Sec. 1-a, Tex. Const.

3. Compensation

Municipal judges are compensated by the municipality, and the municipality sets the compensation amount. Although municipal judges are included in the definition of "state judge" for purposes of certain statutes regarding public information and records, the laws that set compensation of county, district, or appellate judges do not pertain to municipal judges.

4. Oath of Office

Article XVI, Sections 1(a) and 1(c) of the Texas Constitution require all officials who are elected or appointed to take an oath of office. The oath is retained with the official records of the office, usually filed with the city secretary or the person responsible for maintaining the official records of the office. Before an elected or appointed official takes the oath of office, however, the official must swear to an anti-bribery statement, also retained with the records of the office. Art. XVI, Secs. 1(b) and 1(c), Tex. Const. The oath and statement must be sworn to and properly filed every time an official is reelected or reappointed. This includes when a judge continues to serve for another term because the city did not take action to reappoint a judge or appoint another judge by the 91st day following the expiration of a term of office. Before performing any official duties, the judge must swear to and file the anti-bribery statement of officer and oath of office. The wording of the oaths is included in *Appendix A* at the end of this chapter.

A person administering an oath of office or statement of officer must have the authority to administer an oath. Persons who have the authority to administer an oath are listed in Section 602.002 of the Government Code and include:

- a judge, retired judge, or clerk of a municipal court;
- a judge, retired judge, senior judge, clerk, or commissioner of a court of record;
- a justice of the peace, a retired justice of the peace, or a clerk of a justice court;
- a notary public;

- the secretary of state or a former secretary of state;
- the lieutenant governor or a former lieutenant governor;
- the speaker of the House of Representatives or a former speaker of the House of Representatives;
- the governor or a former governor;
- a legislator or retired legislator;
- the attorney general or a former attorney general;
- the comptroller of public accounts or a former comptroller of public accounts;
- the secretary or clerk of a municipality in a matter pertaining to the official business of the municipality; or
- a peace officer only if the oath is administered when the officer is engaged in the performance of the officer's duties and the administration of the oath relates to the officer's duties.

Presumably, a person would not be authorized to administer the oath until they themselves had taken an oath for their office.

5. Duties

Judges have the authority to perform judicial, magistrate, and ministerial duties. Judicial duties require an exercise of judgment, a decision of a question of law or fact, or a choice of alternatives. A question of law is an issue involving the application or interpretation of a law. A question of fact is an issue involving resolution of a factual dispute. The choices made by judges do have limits, however, as judges are required to operate within the bounds of the law. Judicial decisions must be lawfully authorized choices or alternatives.

Judicial duties involve the exercise of judicial discretion. This authority is only given to the judge. Although court clerks work closely with the judge, and may have been delegated certain other duties, the clerk has no authority to exercise judicial discretion. Furthermore, a judge cannot legally delegate any duty that requires judicial discretion. The judge's discretion to make decisions is based on facts and guided by law. It is the power to determine what, under existing circumstances, is right or proper in each case. Judicial discretion is not unrestrained, though, and must be exercised to give effect to the purpose of the law while remaining within the boundaries of what is legally permitted.

Judicial Discretion

The exercise of judgment by a judge based on what is both fair under the circumstances and within the established principles of the law.

In the capacity of a trial court judge, the judge must be impartial and ensure that the court upholds due process. As previously stated in Chapter 1, the judge is not an adversary in the proceeding. He or she must decide questions only on the basis of the law. He or she must never assume the role of prosecutor or of defense counsel nor act as a special advisor to the police or a rubber stamp for law enforcement. In addition, even though the judge is selected and appointed by the city, he or she should never be influenced by the city to produce revenue or to enforce laws selectively. When cases proceed to trial, only the evidence presented and the applicable laws are legitimate bases for any judicial decision. Accordingly, the

judge must allow the prosecution and the defense, as well as all other components of the system, to perform their duties vigorously, but always within the limits allowed by law.

All judges in Texas are also magistrates. Art. 2.09/2A.151, C.C.P. Magistrate authority is additional power granted by the Texas Legislature. This means that a judge essentially wears two hats: judge and magistrate. A judge for the City of Georgetown, for example, could also serve the role of magistrate for Williamson County, the county in which Georgetown is located. Although magistrate duties are broad and scattered throughout various statutes and codes, the general duty of every magistrate is to preserve the peace within his or her jurisdiction by issuing process intended to help prevent and suppress crime and to initiate the arrest of offenders in order that they may be brought to punishment. Art. 2.10/2A.152, C.C.P. Magistrates act as the gatekeeper to the criminal justice system.

Case law provides that a magistrate's authority is countywide. *Gilbert v. State*, 493 S.W.2d 783 (Tex. Crim. App. 1973). In the municipal setting, a mayor is also a magistrate, but a mayor who is not acting as an ex officio municipal judge can only perform magistrate duties and not judicial duties.

The judge will rely heavily on administrative support by the clerk but may not delegate judicial duties to the clerk or allow the clerk to influence any judicial decisions. While the judge establishes judicial policy and general court procedures, the clerk helps to implement those policies and procedures. Despite the close working relationship between the judge and clerk, there must be a clear separation between judicial and administrative functions.

C. The Court Clerk

Court clerks look to the judge for direction in matters pertaining to overall court policy and judicial procedures. The clerk's primary responsibilities include processing the clerical work of the court; administering daily operations of the court; maintaining court records; coordinating the scheduling of cases; and performing other duties as may be outlined in the city charter or ordinances. In the absence of more detailed, written administrative duties for a clerk by the governing body, the judge may assign various administrative duties. Although court clerks do not have authority to exercise judicial discretion, they may carry out the duties that are legally delegated from the judge. This may include tasks such as maintaining the court's docket or providing for internal controls of cash handling in the court. In a nutshell, the court clerk is required to "keep minutes of the proceedings of the court, issue process and generally perform the duties for the municipal court that a county clerk performs for the county court." Sec. 29.010(c), G.C.

1. Qualifications and Selection

Court clerks are elected, appointed, or hired, depending on whether the city is a general-law or home-rule city and the court is a court of record or not.

For courts of non-record in a general-law city, the court clerk is elected in the same manner as the municipal judge if the judge is elected. However, some cities provide by ordinance that the city secretary serves as ex officio court clerk. The city secretary who serves in an ex officio capacity may be authorized to appoint a deputy to serve as court clerk. Sec. 29.010(a), G.C. In a home-rule city, the charter provides for the appointment of the court clerk. Sec. 29.010(d), G.C.

For a municipal court of record, the city by ordinance shall provide for the appointment of a clerk. The city may provide deputy clerks, warrant officers, and other personnel as needed for the

proper operation of the courts, and the clerks and other court personnel perform their duties under the direction and control of the presiding judge.

Cities have broad discretion regarding the clerk's title, and titles vary across the State. Generally, there is one clerk of the court (either appointed or elected), and the city can hire additional clerks with titles such as clerk or deputy clerk. The city council may also establish the qualifications for the position of the court clerk. Qualifications vary greatly depending on the size and workload of the court, the nature of the cases processed, the size of the staff, how the workload is distributed, and whether the court's work is done manually or by computer. Knowledge of court functions and procedures, advanced clerical skills, experience in dealing with the public, knowledge of accounting or bookkeeping, office and personnel management skills, and knowledge of case flow management are most desirable.

2. Term of Office

The municipal court clerk serves a two-year term of office unless the municipality provides for a longer term pursuant to Article XI, Section 11 of the Texas Constitution. If the city secretary serves as clerk, the term of office is during the term of the city secretary. Sec. 29.010(b), G.C.

If the office of the municipal court clerk becomes vacant, the governing body of the city shall by appointment fill a vacancy for the unexpired term of office. Sec. 29.011, G.C. City secretaries are required to notify the Texas Judicial Council of the name of each person who is elected or appointed as mayor, municipal judge, or clerk of a municipal court within 30 days of election or appointment. If the office becomes vacant, the city secretary, or person responsible for maintaining the records of the city's governing body, is required to notify the Texas Judicial Council of the vacancy or appointment within 30 days. Sec. 29.013, G.C.

Appointed or elected court clerks, as opposed to hired clerks, may be removed from office only for the same reasons as other city officials. State law governing general-law cities provides that city officials may be removed for incompetence, corruption, misconduct, or malfeasance in office. Removal may occur after providing the officer with due notice and an opportunity to be heard. Sec. 22.077(a), L.G.C. In addition, if the governing body lacks confidence in a municipal officer elected by the governing body, the governing body may remove the officer at any time. The removal is effective only if two-thirds of the elected aldermen vote in favor of a resolution declaring the lack of confidence. Sec. 22.077(b), L.G.C. Of course, the governing body of the municipality should exercise care in removing a judge or clerk from office and should consider the statutory terms of office for both the judge and clerk. Cities should specify grounds and procedures for removal. Statutory municipal courts of record may have statutes that prohibit removal of a municipal judge by the city council. Ch. 30, G.C. Accordingly, specific statutes and ordinances need to be consulted.

3. Compensation

The salary of the court clerk can be prescribed by the city charter in home-rule cities. Such compensation is paid out of the city treasury. For all other cities, whether general-law or where the charter does not specify compensation, the city council sets the court clerk's salary, just as it does for other officers of the court.

4. Oath of Office

Article XVI, Sections 1(a) and 1(c) of the Texas Constitution require all officials who are elected or appointed to take an oath of office. The oath is retained with the official records of the office,

usually filed with the city secretary or the person responsible for maintaining the official records of the office. Before an elected or appointed official takes the oath of office, however, the official must swear to an anti-bribery statement, also retained with the records of the office. Art. XVI, Secs. 1(b) and 1(c), Tex. Const. The oath and statement must be sworn to and properly filed every time an official is reelected or reappointed. The oath and statement must be taken before performing any duties of office. The wording of the oaths is included in *Appendix A* at the end of this chapter.

A person administering an oath of office or statement of officer must have the authority to administer an oath. Section 602.002 of the Government Code lists persons who have authority to administer any oath and includes:

- a judge, retired judge, or clerk of a municipal court;
- a judge, retired judge, senior judge, clerk, or commissioner of a court of record;
- a justice of the peace, a retired justice of the peace, or a clerk of a justice court;
- a notary public;
- the secretary of state or a former secretary of state;
- the lieutenant governor or a former lieutenant governor;
- the speaker of the House of Representatives or a former speaker of the House of Representatives;
- the governor or a former governor;
- a legislator or retired legislator;
- the attorney general or a former attorney general;
- the comptroller of public accounts or a former comptroller of public accounts;
- the secretary or clerk of a municipality in a matter pertaining to the official business of the municipality; or
- a peace officer only if the oath is administered when the officer is engaged in the performance of the officer's duties and the administration of the oath relates to the officer's duties.

Presumably, a person would not be authorized to administer the oath until they themselves had taken an oath for their office.

Section 29.007(f) of the Government Code provides that in home-rule cities that have established the office of municipal court clerk (the clerk is either appointed or elected), the clerk has authority to administer oaths. This statute does not make any exceptions to this authority.

5. Duties

The responsibility of the court clerk's position and the scope of duties have greatly increased in recent years. The professionalism, timeliness, and accuracy of the court clerk's actions are important to the proper operation of the municipal court. As such, the court clerk can have a tremendous impact on the perception of the justice system. The court clerk likely has more contact with individual defendants in municipal courts on a daily basis than the judge,

Legal Advice

Legal advice is a statement that interprets some aspect of the law, recommends a course of conduct, or applies the law to specific facts.

prosecutor, or even law enforcement. Consequently, the public will develop a perception of municipal courts largely based on interactions with the court clerk.

Due process and the fair treatment of all court users require that the court clerk provide accurate legal information to defendants. This includes, for example, information on the defendant's options that the court clerk is permitted to legally provide. Every court user has the right to know the court's procedures. The court clerk must be careful, however, to avoid providing legal advice. The line is not always clear between legal information and legal advice, but essentially legal advice is what a defendant would receive from an attorney. Only licensed attorneys may provide legal advice to any individual. If a clerk provides legal advice, he or she would potentially be violating not only ethics rules, but also various state criminal laws.

The court clerk's primary duties typically involve some aspect of court administration. These duties vary widely depending on both the size of the city and the volume of the court. Administratively, the court clerk is responsible for seeing that the court's papers are accurately processed and any duties delegated by the judge are performed in a timely manner. While the clerk's duty is to serve all court users equally in the legal system, the clerk must remain independent of any particular user. This means, for example, that the court clerk must be as courteous and helpful to defense lawyers as he or she is to the local prosecutor. Clerks may have a greater knowledge of certain aspects of the law or municipal court procedure than even certain attorneys, but clerks should be careful never to attempt to influence the outcome of any case.

D. The Prosecutor

Art. 45.201(d)/45A.006, C.C.P.

It is the primary duty of a municipal prosecutor not to convict, but to see that justice is done.

The term "prosecutor" is broadly used across all levels of criminal courts in Texas. The term refers to the representative of the State of Texas, who is tasked with prosecuting the State's criminal laws. The individual prosecutor's formal job title generally depends on what level of jurisdiction that person is working within. With some exceptions, an assistant district attorney typically handles felony criminal offenses in district court, an assistant county attorney handles misdemeanors punishable by confinement in county court, and so on. Although municipal prosecutors may also work as the city's legal counsel as an assistant city attorney, he or she does not technically represent the city when appearing in a municipal court. Instead, he or she represents the State of Texas and is tasked with the primary duty not to convict but to see that justice is done. Art. 45.201(d)/45A.006, C.C.P. In the broad view, the prosecutor represents the public's interest in enforcing the criminal laws of the state while acting in a manner that maintains public respect for the system. This is often a balancing act for prosecutors seeking to see justice fairly administered while still operating within an adversarial system.

Some cities have in-house city attorneys and others contract with solo practitioners or law firms. In this regard, the municipal prosecutor is unique in the Texas justice system in that the prosecutor may practice an entirely different type of law, even criminal defense, when not acting in the role of the municipal court's prosecutor. The prosecutor may also be the county attorney of

the county in which the municipality is situated if the county attorney so desires. In this case, the county attorney is not entitled to receive any compensation.

From a practical standpoint, prosecutors are the gatekeepers that decide whether criminal offenses are filed in court in the first place. Many prosecutors also act as police advisors, and one of the many duties of the prosecuting attorney is to decide if there is sufficient evidence to proceed on any given case. Judges and clerks do not have the authority to file any new criminal offenses in court, including the criminal offense of Failure to Appear. A court may not proceed on such a charge without explicit authority from the prosecutor. The prosecutor will also meet with opposing counsel or pro se defendants concerning the case, negotiate plea agreements, and conduct trial. Article 45.201/45A.005 of the Code of Criminal Procedure only requires an attorney representing the State to be present to conduct prosecutions at bench or jury trials. Tex. Atty. Gen. Op. GA-0067 (2003). Thus, interestingly, prosecutors may be present, but are not required when a defendant makes an appearance to enter a plea. There are also no provisions in current law that require a prosecutor to be present at show cause hearings or indigency hearings. These hearings are solely within the court's authority and duty.

1. Qualifications and Term of Office

The city attorney's term, subject to conditions regarding removal, may be set by ordinance, charter, or the agreement for employment. Deputy city attorneys assigned as municipal court prosecutors work at the pleasure and discretion of the city attorney. The prosecutor must be a licensed attorney in Texas, which means he or she has been admitted to the State Bar of Texas and may practice in the state courts.

Minimum qualifications to become an attorney in Texas generally include seven years of education after high school. This includes three years of law school resulting in the Doctor of Jurisprudence (JD) degree. Attorneys must also pass the Texas Bar Exam, a 2 ½ day exam covering state, federal, and common law topics.

Practice Note

All attorneys that are licensed to practice law in Texas must maintain a profile with certain information through the State Bar of Texas. This information is available in a public database on the internet at no charge. Information available through the database includes contact information for the attorney and whether he or she is currently licensed and eligible to practice in Texas. The database is located at www.texasbar.com.

2. Duties and Responsibilities

Just as municipal court clerks perform many of the same duties as their counterparts at the county and district levels, the city prosecutor performs a similar role as the prosecuting attorney in other criminal trial courts. A big difference is that county and district court prosecutors typically have distinct case intake protocols and may have staff and clerks of their own assisting in case preparation. In many Texas cities, the municipal prosecutor will not have a vast support network. The prosecutor's time for case preparation and consultation with police officers, witnesses, and complainants is usually more limited than their counterparts in

***Aguirre v. State*, 22 S.W.3d 463 (Tex. Crim. App. 1999)**

The State not only has an interest (in the prosecution of criminal offenses in municipal court); its interest is paramount.

the higher courts due in part to the greater case volume in municipal courts.

The prosecutor ultimately represents the State of Texas when appearing in municipal court. To this end, as a representative of the state, the prosecutor's role is always to seek justice. This may not only include seeking convictions where appropriate, but also deciding which cases to pursue or even to seek dismissal where there is insufficient evidence. It is solely the prosecutor's duty to decide when to file a complaint or advise peace officers in case preparation. Prosecutors, however, should be mindful that they cannot dismiss charges or cases, except upon written grounds and with the judge's approval. Art. 32.02, C.C.P.

Duties of a municipal prosecutor include:

- investigating the facts surrounding alleged offenses and deciding whether to file charges;
- preparing and drafting complaints (the clerk may assist the prosecutor in preparing routine complaints where that preparation is a ministerial duty; however, the ultimate responsibility for the legal sufficiency and accuracy of complaints belongs to the prosecutor);
- administering oaths to persons filing complaints before the court (Art. 45.019(e)/45A.101(e), C.C.P.);
- preparing and presenting the State's case at trial;
- arranging for the appearance of the State's witnesses, including requests for subpoenas and attachments;
- filing motions with the court that may be necessary to present cases;
- requesting dismissal of cases under proper circumstances;
- advising the police department in case preparation, legal procedures, and requirements, and other legal questions; and
- discussing pending cases with defendants or, if represented by counsel, with their attorneys prior to the courtroom hearing.

With the county attorney's consent or assistance, prosecutors are statutorily allowed to prosecute cases on appeal out of a municipal court. Art. 45.201/45A.005, C.C.P. The prosecutor may make arrangements with the county attorney or criminal district attorney and the county judge to prosecute municipal court appeals.

E. The Bailiff

Ultimately, the judge has responsibility for maintaining order in his or her courtroom. Section 21.001(b) of the Government Code provides that "a court shall require that proceedings be conducted with dignity and in an orderly and expeditious manner and control the proceedings so that justice is done." It is, therefore, up to the judge to ensure that all users of the court are afforded safe and orderly proceedings. This is an impossible task to administer alone, however, so judges rely on the court bailiff to help.

1. Qualifications

Chapter 53 of the Government Code mandates the appointment of bailiffs in certain courts in Texas; however, there is no universal statutory requirement for municipal courts to have a bailiff. There are a few exceptions for cities that have statutory courts of record. Even though Texas law

does not require the use of a bailiff in most municipal courts, it is the best practice to have at least one bailiff.

Just as there is no statutory requirement to have a bailiff, there are also no statutory qualifications for bailiffs in municipal courts. Minimum qualifications used by cities for the position of bailiff commonly include the following: high school graduation or G.E.D.; knowledge of the operations, procedures, and decorum of the municipal court; and experience in dealing with the public. Some cities require bailiffs to be at least 18 years of age, some 21. Many cities require the bailiff to be a licensed peace officer because peace officers possess arrest powers and can carry a weapon, while a non-peace officer's authority to arrest, carry a firearm, or enforce contempt orders would be limited.

Some bailiffs are licensed peace officers dedicated to working with the court. Others are warrant officers or city marshals who also provide security for the court when court is in session, are peace officers who are "on loan" from the police department to the court when needed or are retired peace officers. Other courts hire outside, private security companies or court security officers who are not peace officers.

Practice Note

Any person that provides security for the municipal court is required to hold a court security officer certification issued by a training provider approved by the Texas Commission on Law Enforcement (TCOLE). The training consists of 8 hours of education on specific court security topics. Further information on this training, as well as additional resources, may be found online at https://www.tmcec.com/programs/court-security-officer/.

2. Duties and Responsibilities

The bailiff is directly responsible to the judge and has the duty of maintaining order, security, and decorum while the court is in session. The bailiff generally opens and closes court sessions. He or she may be assigned other duties, including maintaining custody of and escorting those convicted to the clerk to arrange payment. Bailiffs also administer oaths to witnesses (if directed and authorized by the judge); attend to the jury, keeping them together and separate from all other citizens during deliberations; carry written communications between the jury and the judge; and inform the judge when a verdict has been reached. Bailiffs may also assist defendants and other citizens present by explaining court procedures and answering questions.

F. The Warrant Officer

It is the duty of every peace officer to preserve the peace within the officer's jurisdiction using all lawful means. Art. 2.13/2A.051, C.C.P. Peace officers engage in various law enforcement duties when arresting offenders without a warrant (i.e., issuing a citation or making a custodial arrest for an offense committed in view), applying to a magistrate for an arrest warrant when the officer has probable cause to believe a person has committed an offense, and executing lawful process issued to the officer by a magistrate or a judge.

The primary role of the warrant officer is to serve all processes or papers issued by a municipal court; in other words, to make arrests on warrants or capiases pro fine or deliver summonses to the parties to whom they are addressed. The Code of Criminal Procedure provides that all process issuing out of the municipal court shall be served by a police officer or city marshal

under the same rules that apply to service by sheriffs and constables of process issuing out of justice courts. Art. 45.202/45A.103, C.C.P. Failure, neglect, or refusal to serve process may make the responsible officer liable for a fine of $10-200 for contempt of court. Art. 2.16/2A.055, C.C.P.

Some cities have city marshal departments that work under the court; often, the court administrator is the chief administrator of the law enforcement agency that is the marshal's office. In most cities, the duty to serve process is often assigned to the police department and sometimes to individuals specially designated as warrant officers. As peace officers, warrant officers must comply with the minimum educational, training, physical, mental, and moral standards established by the Texas Commission on Law Enforcement (TCOLE).

G. Defense Counsel

The role of defense counsel is to represent a client zealously within the bounds of the law. Like the prosecutor, the defense counsel has a duty to maintain public respect for the system. Even citizens who have committed crimes are entitled to have their rights respected and to be treated fairly at all stages of court proceedings. Upon a guilty verdict, defense counsel has a duty to argue for fair punishment.

In practice, the majority of municipal court defendants appear in court as a pro se defendant. This means that they appear on their own behalf without an attorney. If a defendant wants to be represented by another individual, the defendant has that right, but that person must be a licensed Texas attorney. Every attorney licensed in Texas can be found through the State Bar of Texas, at http://www.texasbar.com. Information found on this website includes the attorney's bar number and whether he or she is currently eligible to practice in Texas.

Attorney at Law Representation

Defendants in Texas have the right to be represented by an attorney in any criminal proceeding. Although there is a right to represent oneself in court as a pro se defendant, a person must be a licensed attorney at law in order to represent another person in court proceedings. Family members, parents, and friends cannot legally represent defendants in court unless the person is a licensed Texas attorney. Despite its name, a power of attorney is not an instrument that would allow a non-attorney to represent another person in municipal court. A power of attorney only allows another person to act as an attorney in fact. In simplest terms, this means that the person may handle certain business transactions for another individual. To represent another person in court proceedings, a person must be an attorney at law. *Harkins v. Murphy & Bolanz*, 112 S.W. 136 (Tex. Civ. App.—Dallas 1908, writ dism'd); *Elwell v. Mayfield*, 2005 Tex. App. LEXIS 6356, 2005 WL 1907126, at 3 (Tex. App.—Waco Aug. 10, 2005, pet. denied).

***Harkins v. Murphy & Bolanz*, 112 S.W. 136 (Tex.Civ.App.- Dallas 1908, writ dism'd)**

A power of attorney does not authorize a person to act as an attorney at law in a court proceeding.

Attorney at law means that the person is a licensed attorney. Practicing law without a license is against the law, regardless of the person's relationship to the defendant, and in some situations could result in criminal charges for the unauthorized practice of law.

To protect the rights of defendants and ensure that communications are made to any attorney of record, a best practice is to require attorneys to submit a letter of representation to the court. The

letter typically will indicate that a person is represented by counsel, ask that court communications be sent to the attorney, and provide contact information. Once a court has a letter of representation, the court must then communicate with the defendant through his or her attorney. This will also help prevent any communication by the judge or prosecutor with a represented person without their counsel present.

True or False

1. The judge plays an adversarial role in court. ____
2. If there is not a prosecutor, the judge or the clerk should serve as the prosecutor and represent the State. ____
3. The prosecutor, with the consent of the judge, has the authority to dismiss a case. ____
4. The prosecutor is responsible for preparing and drafting complaints and may ask the clerk for assistance. ____
5. A court clerk may exercise judicial discretion. ____
6. What is the longest term of office that a city may set for municipal judge? How may a city provide for this term of office? _____

   _____
7. May a non-attorney parent represent his or her child in court if that person is named in a power of attorney? Why or why not? _____

   _____

   _____
8. What qualifications are required to practice law in Texas? _____

   _____
9. How often must the statement of officer and oath of office be filed? _____

   _____

PART 2
AUTHORITY OF A JUDGE

A. Judicial Duties and Responsibilities

Judicial duties require an exercise of discretion. Judicial duties are found throughout the codes and statutes and prescribe an action by the judge or the court. Judicial acts include accepting pleas, assessing fines, and dismissing cases when permitted by statute, issuing warrants and capiases, or granting driving safety courses. Tex. Atty. Gen. Op. H-386 (1974).

A judge is not permitted to delegate duties conferred by law unless there is express statutory or constitutional authorization permitting the judge to do so. *Newsom v. Adams*, 451 S.W.2d 948 (Tex. Civ. App.—Beaumont 1970); Tex. Atty. Gen. Op. H-386 (1974). Thus, unless there is clear language in the statutes permitting the judge to delegate duties to the clerk, the judge may not do so. The judge may not delegate to the clerk any action that the judge is statutorily bound to take that requires an interpretation or application of law or determination of fact based upon the circumstances in any particular case. Put simply, if the law says a judge has to do something, or if a decision has to be made on the law or facts of a case, the judge may not delegate the task.

Hence, a judge is not permitted to delegate to a court clerk a duty such as taking a plea or setting a fine.

Other duties that judges may perform, such as ministerial duties, may be delegated to court clerks because ministerial duties require no discretion and are generally administrative in nature, such as keeping and maintaining a docket, preparing paperwork for the judge's signature, maintaining files, and providing customer service to court users.

1. Judicial Duties and Responsibilities that May Not Be Delegated

The list below, although not exhaustive, provides examples of judicial duties and responsibilities that may not be delegated to a clerk.

Judicial Duty or Responsibility	Cite
Set bail to secure the defendant's appearance after a case has been filed.	Article 45.016/45A.107, C.C.P.
Issue arrest warrants for defendants whose cases are filed.	Article 45.014/45A.104, C.C.P.
Issue a capias for a defendant after a charge has been filed.	Article 23.04, C.C.P.
Issue a summons for a defendant when requested by the prosecutor.	Article 23.04, C.C.P.
Issue a summons for the parent of a person under 17.	Articles 45.0215/45A.452, C.C.P.
Forfeit bail.	Articles 4.14 and 45.044/45A.256, C.C.P.; Section 29.003(e), G.C.
Take and accept pleas of guilty, nolo contendere, or not guilty.	Articles 27.14, 27.16, 45.021/45A.151(a), 45.0215/45A.452, 45.022/45A.153(a), and 45.024/45A.152, C.C.P.; Attorney General Opinion H-386
Enter a plea of not guilty for a defendant who refuses to plead.	Article 45.024/45A.152, C.C.P.
Grant a motion for new trial made after a defendant entered a plea while detained in jail.	Article 45.023/45A.154(b), C.C.P.
Conduct pre-trial hearings.	Article 28.01, C.C.P.
Grant continuances.	Chapter 29, C.C.P.
Conduct trials.	Article 45.025/45A.155, C.C.P.
Issue a writ to summon a venire (jury panel).	Article 45.027/45A.156, C.C.P.
Rule on challenges to the array (membership) of the jury pool.	Article 35.07, C.C.P.
Form the jury and administer the oath.	Article 45.030/45A.159(b), C.C.P.
Charge the jury.	Article 45.033/45A.163, C.C.P.

See that the verdict is in proper form and render judgment and sentence following a jury trial.	Article 45.036/45A.166, C.C.P.
Enter judgments.	Article 45.041/45A.251, C.C.P.
Set fines.	Article 45.041/45A.251, C.C.P.; Attorney General Opinion H-386
Grant deferred disposition.	Article 45.051/45A.302, C.C.P.
Grant a driving safety course.	Article 45.0511/45A.352, C.C.P.
Grant teen court.	Article 45.052/45A.401, C.C.P.
Determine how a defendant is ordered to pay the fine and costs (time payment, extensions, community service).	Articles 45.041/45A.251 and 45.049/45A.254, C.C.P.
Grant community service or tutoring in satisfaction of the fine or costs for juvenile defendants.	Articles 45.049/45A.254 and 45.0492/45A.459-45A.460, C.C.P.
Grant jail-time credit.	Articles 42.03, 45.041/45A.251, and 45.048/45A.262, C.C.P.
Determine indigence.	Articles 43.091, 45.041/45A.252, 45.046/45A.261, 45.048/45A.262, and 45.049/45A.254, C.C.P.
Waive the fine and court costs.	Article 43.091, C.C.P.
Rule on a motion for new trial.	Article 45.038/45A.201, C.C.P.; Section 30.00014, G.C.
Set and approve appeal bonds.	Article 45.0425/45A.203, C.C.P.
Issue a capias pro fine.	Article 45.045/45A.259, C.C.P.
Commit a defendant to jail for unpaid fines/costs.	Article 45.046/45A.261, C.C.P.
Conduct stolen or seized property hearings.	Chapter 47, C.C.P.
Dismiss cases when required by law or upon a prosecutor's motion.	Article 32.02, C.C.P.
Inform a juvenile and any parent in open court of the juvenile's expunction rights and provide them with a copy of the law.	Article 45.0216/45A.463, C.C.P.
Order convictions or records expunged.	Articles 45.0216/45A.463, C.C.P.; Article 55.02/55A.201, C.C.P.; Section 106.12, A.B.C.; Section 161.255, H.S.C.
Hold a person in contempt.	Article 45.050/45A.461, C.C.P.; Section 21.002, G.C.

2. Consequences of Delegating Judicial Duties or Responsibilities

If a judge delegates a judicial duty or responsibility to a court clerk, there can be consequences. Several cases illustrate such consequences.

In *Sharp v. State*, 677 S.W.2d 513 (Tex. Crim. App. 1984), a City of Houston municipal court clerk issued a capias for violating the "motorcycle helmet safety law." The defendant was later arrested on the capias and as a result of this arrest was charged with and convicted of possession of methamphetamine. The defendant appealed the possession case. The appellate court held that the deputy court clerk did not have authority to issue a capias. Because a magistrate failed to direct the issuance of the capias and to determine probable cause, the defendant's arrest was illegal; thus, the evidence discovered as a direct result of the arrest had to be suppressed (it could not be admitted into evidence).

The procedure to prosecute in Houston was initiated with an officer's citation for the helmet offense. According to the established procedures, if the defendant failed to appear in court to answer the charge, the clerk was delegated the authority to stamp the judge's name and issue the capias. The Court of Criminal Appeals reviewed this procedure and found that, although Texas municipal clerks were empowered to perform ministerial tasks such as preparing process under the direction of the judge, they were neither authorized nor trained to determine probable cause to support a warrant ordering a citizen to be arrested. There was no evidence that a judge intervened at any point in the process. The Court of Criminal Appeals concluded that because a judge did not determine whether there was probable cause to issue the arrest warrant (capias) and since a judge did not direct the issuance of the capias, the defendant's arrest was illegal. Hence, all evidence obtained from the arrest was excluded.

Crane v. Texas, 759 F.2d 412 (5th Cir. 1985), points out civil liability when a judge allows someone else to devise a policy delegating judicial authority. In this case, a district attorney and county attorney were held civilly liable and denied governmental immunity because they devised a policy authorizing the county clerk rather than the judge to issue misdemeanor capiases.

In *Daniels v. Stovall*, 660 F. Supp. 301 (S.D. Tex. 1987), a justice of the peace delegated his authority to affix his rubber-stamped signature to a mental health warrant outside his presence. He reviewed the warrant and adopted it the next business day. The court cited favorably Attorney General Opinion JM-373 (1985), which states that a judge may not delegate authority to affix his or her signature unless the signature is affixed under the judge's personal supervision. Generally, judges have absolute immunity for damages for acts performed in their judicial capacity. However, because the judge delegated judicial authority to his clerk in this case, neither was immune from civil liability.

In *Daniels*, the court discussed the approved factors for determining whether a particular action is a judicial action that would be entitled to immunity. The issuance of a mental commitment order is a judicial act, but the manner in which it was issued prevented the act from being covered by judicial immunity. The factors for determining whether a particular action is judicial are:

- whether the precise act complained of is a normal judicial function;
- whether the act occurred in the courtroom or appropriate adjunct spaces such as the judge's chambers;
- whether the controversy centered around a case pending before the court; and
- whether the act arose directly out of a visit to the judge in his or her official capacity.

B. Magistrate Duties

It is important that when acting in an official capacity, all judges are able to differentiate between judicial and magistrate duties and authorities. Regardless of which hat (judge or magistrate) a municipal judge is wearing, he or she must be impartial, ensure that justice is done, and base decisions on the law as applicable to the facts.

Magistrate duties, like judicial duties, cannot be delegated to municipal court clerks.

The following is a list, although not exhaustive, of magistrate duties that a municipal judge has the authority to perform as a magistrate.

Magistrate Duties	Cite
Issue emergency protection orders for an offense involving family violence.	Article 17.292, C.C.P.
Issue a warrant when any person informs the judge, under oath, of an offense about to be committed.	Article 7.01, C.C.P.
Conduct peace bond hearings.	Article 7.03, C.C.P.
Verbally order a peace officer to arrest, without warrant, when a felony or breach of the peace is committed in the presence of or within the view of a magistrate.	Article 14.02, C.C.P.
Accept complaints (probable cause affidavit) and issue arrest warrants and summonses (these complaints are for Class A and B misdemeanors and felony offenses).	Article 15.17, C.C.P.
Give magistrate warnings after arrest.	Article 15.17, C.C.P.
Take a plea and set and collect a fine when a defendant is arrested on an out-of-county warrant for a fine-only offense.	Article 15.18, C.C.P.
Conduct examining trials in felony cases to determine probable cause.	Article 16.01, C.C.P.
Determine the sufficiency of sureties.	Chapter 17, C.C.P.
After receiving notice, order a qualified expert to interview a defendant in custody and believed to have a mental illness or intellectual or developmental disability and provide the magistrate with a written report.	Article 16.22, C.C.P.
Set and accept bail, including personal bonds.	Chapter 17, C.C.P.
Issue search warrants; mere evidence warrants may issue only from an attorney judge.	Chapter 18, C.C.P.
Move to dispose of the weapon (destroy or sell) if no prosecution or conviction will occur when a weapon has been seized.	Article 18.19, C.C.P.
Direct a peace officer to prevent a person from leaving a facility to prevent the spread of communicable disease.	Section 81.162, H.S.C.

C. Ministerial Responsibilities

Ministerial responsibilities are those in which there is nothing left to discretion. They are generally administrative in nature, pertain to effectively and efficiently managing the cases filed in the court, and are imposed by law. Although Canon 3C(1) of the *Code of Judicial Conduct* requires judges to diligently and promptly discharge administrative responsibilities and to maintain professional competence in judicial administration, judges typically delegate ministerial and administrative duties to clerks.

Statutes provide little guidance regarding ministerial responsibilities. It is only in understanding judicial authority and knowing what a judge cannot delegate that courts determine what responsibilities are ministerial and administrative. Generally, ministerial and administrative responsibilities include the following tasks, which can be performed by either judges or clerks:

- records management;
- financial management;
- office management;
- preparation of processes (warrants, capias, capias pro fine, judgments, summonses, subpoenas, orders);
- preparation of paperwork for defendants requesting a driving safety course or being granted a deferred disposition;
- preparation of the budget;
- collection of data for and timely submission of state reports;
- coordination of trial processes;
- coordination of community service and other alternative sentencing options; and
- coordination of orders with the police department.

D. Judicial Authority

Although judges are empowered to perform a variety of judicial, magistrate, or ministerial tasks, there are a few that deserve special mention.

1. Administering Oaths

Article 45.019/45A.101 of the Code of Criminal Procedure grants power to administer oaths to a person swearing to a complaint before the municipal court. The following court officials have authority to administer this oath:

- municipal judge;
- clerk of the court;
- deputy court clerk;
- city secretary;
- city attorney; and
- deputy city attorney.

Section 602.002 of the Government Code provides authority for a judge, retired judge, or clerk of a municipal court to administer any oath. In general-law cities, Section 29.006 of the Government Code provides that a judge appointed to act for the municipal judge, who is

temporarily unable to act, has all powers and duties of the office. In home-rule cities, Section 29.007 of the Government Code provides that associate judges have the same powers as the presiding judge. Therefore, associate or alternate judges may administer oaths. It makes sense that a judge could administer an oath because the judge themselves would have taken an oath upon appointment or election.

2. Dismissing Cases

a. In General

Under common law, prosecutors typically have the power to dismiss cases, absent specific statutory authority to the contrary. Texas law generally follows that common law rule but includes judges in the dismissal process. Art. 32.02, C.C.P. In the Texas model, dismissals may occur through constitutional or statutory authority vesting a trial court with dismissal power, or on the motion of the prosecuting attorney. *State v. Morales*, 804 S.W.2d 331 (Tex. App.—Austin 1991, no pet.). Typically, courts may not dismiss without the prosecutor's consent, and prosecutors cannot dismiss without the court's approval. *State v. Johnson*, 821 S.W.2d 609 (Tex. Crim. App. 1991).

If the prosecutor decides not to prosecute a case, the prosecutor must provide a reason in writing for the dismissal. The prosecutor's motion to dismiss is filed with the court. Article 32.02 of the Code of Criminal Procedure requires judicial consent or approval for a case to be dismissed, also known as, the judicial veto. Generally, a judge cannot dismiss a case, except by consenting to and granting a prosecutor's motion and grounds presented. *Flores v. State*, 487 S.W.2d 122 (Tex. Crim. App. 1972).

b. Mandatory v. Discretionary Judicial Duty to Dismiss

Some statutes create a mandatory judicial duty to dismiss a criminal charge. These include where the defendant is entitled to a dismissal pursuant to law, such as upon successful completion of a deferred disposition, driving safety course, or teen court program. Arts. 45.051/Subchapter G, Chapter 45A, 45.0511/Subchapter H, Chapter 45A, and 45.052/45A.401, C.C.P. In these instances, judges shall dismiss the charge in the absence of a prosecutor's motion. Arguably, a judge could also dismiss a case without involvement from the prosecutor when the court lacks jurisdiction over the offense because it is either not a fine-only offense or was committed outside the court's territorial jurisdiction.

Other statutes give the judge discretion to decide whether a case could be dismissed, even without involvement from the prosecutor. These statutes are commonly referred to as "compliance dismissals" and are available when the defendant remedies certain defects. Most of the compliance dismissals available to defendants are discretionary, meaning it is up to the judge whether to accept the proof of remedying the defect and dismiss upon payment of some administrative fee set by statute. However, there are a few compliance dismissals that provide for a mandatory dismissal if the defendant meets certain criteria. Compliance dismissals are discussed at length in the *Traffic Law* chapter of this Study Guide as the statutes that authorize such dismissals are located in the Transportation Code.

Judges should be cautious whenever exercising their power to dismiss. The general rule is that a judge's authority to dismiss is limited, and without express authority to dismiss, the judge should never dismiss without a motion from the prosecutor. Remember, it is the prosecutor's case on behalf of the State of Texas; therefore, the only person who can choose to dismiss is the

prosecutor. In no case should the clerk or a peace officer attempt to dismiss a case. Such practice could amount to a federal and state crime for "ticket fixing."

3. Controlling the Courtroom

Section 21.001 of the Government Code provides courts with all powers necessary for the exercise of its jurisdiction and the enforcement of its lawful orders. It also provides that the court shall require that proceedings be conducted with dignity in an orderly and expeditious manner so that justice is done. This is referred to as the court's inherent power. To maintain control, judges have contempt power to regulate conduct in the courtroom. Sec. 21.002, G.C. Contempt power must be reasonably exercised and not be arbitrary; it is a last resort. Persons in a courtroom should understand the type of conduct required and the consequences of not complying. Judges should establish rules and procedures for courtroom conduct and notify the public of those rules.

4. Marriages

Section 2.202 of the Family Code outlines who has the authority under Texas law to perform a marriage ceremony. All current, former, or retired federal or state judges have such authority. This includes current, former, or retired municipal judges.

Judges who are interested in conducting marriage ceremonies should review the laws associated with the marriage license and ceremony found in Chapter 2 of the Family Code.

E. Disqualification and Recusal

Defendants in criminal trials have the right to a fair trial. As part of a fair trial, the judge presiding must be neutral and detached. The authority of a judge to preside over a criminal case is tempered by recusal and disqualification provisions found in the Texas Constitution and under Texas statutory law. Article V, Section 11 of the Texas Constitution provides three grounds for disqualifying a judge from sitting in any case:

- the judge was counsel in the case;
- the judge "may be interested" in the outcome of the case; or
- one of the parties is related to the judge.

Similarly, Article 30.01 of the Code of Criminal Procedure provides instances in which the judge is disqualified regardless of the judge's discretion. The judge is disqualified as a matter of law when a judge:

- is the injured party;
- has been counsel for the State or the accused; or
- is connected to the accused or the party injured by consanguinity or affinity within the third degree as determined by Chapter 573 of the Government Code.

Disqualification is mandatory even if the judge did not know about the relationship. *Ex parte Vivier*, 699 S.W.2d 862 (Tex. Crim. App. 1985). The defendant cannot waive the judge's disqualification. *Gamez v. State*, 737 S.W.2d 315 (Tex. Crim. App. 1987).

While disqualification is mandatory, recusal lies in the judge's honest appraisal of the individual situation. Judges must recuse themselves if they feel they have a conflict of interest that would affect their ability to be fair and impartial. Canon 3B(5), Code of Judicial Conduct. While this determination can only be made in light of the specifics of a situation, Texas Rule of Civil

Procedure 18b(2) states that a judge shall recuse when:

- the judge's impartiality might reasonably be questioned;
- the judge has a personal bias or prejudice concerning the subject matter or a party, or personal knowledge of disputed evidentiary facts concerning the proceedings;
- the judge or a lawyer with whom the judge previously practiced law is a material witness;
- the judge participated as counsel, adviser, or material witness in the matter in controversy or expressed an opinion concerning the merits of it while acting as an attorney in government service;
- the judge, judge's spouse, or a person within the third degree of relationship to either the judge or judge's spouse is:
  - a party to the proceeding or an officer, director, or trustee of a party;
  - known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;
  - to the judge's knowledge likely to be a material witness in the proceeding; or
- the judge, judge's spouse, or a person within the first degree of relationship to either the judge or judges' spouse is acting as a lawyer in the proceeding.

While the Court of Criminal Appeals has not expressly held Rule 18b(2) (the grounds for recusal) to be applicable in criminal proceedings, it has implicitly done so. More than one court of appeals has cited Rule 18b(2) in criminal cases on recusal questions.

In 1999, the Legislature passed Section 29.012 of the Government Code, which provided that a municipal judge that is disqualified or recused can have a judge from another municipal court located in an adjacent city sit for that judge. In 2011, the Legislature repealed Section 29.012 and replaced it with a comprehensive set of procedures now located in Subchapter A-1 of Chapter 29. These procedures, adapted from Texas Rule of Civil Procedure 18a, are designed to accommodate all sizes of municipal courts and strike a balance between uniformity in application of the law and judicial efficiency. They are intended for use in any kind of criminal or civil case in which a municipal court has jurisdiction.

10. When can a mayor in a general-law city be the *ex officio* municipal judge? _____

_____

11. What governs the selection of municipal judges in a home-rule municipality?_____

_____

12. What must a general-law city do when a municipal judge is temporarily unable to act? ___

_____

_____

13. What is a question of law? _____
14. What is a question of fact? _____
15. What is judicial discretion? _____
16. When does a judge not have discretion to perform an action? _____

_____

_____

17. Which kind of duty may a judge delegate to a court clerk? _____

_____

True or False

18. Clerks may set and take bail from a defendant. ____
19. The clerk may ask the defendant how he or she wants to plea. ____
20. When a defendant calls the court to request that the clerk reset his or her case to another trial date, the clerk may grant the continuance and reset the case. ____
21. Clerks may not conduct trials. ____
22. Clerks may set fines. ____
23. Clerks may grant extensions and time payment plans to defendants. ____
24. Clerks may require a defendant to pay a fine by performing community service. ____
25. The judge has authority to waive all or part of the fine or costs if the defendant is indigent or does not have sufficient resources or income to pay all or part of the fine or costs and discharging the fine or costs by community service or installment payments would impose an undue hardship. ____
26. Clerks may not issue arrest warrants. ____
27. Municipal court clerks have the authority to issue a capias. ____
28. Only a judge may issue a summons for a defendant. ____
29. When a judge is not available, the clerk may grant deferred disposition or teen court. ____
30. Judges can permit clerks to perform judicial duties and then later adopt the actions of the clerk. ____
31. Municipal court clerks may stamp the judge's signature on court documents when the judge is on vacation. ____
32. When a judge is in the office part-time, the clerk may use the judge's signature stamp to sign judgments on cases in which a defendant pays a fine at the clerk's office. ____
33. Municipal court clerks may stamp the judge's signature on mental health commitments when the judge is not available and it is an emergency. ____
34. Municipal court clerks cannot be held liable for performing a judicial duty if the judge requires the clerk to perform the duty. ____
35. Municipal judges are magistrates. ____
36. Municipal judges may perform duties that a magistrate has the authority to perform. ____
37. Municipal judges, acting as magistrates, may issue emergency protection orders for an offense involving family violence. ____
38. Only justices of the peace may conduct peace bond hearings. ____
39. Municipal judges, acting as magistrates, may accept a complaint (probable cause affidavit) for a felony. ____
40. Municipal court clerks may give magistrate warnings after a defendant is arrested when the municipal judge is not available. ____
41. Municipal judges, acting as magistrates, may issue search warrants. ____

42. Only justices of the peace may conduct license suspension hearings. ____
43. Usually, clerks are responsible for establishing and maintaining a financial management program for the court. ____
44. Although presiding judges have authority to administer the oath to someone swearing to a complaint, associate judges do not. ____
45. A municipal judge may dismiss a case filed by a citation if the peace officer asks for the dismissal. ____
46. When defendants present proof that they renewed an expired driver's license, the clerk may dismiss the case. ____
47. Clerks may dismiss an offense for failure to maintain financial responsibility if the judge is on vacation. ____
48. What power does a judge use to exercise control in the courtroom? _____
_____
49. What Code gives municipal judges the authority to conduct marriage ceremonies? _____
_____

PART 3
AUTHORITY OF A COURT CLERK

A. Duties

Clerks have the authority to perform ministerial and administrative duties. Section 29.010(c) of the Government Code provides the general ministerial duties of a municipal court clerk and requires the clerk to keep minutes of court proceedings, issue process, and generally perform the duties for the municipal court that a county clerk performs for a county court.

1. General Duties

Because statutes do not contain many specific duties for municipal court clerks, it helps to look at the general duties of the county court clerk The following chart is a non-exhaustive list of general duties of county court clerks and corresponding duties in municipal courts.

County Clerk Duties	Corresponding Municipal Clerk Duties
Deposit fines and fees in the county treasury.	Deposit fines and fees in the city treasury.
Make a statement of fines and fees collected on the last day of each term of court.	Make reports to the city council of fines and fees.
Show from whom fees are received.	Keep records of money collected.
List jurors' names and length of service.	Keep records of names and length of service of citizens who serve on municipal court juries.
Transfer cases.	A transfer of a case is generally not applicable to municipal courts except when transferring a juvenile case to the juvenile court, or when a

	change of venue for a person allowed to participate in a teen court program has been granted.
Destroy archived, inactive records.	Destroy municipal court records retained for the period required by the State. (Check with the city secretary for a copy of the city's ordinance approved by the State Library and Archives Commission governing the retention and destruction of records. Without it, the clerk must get permission from the State Library to destroy records.)
Maintain fee books.	Keep a record of all fines, fees, court costs, and restitution collected by the court and prepare a bill of costs showing the defendant what fees and costs are payable.
Report monthly court statistics to the Office of Court Administration.	Report monthly court statistics to the Office of Court Administration.

2. Required Duties

The following is a non-exhaustive list of duties that court clerks are required to perform.

Required Clerk Duties	Cite
The judge or clerk shall keep a docket containing certain case information: the style and file number of each criminal case; offense charged; the defendant's plea and the date it was entered; the date the warrant, if any, was issued and returned; the date the trial, if any, was held and whether it was a bench or jury trial; the jury's verdict, if applicable, and the date; the judgment and sentence of the court and the date given; the motion for new trial, if any, and the court's decision; and whether an appeal was taken and the date of that action.	Article 45.017/45A.053, C.C.P.
The clerk of a court that does not provide online internet access to its criminal case records shall post in a designated public place in the courthouse notice of a prospective criminal court docket setting as soon as the clerk is notified of the setting.	Article 17.085, C.C.P.
Every clerk of a court of record shall keep a record of each case in which a person is charged with a violation of law regulating the operation of vehicles on highways. Magistrates and judges of non-record courts are required to keep these, but it is usually delegated to the clerk.	Section 543.201, T.C.
The clerk of every court in which there is a conviction or forfeiture of bail in a case involving a traffic offense must report it to the Department of Public Safety within seven days of the conviction or forfeiture. Judges and magistrates are also required to report.	Section 543.203, T.C.
When a jury shuffle is requested, the clerk randomly selects jurors by	Sections 62.107(c) and

computer or another unbiased process and prints the names in the order selected on a new jury list. The clerk then delivers a copy of the list to the prosecutor and the defendant or his or her attorney.	62.108(a), G.C.; Article 35.11, C.C.P.
When a person files with the court a permanent exemption from jury duty, the clerk is required to promptly deliver a copy of the permanent exemption to the county voter registrar.	Sections 62.107(c) and 62.108(a), (c), and (d), G.C.
When a defendant appeals, the clerk is required to forward the record to the appellate court.	*Whitsitt v. Ramsay*, 719 S.W.2d 333 (Tex. Crim. App. 1986)
When a forfeiture has been declared upon a bond, the judge or clerk shall docket the case upon the scire facias (a special docket for bond forfeitures) or upon the civil docket.	Article 22.10, C.C.P.
If a victim of family violence is not present when a magistrate's order of emergency protection is issued, the clerk must send him or her a copy.	Article 17.292(g), C.C.P.
If a magistrate suspends a concealed handgun license when issuing a magistrate's order of emergency protection, the judge or the clerk is required to immediately notify the Department of Public Safety.	Article 17.293, C.C.P.
A magistrate's clerk is the custodian of any arrest warrants or affidavits made in support of the warrant. The warrants and affidavits are public information and the clerk has an affirmative duty to make a copy of the warrants and supporting affidavits available for public inspection after the warrants are executed.	Article 15.26, C.C.P.
The clerk is required to make a copy of the affidavit for a search warrant after it has been executed and have it available for public inspection in the clerk's office during normal business hours.	Article 18.01(b), C.C.P.

3. Administrative Functions

Municipal court clerks generally perform administrative functions of the court, including:

- preparing process (complaints, warrants, capiases, summons, subpoenas, etc.) and coordinating with law enforcement;
- preparing correspondence and notices;
- processing fine payments and bonds (appearance and appeal bonds);
- maintaining accounting records of the court;
- managing the office and personnel;
- coordinating trials and appearances (includes juvenile cases);
- maintaining records;
- producing reports;
  - monthly reports to the Texas Judicial Council/Office of Court Administration;
  - notice of final convictions and bond forfeitures (reported to DPS);
  - notice of the completion date of driving safety course (reported to DPS);

  - teen court dismissals (reported to DPS);
  - quarterly court costs reports (reported to State Comptroller's Office);
  - notice of violation of *Nonresident Violator Compact* (reported to DPS);
  - reports to city council, city manager, and judge;
- coordinating alternative sentencing (driving safety courses, deferred disposition, teen court);
- coordinating community service;
- coordinating juvenile cases and rehabilitative sanctions;
- processing dismissals;
- coordinating administrative and other hearings;
- processing bond forfeitures;
- overseeing the budget;
- accepting complaints and entering on the docket; and
- performing any other ministerial function that may be delegated by the judge.

B. Authorities

1. Summoning the Jury

When a defendant does not waive a trial by jury, the judge must issue a writ commanding the proper officer to summon a venire (a list of prospective jurors) from which six qualified persons shall be selected to serve as jurors in the case. The judge may command the court clerk to summon jurors. Art. 45.027/45A.156, C.C.P.

2. Administering the Oath to Jurors

The judge may direct the court clerk to administer the oath to venire persons for voir dire, which is the questioning of jurors under oath to determine their qualifications for jury service. Art. 35.02, C.C.P. After six jurors are selected, the court may also direct the clerk to administer an oath to the jurors to properly try the case. Arts. 45.030/45A.159 and 35.22, C.C.P.

3. Administering the Oath to Complainant

Article 45.019/45A.101 of the Code of Criminal Procedure grants the power to administer the oath to a person swearing to a complaint before the municipal court. The following court officials have the authority to administer this type of oath:

- municipal judge;
- clerk of the court;
- deputy court clerk;
- city secretary;
- city attorney; and
- deputy city attorney.

Section 602.002 of the Government Code provides authority for a judge, retired judge, or clerk of a municipal court to administer any oath. Section 29.007(f) of the Government Code also

provides authority for a clerk in a home-rule municipality who is an appointed or elected clerk to administer oaths. It makes sense that a clerk who has previously taken the oath of office upon election or appointment would have the authority to administer an oath under both the Government Code provisions and Article 45.019/45A.101.

4. Issuing Subpoenas

The issuance of an arrest warrant, summons, capias, or capias pro fine is judicial authority that cannot be delegated to the clerk. However, a criminal defendant has the right to have some type of compulsory process for obtaining witnesses. Art. 1.05, C.C.P. As there is no discretion regarding whether to issue a subpoena, a municipal court clerk has the authority to issue a subpoena. In fact, a clerk must issue a subpoena if requested. *Edmondson v. State*, 43 Tex. 230 (1875).

Article 24.01(d) of the Code of Criminal Procedure states that a judge or a clerk issuing a subpoena shall sign the subpoena and indicate on it the date it was issued, but the subpoena need not be under seal. Art. 45.012(g)/45A.052, C.C.P.

5. Authenticating Acts

Article 45.012(g/45A.052) of the Code of Criminal Procedure requires non-record municipal courts to impress a seal on all documents, except subpoenas, issued out of the court and to use the seal to authenticate the acts of the judge and clerk. Section 30.000125 of the Government Code governs the use of the court seal for courts of record. These two statutes are similar in that they both require the seal to be impressed on all documents, except subpoenas, issued out of the court and to authenticate the acts of the judge and clerk. The two statutes are different in that Article 45.012/45A.052 does not provide for the wording of the seal, but Section 30.000125 does contain specific wording for the municipal courts of record seal. That statute requires the following phrase to be included on the seal: "Municipal Court of/in_____, Texas." Non-record municipal courts may want to consider using the same or similar wording on their seal.

Neither of the two statutes provides for the appearance of the seal. Before 1999, there was a statute requiring the municipal court seal for both record and non-record municipal courts to contain a five-point star, but that statute was repealed. Although the courts no longer have guidance on the appearance of the seal, most courts have retained the appearance that was once required.

Both the judge and the clerk have the authority to impress the court seal on documents issuing out of the court.

C. Custodian of the Funds

Article 17.02 of the Code of Criminal Procedure requires peace officers to deposit cash bond money with the custodian of the funds of the court. Generally, the court clerk is designated as the custodian of the funds of the court. The officer receiving the funds shall receipt the funds, and if the bond is to be refunded, the bond should be refunded to the person whose name is on the receipt. If a receipt cannot be produced, the bond may be refunded to the defendant.

Clerks are also often designated as the officer to receive or collect payment of fines and costs. Chapter 103 of the Code of Criminal Procedure and Chapter 133 of the Local Government Code provide procedures and requirements for officers who receive or collect payments of court costs and fines.

D. Fraudulent Documents

When a court clerk has a reasonable basis to believe in good faith that a document or instrument previously filed, recorded, offered, or submitted for filing is fraudulent, the clerk shall: (1) notify in writing the aggrieved person against whom the purported judgment, act, order, directive, or oral process is rendered; or (2) if the document or instrument purports to create a lien on real or personal property, notify the aggrieved person in writing at the stated or last known address of the person named in the document. The clerk is required to provide this written notice no later than the second business day after the date that the document or instrument is offered or submitted for filing. Sec. 51.901, G.C.

Section 51.904 of the Government Code requires the clerk to post a warning sign with letters at least one inch in height that is clearly visible to the general public near the clerk's office stating:

> IT IS A CRIME TO INTENTIONALLY OR KNOWINGLY FILE A FRAUDULENT COURT DOCUMENT OR INSTRUMENT.

E. Standing Orders

Many clerks will read the above sections in fear that they are improperly performing judicial functions because they have orders in their court allowing the clerk to grant a continuance or set the fine or grant a driving safety course. Such orders are called "standing orders" and are an excellent tool to help improve the court's efficiency when used correctly. Standing orders are written orders from the judge directing court staff on how to perform a specific procedure. They must be signed by the judge and should be accessible to all court staff to ensure they are being followed.

Although judges may not delegate judicial authority to court clerks, many processes in the municipal court setting are adversely affected when the volume of cases is so large to prevent every case from appearing before the judge or when the judge is only at the court part-time. To combat these issues, standing orders direct the court staff on how the judge will rule in a particular and specific set of circumstances to allow the clerk to go ahead and process the case as though the judge had entered that order. Some examples of standing orders may include:

- Allowing the clerk to process a driving safety course request if the defendant meets specific criteria. The judge will still have to grant the request by signing the order/interim judgment prepared by the clerk.
- Allowing the clerk to process a deferred disposition order if the defendant meets specific criteria. Again, the judge will still have to grant the deferral by signing the order prepared by the clerk.
- Allowing the clerk to reschedule a trial or hearing upon receipt of a motion for continuance. Many courts follow some formula or parameters that clearly outline when a case may be automatically reset.
- Window fines or standard fines that allow the clerk to inform the defendant what the fine will be upon a plea of guilty or no contest without that defendant having to appear before the judge for sentencing.

Practice Note

Standing orders are generally a best practice but are not required or defined by any statute. They are, however, a means to clearly document the authority delegated to the court clerk. Judges have complete discretion over whether to utilize standing orders. Such orders should not unduly interfere with a defendant's ability to appear before the judge.

50. What is a general-law city? _____

_____

51. In a general-law city, is the municipal court clerk hired, appointed, or elected? _____

_____

52. What is a home-rule city? _____

_____

53. In a home-rule city is the municipal court clerk hired, appointed, or elected? _____

_____

True or False

54. City secretaries may never hold the office of court clerk. _____
55. In a general-law city, a court clerk automatically serves for a two-year term unless the city provides by ordinance for a longer term. _____
56. In a general-law city, the city manager may fill a vacancy for the unexpired term of a court clerk's office. _____
57. Every time someone is elected, appointed, or reappointed, he or she is required to swear to an anti-bribery statement and to take an oath of office. _____
58. An elected or appointed official may perform official duties before filing the anti-bribery statement with the official records of the office. _____
59. List the general duties of the municipal court clerk. _____

_____

_____

60. If a city does not have an ordinance governing the destruction of records and a clerk wants to destroy records, what must the clerk do? _____

_____

True or False

61. Both clerks and judges may establish and maintain a financial management program for the court. _____
62. Court clerks may prepare warrants but not sign them. ____
63. Only judges may grant driving safety courses, but clerks may give defendants the paperwork on court requirements for processing their cases. _____
64. What type of records is a municipal court clerk of a court of record required to keep

regarding traffic offenses? _____

_____

65. In non-record courts, who is required to keep records of traffic offenses? _____

_____

66. Who is required to report convictions and bond forfeitures of traffic offenses to the Department of Public Safety? _____

67. When a prospective juror files a permanent exemption with the municipal court clerk, what is the clerk required to do? _____

_____

68. When either the defense or prosecution demands a jury shuffle, what is the clerk required to do? _____

_____

69. When a defendant appeals his or her case, what is the clerk required to do? _____

_____

70. What is a clerk required to do when a bond forfeiture has been declared? _____

_____

71. What is a clerk required to do when the victim is not present when an emergency order of protection is issued? _____

_____

72. What must a clerk or magistrate do when the magistrate suspends a concealed handgun license in an emergency protection order? _____

_____

73. What is a clerk required to do after warrants have been executed? _____

_____

74. Who is custodian of the funds of the court in your city? _____

75. When a defendant does not waive a jury trial, when may the clerk summon prospective jurors? _____

76. When may the clerk administer the oath to prospective jurors for voir dire? _____

_____

77. What information is required to be entered on the docket? _____

_____

_____

78. Why may judges delegate the maintenance of the docket to the clerks? _____

_____

79. List what a clerk is required to do concerning fraudulent documents. _____

_____

_____

_____

True or False

80. Court clerks, deputy court clerks, and city secretaries may administer an oath to someone swearing to a complaint. ____

81. Municipal court clerks may administer an oath pertaining to any matter in municipal court. ____

82. Judges may ask the clerk to administer the oath to the six persons chosen for a jury. ____

83. Why do municipal court clerks have authority to issue subpoenas? _____
_____

84. What wording goes on a non-record municipal court seal? _____
_____

85. What is the wording on a municipal court of record seal? _____
_____

86. What is the purpose of the municipal court seal? _____
_____

PART 4
IMAGE OF THE COURT

A. Public Perception

Image is an important part of public perception. Court personnel have an important role in promoting public confidence in the integrity and impartiality of the judiciary. Everyone that comes through municipal courts should experience procedural fairness. Procedural fairness occurs when people experiencing the justice system perceive the procedures (and their treatment) as fair. Although the image of the municipal court is affected by many different factors, professionalism and impartiality of the court staff are perhaps the most important traits that command respect.

B. Court Decorum

It is essential that judges and clerks conduct themselves and their courts with the utmost decorum and dignity. Decorum requires observance of correct judicial procedures and customs, as well as exercising courtesy before everyone who appears in court. For the court to be effective, it must deserve the respect of the people. Courteous behavior does not guarantee that every person will reciprocate, but it does entitle the court to command that people behave correctly when they are treated with respect.

The fact that the judge and court staff must remain neutral does not mean that they should be detached from the public. Many courts have adopted customer service best practices where all defendants, witnesses, attorneys, victims, and staff from cooperating departments are treated with respect and appropriate levels of service.

C. Court Operations

The court must strive to be accessible to perform its ministerial, clerical, judicial, and magisterial functions by adopting regular hours and being on call for hardship or emergency cases. The court should inspect the physical site and ensure that it is accessible to persons with disabilities.

The physical appearance of the municipal court significantly influences the attitudes of those appearing before the court and the morale of the officials of the court. The court should have facilities that encourage public respect and confidence in the judicial system.

The location of the municipal court is a matter for each city to decide according to its local conditions and needs. An ideal location would be in a separate public building or portion of city hall. An alternative might be to utilize the city council chambers or a city auditorium for the courtroom. The court should not be located within the confines of the police department.

In the case of part-time judges, the court should not be situated in the judge's other place of employment, in the judge's or clerk's home, or in any other place that might discourage public attendance or respect. Court should be held in a place, even though it may be humble, that is separate from other operations and devoted for that time only to hearings to determine facts, apply laws, and administer justice.

87. Explain, in your own words, court decorum. _____

_____

CONCLUSION

After reading this guide, clerks should have a clearer picture of the judicial system and their role in it. Although the judge is responsible for guiding the court, it is the clerk who manages the day-to-day operations of the court, ensuring that the ministerial and administrative duties are properly performed. Clerks are literally the face of the court to most defendants and may encounter more defendants on a daily basis than judges and prosecutors. Many defendants do not understand that the judge may not hear their side of the story unless it is at trial or unless the defendant wants to plead guilty or nolo contendere. To help these defendants understand court procedures, clerks should be good communicators and understand court processes and procedures to be able to properly explain them to defendants.

Some Texas cities require the judge to also be the clerk for the court, which tasks judges with performing the ministerial and administrative work typical of clerks. Judges acting as the clerk must also be concerned with the potential appearance of impropriety when preparing complaints based off of a citation, coordinating peace officers' filing of citations and the officers' trial appearances, or providing the prosecutor information needed to prosecute cases.

Although these functions are necessary to the operation of the court, a judge performing them must do so very cautiously, remembering the *Code of Judicial Conduct*'s requirement to abstain from the appearance of impropriety.

APPENDIX A:
STATEMENT OF OFFICER AND OATH OF OFFICE

It is imperative that each appointed or elected official swear to and sign a statement of officer and an oath of office upon each appointment or election and upon reappointment or reelection.

Anti-Bribery Statement of Officer

Before assuming the duties of office, all appointed or elected judges and clerks of the court must first file a sworn statement of officer with the records of the office. Usually, the city secretary maintains these records.

Appointed judges and clerks of the court must swear to and sign the following statement:

> *I, _____, do solemnly swear (or affirm) that I have not directly or indirectly paid, offered, promised to pay, contributed, or promised to contribute any money, or thing of value, or promised any public office or employment, as a reward to secure my appointment or confirmation thereof, so help me God.*

Elected judges and clerks of the court must swear to and sign the following statement:

> *I, _____, do solemnly swear (or affirm) that I have not directly or indirectly paid, offered, promised to pay, contributed, or promised to contribute any money or thing of value, or promised any public office or employment for the giving or withholding of a vote at the election at which I was elected, so help me God.*

Oath of Office

After filing one of the above statements, the official, whether elected or appointed, must swear to the following oath of office:

> *I, _____, do solemnly swear (or affirm) that I will faithfully execute the duties of the office of _____ of the State of Texas, and will to the best of my ability preserve, protect, and defend the Constitution and laws of the United States and of this State, so help me God.*

APPENDIX B: WHOSE JOB IS IT?

Activity	Magistrate	Judge	Clerk	Prosecutor	Other
Issue search warrants	x				
Issue arrest warrants	x	x			
Review probable cause for Class A & B misdemeanor & felony warrants	x				
Administer oath to affiant swearing to complaint – A & B misdemeanors & felonies					x District and County Attorney
Administer magistrate warnings	x				
Issue MOEPs	x				
Set bail	x	x			x Peace Officer (in limited circumstances)
Determine sufficiency of bail	x	x			
Issue citation					x Peace Officer
File sworn complaint (charging instrument)			x	x	x Any person
Approve charges and dictate language in charging instrument				x	
Prepare complaint (charging instrument)			x	x	
Administer oath to affiant swearing to complaint in municipal court		x	x	x	x City Secretary, City Attorney, and Deputy City Attorney
Request summons				x	
Prepare summons			x		
Issue summons	x	x			
Issue capias		x			
Maintain docket		x	x		
Formally accept plea from defendant	x	x			

Activity	Magistrate	Judge	Clerk	Prosecutor	Other
Enter not guilty plea when defendant fails to enter plea		x			
Plea bargaining				x	x Defendant
Accept plea bargain		x			
Set fines		x			
Determine how fine is paid		x			
Prepare judgment		x	x		
Sign judgment		x			
Process DSC request		x	x		
Grant DSC		x			
Grant deferred		x			
Process paperwork for deferred		x	x		
Set case for show cause hearing		x	x		
Grant continuances		x			
Rule on motions		x			
Request subpoenas				x	x Defendant
Issue subpoenas		x	x		
Serve subpoenas					x Peace Officer or a Non-party at least 18 years
Deliberate on evidence for determination of guilt		x			x Jurors
Issue writ of venire		x			
Summon prospective jurors		x	x		
Administer oath to venire and/or jury panel		x	x		x Bailiff
Grant extensions for payment		x			
Grant community service		x			
Grant credit for time served		x			

Activity	Magistrate	Judge	Clerk	Prosecutor	Other
Waive fines/costs		**x**			
Dismiss cases		**x**		**x**	
Prepare capias pro fine		**x**	**x**		
Issue capias pro fine		**x**			
Execute warrant, capias, summons, capias pro fine					**x** Peace Officer
Prepare file for appellate court		**x**	**x**		

ANSWERS TO QUESTIONS

PART 1

1. False.
2. False.
3. False.
4. True.
5. False.
6. The Texas Constitution authorizes cities to provide for a term not to exceed four years for the municipal judge. A city may provide for this term through its city charter or by majority vote, depending on whether it is a home-rule or general-law city. For municipal courts of record, however, the term of office for judges is established by the ordinance that created the office, for a definite term of two or four years.
7. No, a non-attorney may not represent another person in court proceedings regardless of any relationship or power of attorney document. A power of attorney, despite its name, does not permit a person to act as a licensed attorney representing others in court. A person must be an attorney at law, licensed to practice in Texas.
8. Minimum qualifications to become an attorney in Texas are a law degree (Doctor of Jurisprudence or J.D.) and a valid Texas Law License.
9. Every time appointment, election, reappointment, or reelection occurs; with each new term of office.

PART 2

10. In a general-law city, the mayor is the *ex-officio* judge of the municipal court. The mayor continues as municipal judge during his or her term as mayor unless the municipality, by ordinance, authorizes the election of a judge or provides for the appointment and qualifications of a judge by ordinance. After the ordinance is adopted by the city council, the mayor ceases to act in the capacity of a judge, even if the position of judge is vacant.
11. The city's charter.
12. If a municipal judge of a general-law city is temporarily unable to act, the governing body may appoint one or more persons meeting the qualifications for the position to sit for the regular municipal judge. The appointee has all powers and duties of the office and is entitled to compensation.
13. A question of law is an issue involving application or interpretation of a law.
14. A question of fact is an issue involving resolution of a factual dispute.
15. Judicial discretion is the exercise of judicial judgment. Judges' discretion to make decisions must be guided by law and be based on facts and is the power to determine what, under existing circumstances, is right or proper.
16. When a law prescribes a certain way to perform a certain action, the judge has no discretion.
17. Judges can delegate a ministerial duty to the clerk.
18. False.
19. False.

20. False.
21. True.
22. False.
23. False.
24. False.
25. True.
26. True.
27. False.
28. True.
29. False.
30. False.
31. False.
32. False.
33. False.
34. False.
35. True.
36. True.
37. True.
38. False.
39. True.
40. False.
41. True.
42. False.
43. True.
44. False.
45. False (Only a prosecutor may request a case be dismissed).
46. False.
47. False.
48. Contempt power.
49. Family Code.

PART 3

50. A general-law city is one with a population under 5,000 or with a population of more than 5,000 that does not have a home-rule charter and is, therefore, governed by the general laws of the State.
51. In general-law cities, the municipal court clerk may be either appointed or elected.
52. A home-rule city is one that has a charter that governs it, and therefore has a measure of self-government.
53. In a home-rule city, the municipal court clerk may be hired, appointed, or elected.

54. False.
55. True.
56. False.
57. True.
58. False.
59. General duties of the clerk include:
    - keep minutes of the court proceedings;
    - issue (prepare) process; and
    - generally perform the duties for the municipal court that a county clerk performs for a county court.
60. The clerk must get permission from the State Library and Archives Commission to destroy the records.
61. True.
62. True.
63. True.
64. Municipal court clerks of courts of records are required to keep a record of each case in which a person is charged with a violation of law regulating the operation of vehicles on highways.
65. In non-record courts, judges and magistrates are required to keep records of traffic offenses. Keeping these types of records is a ministerial duty that judges may delegate to the clerk.
66. Municipal court clerks, judges, and magistrates are required to report convictions and bond forfeitures of traffic offense to the Department of Public Safety.
67. The clerk is required to deliver a copy of the permanent exemption to the county voter registrar.
68. The clerk is required to randomly select jurors by computer or another process of random selection and shall write or print the names in the order selected on the jury list. The clerk shall deliver a copy of the list to the prosecutor and to the defendant or his or her attorney.
69. The clerk has a mandatory ministerial duty to forward the appeal to the appellate court.
70. When a forfeiture has been declared, the judge or clerk shall docket the case upon the scire facias (a special docket for bond forfeiture) or upon the civil docket.
71. The clerk is required to send a copy of the order to the victim.
72. The clerk or judge must immediately notify the Texas Department of Public Safety.
73. Keep a copy of the warrants and supporting affidavits on file for public viewing.
74. Answer may vary from city to city.
75. A clerk may summon prospective jurors when the judge issues a writ commanding the clerk to summon a list of citizens from which six qualified persons shall be selected.
76. The clerk may administer the oath to prospective juror for voir dire when directed to do so by the judge.
77. Information to be entered into the docket:
    - the style and file number of each criminal action;

- the nature of the offense charged;
- the plea offered by the defendant and the date the plea was entered;
- the date the warrant, if any, was issued and the return made thereon;
- the date the examination of trial was held, and if a trial was held, whether it was by jury or by the justice or judge;
- the verdict of the jury, if any, and the date of the verdict;
- the judgment and sentence of the court, and the date each was given;
- the motion for new trial, if any, and the decision thereon; and
- whether an appeal was taken and the date of that action.

78. Because judges are required to keep a docket and there is no discretion as to the information required to be maintained, judges may delegate this ministerial duty to the clerk.

79. A municipal court clerk is required to notify in writing the aggrieved person against whom the purported judgment, act, order, directive, or oral process is rendered. If the document or instrument purports to create a lien on real or personal property, the clerk is required to notify in writing the person named in the document at his or her stated or last known address. The clerk is required to provide this written notice not later than the second business day after the date that the document or instrument is offered or submitted for filing. The clerk is also required to post a warning sign with letters at least one inch in height that is clearly visible to the general public near the clerk's office stating: IT IS A CRIME TO INTENTIONALLY OR KNOWINGLY FILE A FRAUDULENT COURT DOCUMENT OR INSTRUMENT.

80. True. This authority is found in Art. 45.019/45A.101, C.C.P.

81. True.

82. True.

83. Municipal court clerks have the authority to issue subpoenas because there is no discretion in issuing a subpoena; it is a ministerial duty.

84. The statute requiring the seal does not provide the wording of the seal.

85. "Municipal Court of/in _____, Texas."

86. The purpose of the court seal is to authenticate the acts of the judge and clerk.

PART 4

87. Decorum includes observing correct judicial procedures and customs, as well as exercising courtesy before everyone who appears in court. Starting on time, allowing time to permit full hearings, and being courteous to all who appear in court are examples. *(Answers may vary)*

3

Court Ethics

Table of Contents

INTRODUCTION

Ethics is defined in *Black's Law Dictionary* as "of or relating to moral action, conduct, motive, or character…professionally right or befitting; conforming to professional standards of conduct." Ethics is one of the most important topics for clerks to study because of the contact that they have with the judge, the parties to a case, and the public. In every court, incidents occur daily that require clerks to make ethical judgments over what to do or what to say.

The court clerk plays an essential role in assuring the integrity and efficiency of the courts and in maintaining public confidence in the fairness of the Texas judicial system. Clerks not only perform the administrative work of the courts (e.g., caseflow and records management, filing, collecting court costs and fines), but they also help shape the public's perception of the Texas judicial system by acting as a liaison between the public and judiciary. They must find the proper balance among responsibilities as public servants, as court clerks, as city employees, and as individuals. In addition to the difficulty in maintaining this delicate balance, non-judicial employees are expected to abide by the same rules that apply to the judges as outlined in the canons of the *Code of Judicial Conduct*. The *Code of Judicial Conduct*, which is promulgated by the Texas Supreme Court, outlines basic precepts that judicial officers and court employees should follow and assists in establishing and maintaining high standards of judicial and personal conduct.

As clerks read this study guide, they will find that the ethical standards found in the *Code of Judicial Conduct* were written to be broad and flexible enough to offer guidance to judges and clerks in all Texas courts. Ethical rules cannot address every situation, but personal integrity and judgment are crucial to the judicial system.

PART 1
ETHICS AND INTEGRITY

Generally, ethics is about what is right or wrong. What a person considers to be ethical may depend on that person's value system. A value system consists of personal beliefs developed through life experiences and teachings. A person's values are standards in which he or she believes strongly; a person generally does not change or compromise their values unless there is a very good reason to do so.

To better serve the judicial system, municipal court clerks should strive for high personal integrity. Integrity is adhering to one's moral values or putting into practice one's values and beliefs. The following is a list of suggestions to help clerks attain and maintain integrity and professionalism.

- Have a positive attitude.
- Carry out responsibilities in as courteous a manner as possible.
- Support open communication, hard work, and dedication.
- Avoid conflicts of interest.
- Respect privileged information.
- Do not attempt to use the official position to secure unwarranted privileges or exemptions.
- Keep up-to-date on the laws and procedure.
- Eliminate fraud and mismanagement of funds.

- Eliminate verbal or nonverbal manifestations of bias or prejudice based on race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status.
- Adopt time and stress management skills.
- Be committed to the standards in the *Code of Judicial Conduct*.

1. Define ethics. _____

   _____

2. Define integrity. _____

   _____

PART 2
STATE COMMISSION ON JUDICIAL CONDUCT

The State Commission on Judicial Conduct (the Commission) is charged with promoting public confidence in the integrity, independence, competence, and impartiality of the judiciary and with encouraging judges to maintain high standards of conduct both on and off the bench.

The Commission's objectives are threefold:

- preserve the integrity of all judges in the State;
- ensure public confidence in the judiciary; and
- encourage judges to maintain high standards of both professional and personal conduct.

To achieve these objectives, the Commission issues discipline (public/private sanctions and orders of additional education) to judges who violate legal or ethical standards but also assists judges who have an underlying personal impairment that may be connected to the misconduct. In rare situations, the Commission can petition the Supreme Court of Texas to remove a judge from the bench after a lengthy process which includes a public civil trial. In addition, the Commission members and staff participate as faculty members in continuing education programs at all levels of the judiciary as well as providing ethics advice to judges.

The Commission issues annual reports, available online at www.scjc.texas.gov. The information in this guide uses the Commission's annual reports through the most current report.

The Commission's authority is exercised over (an annual average of) 4,000 judges and judicial officers in Texas, including appellate judges, district judges, county judges, justices of the peace, municipal judges, masters, magistrates, and retired and former judges who are available for assignment as visiting judges. The Commission does not have jurisdiction over federal judges and magistrates, administrative hearing officers for state agencies or the State Office of Administrative Hearings, or private mediators or arbitrators. The Commission is an agency of the judicial branch of state government and administers judicial discipline, but the Commission does not have the power or authority of a court.

A. Authority for Operation of the Commission

The Commission was created by an amendment to the Texas Constitution in 1965. Article V, Section 1-a of the Texas Constitution and Chapter 33 of the Government Code are the sources of authority under which the Commission operates.

B. Procedures

The constitutional and statutory provisions, together with the *Texas Procedural Rules for the Removal or Retirement of Judges* promulgated by the Texas Supreme Court, make up the procedural framework within which the Commission operates.

1. Complaints

The Commission creates a complaint file upon receipt of a written complaint naming a Texas judge. Currently, the Commission only accepts sworn complaints (complaints with an accompanying affidavit) and does not accept electronically filed complaints. The Commission has the discretion to initiate complaints on its own motion based on anonymous submissions, news reports, court documents, or other sources that indicate possible misconduct or appear to bring discredit upon the judiciary. A complainant may request that the Commission keep his or her identity confidential. However, anonymous complaints and requests for confidentiality may restrict the Commission's ability to thoroughly investigate the allegations. Furthermore, while the Commission strives to maintain the confidentiality of those complainants who request it, the Commission may, in its discretion, reveal the identity of a confidential complainant when doing so serves the Commission's interest in protecting the public by addressing misconduct. When a complaint is received, a file is established and reviewed by Commission staff. The case is analyzed and assigned an investigator or attorney who reviews the allegations. A preliminary screening determines if further investigation is appropriate. On occasion, an individual will complain to the Commission about the actions of law enforcement officers, corrections officials, lawyers, or even the federal judiciary. In these instances, no case is opened, and the individual is notified that the Commission has no jurisdiction in the matter. In other cases, the complainant may be disgruntled with a judge's decision, particularly in emotionally charged litigation such as divorce/custody cases, contested probate cases, or criminal trials. Such matters are proper for appeal. In all cases, the complainant is notified by mail that the complaint has been received. If the complaint is vague in its allegations, the complainant may be asked for more specific details or additional documentation.

If further inquiry is appropriate, the judge is informed in writing that an investigation has commenced and of the nature of the matter being investigated. The judge may be requested to respond in writing to specific inquiries or to explain the judge's authority for the actions in question. Facts may be further investigated on-site or through telephone interviews. At times, the Commission may request investigative assistance from other agencies such as the Department of Public Safety, the Texas Ranger Service, or a district attorney's office. The Commission has the right to subpoena judges to appear or to produce documents and to depose witnesses.

Each complaint is briefed by staff along with any investigative results and presented to the Commission at its regularly scheduled meeting in Austin every other month. On occasion, the Commission will convene special meetings where the Commission may request further investigation or ask the judge to provide further information. The Commission may also dismiss the case at its first presentation.

At the conclusion of every case, the complainant is notified of the outcome in accordance with statutory requirements. If the complaint is dismissed, the Commission must explain in plain and easily understandable language why the conduct alleged in the complaint failed to constitute judicial misconduct. In situations where a public sanction has been issued, the complainant is provided with a copy. If the Commission issues a private sanction, the complainant is notified of such but is not provided with a copy of the sanction nor is the complainant provided with the specifics of the private sanction.

2. Confidentiality

The Commission is not governed by the Texas Public Information Act (Chapter 552 of the Government Code), the Open Meetings Act (Chapter 551 of the Government Code), or the Texas Administrative Procedures Act (Chapter 2001 of the Government Code), as it has its own constitutional and statutory provisions regarding the confidentiality of papers, records, and proceedings. However, the Legislature, in 2013, passed legislation requiring the Commission to hold an open public meeting at least once every even-numbered year to seek public input on the Commission's mission and operations.

a. Records and Information

The availability of information and records maintained by the Commission is governed by Rule 12 of the Texas Rules of Judicial Administration, the Texas Constitution, and the Texas Government Code.

Generally, information is confidential (Sections 33.032, 33.0321, and 33.0322 of the Government Code), but there are some exceptions such as:

- public sanctions;
- suspension orders and proceedings;
- voluntary agreements to resign in lieu of disciplinary proceedings;
- papers filed in formal proceedings when formal charges are filed;
- if issues concerning a judge or the Commission is made public by sources other than the Commission, the Commission may make a public statement; and
- the Commission may not withhold from the Sunset Advisory Commission staff access to any confidential document, record, meeting, or proceeding to which Sunset staff determines access is necessary for a review.

b. Proceedings

Commission proceedings are confidential and privileged unless:

- a judge who is appearing before the Commission elects to have the hearing open to the public or to persons designated by the judge;
- the Commission issues a public admonition, warning, reprimand, or requirement that a person obtain additional training or education, in which case, all papers, documents, evidence, and records considered by the Commission shall be public; or
- the judge appeals a sanction.

When the Commission determines that formal proceedings are in order, confidentiality ends upon the convening of a formal proceeding, and such a hearing is public.

3. Meeting with the Commission

Although the meeting with the Commission is confidential in accordance with constitutional requirements, the judge has the right to waive confidentiality and open the meeting. The judge may be represented by legal counsel. If the judge wishes to introduce the testimony of others, it must, at this point, be written. Only the judge may present oral testimony under oath.

4. Possible Actions by the Commission

The following information explains the possible actions of the Commission.

a. Dismissal

Prior to the decision to dismiss, the Commission often expends considerable resources in fact collection. The Commission may choose to dismiss a case for a variety of reasons, including:

- the judge took corrective action;
- finding of no misconduct;
- lack of proof;
- no jurisdiction over the complaint because the actions were within the judge's judicial discretion;
- the judge's action did not rise to the level of judicial misconduct; or
- the judge agreed to voluntarily resign from judicial office in lieu of disciplinary action.

A complainant may request reconsideration of the dismissal of a complaint. The request must be received within 30 days of notification of the dismissal and must contain new evidence or factual material. Reconsideration can be requested only once.

b. Sanctions

In cases of judicial discipline, the Commission considers the purpose of a sanction not to secure vengeance, retribution, or punishment, but to deter any similar misconduct by judges in the future, to promote proper administration of justice, and to reassure the public that the judicial system in this State neither permits nor condones misconduct. The judicial officers of this State, even those sanctioned, are dedicated to the principle of government through rule of law and are deserving of continued confidence in their honor and integrity.

No sanction is issued by the Commission unless the judge involved has been advised of the nature of the allegations and has been afforded an opportunity to respond. No public sanction is issued unless the judge has been afforded an opportunity to appear.

Any sanction issued by the Commission may be appealed by the judge to a special court of review composed of three justices from courts of appeals selected by the Chief Justice of the Supreme Court. The review is de novo under rules of law, evidence, and procedure for civil actions. The special court of review may dismiss or affirm the Commission's decision. It may also impose a lesser or greater sanction or institute formal proceedings.

Causes for sanction of a judge may be due to willful or persistent conduct that is clearly inconsistent with the proper performance of duties or casts public discredit upon the judiciary or administration of justice.

The Commission does not have authority to change decisions of any court or to act as an appellate review board. The Commission does not give legal advice, issue advisory opinions, or sanction judges who act in good faith in reaching a legal decision, making findings of fact, or applying the law as the judge understands it.

The Commission may impose the following sanctions:

- **Additional Training**: Requiring a judge to obtain additional continuing education is a sanction that the Commission believes is especially effective. Such an order can be tailored to remedy any particular problem area in the judge's understanding of the judicial process. Such orders of additional education can be private or public.
- **Private Admonition:** A written private admonition is the least onerous of all sanctions that may be imposed by the Commission. A private admonition indicates to the judge that his or her actions were inappropriate and suggests a preferred approach to handling similar situations.
- **Private Warning or Reprimand:** A written private warning is stronger than an admonition, and a private reprimand is stronger still, spelling out the findings of fact and specifying the standards of law or ethics violated.
- **Public Admonition or Warning:** A public admonition or warning is similar to a private admonition or warning except that it is released to the public. This is meant to instruct other members of the judiciary and to reassure the public that their interests are being protected and that the high standards of the Texas judiciary are being maintained.
- **Public Reprimand:** The most serious of all sanctions that can be issued, other than formal proceedings, is the public reprimand. This sanction is issued when the Commission believes that a judge has committed serious misconduct, and both the public and the judiciary would be best served by a public statement of the judge's misconduct. Certain judges (such as district judges, county court at law judges, and court of appeals justices) are precluded from sitting by assignment as a visiting judge if they have received a public reprimand from the Commission.
- **Suspension:** A judge, indicted with a felony offense or charged with a misdemeanor involving official misconduct, may be suspended from office with or without pay pending resolution of the criminal charges. In a situation where a judge is suspended because of pending criminal charges, the Commission undertakes its own examination. The Commission does not proceed in the manner of a criminal case and does not determine guilt or innocence by the evidentiary standard of beyond a reasonable doubt; rather, by using the preponderance of the evidence standard, the Commission determines whether the judge has brought discredit upon the judiciary or engaged in willful or persistent conduct that is clearly inconsistent with the proper performance of judicial duties. This type of suspension is temporary; however, if the judge is convicted of a felony (or misdemeanors involving official misconduct) he is disqualified from the bench as a matter of law.

- **Removal or Censure:** The Commission may seek the removal or censure of a judge through formal proceedings which essentially amount to a public trial. Subpoena power is provided to enable the Commission to carry out its work. Formal proceedings are very rare. In fact, a judge has not been removed from the bench after formal proceedings since 2004; however, several judges have resigned in lieu of discipline after the Commission commenced formal proceedings.

C. Formal Proceedings

When the Commission determines that formal proceedings are in order, confidentiality ends. A formal proceeding is an adjudicative proceeding in which the judge is entitled to due process of law in the same manner as any person whose property rights are in jeopardy. The Commission seeks the appointment of a special master by the Supreme Court (who is normally an active or retired district judge). After a public hearing, with the master presiding, the master makes findings of fact. The Commission may then dismiss the complaint, publicly censure the judge, or forward the findings with a recommendation for removal. Public censure following a formal proceeding is "tantamount to denunciation of the offending conduct," and a more severe action than remedial sanctions that may be issued prior to a formal proceeding. In the event of a recommendation for removal, the Texas Supreme Court appoints a seven-judge tribunal made up of justices from courts of appeal throughout Texas. Appeal from a decision of the tribunal is directly to the Texas Supreme Court, which considers the case under the substantial evidence rule.

Section 33.038 of the Government Code provides for automatic removal of judges who are convicted or given deferred adjudication for felony offenses or specific misdemeanor offenses involving official misconduct.

Judges who are removed or involuntarily retired may be prohibited from holding a judicial office in the future. In addition, district and appellate judges who are removed by the Commission may not be eligible for judicial retirement benefits, even losing the contributions that the judge paid into the retirement system

3. What are the three objectives of the Commission on Judicial Conduct? _____

   _____

   _____

4. How does the Commission endeavor to achieve its objectives? _____

   _____

5. What provides authority for the Commission on Judicial Conduct to operate? _____

   _____

True or False

6. A file is initiated with the Commission on Judicial Conduct when the Commission receives a telephone complaint. ____

7. Complainants may request the Commission on Judicial Conduct keep their identity confidential. ____

8. Information gathered by the Commission on Judicial Conduct may never be made public. _____

9. All proceedings of the Commission on Judicial Conduct are conducted publicly. ____

10. The Commission on Judicial Conduct may dismiss a case if a judge took corrective action in the case against him or her. ____

11. Improper conduct includes failure to conduct court business in a timely manner. ____

12. Judges could be reprimanded for incompetence in the performance of their duties. ____

13. Rank the following actions by the Commission in order of severity. (1= the most severe)
____Removal-Censure
____ Private Admonition
____ Public Reprimand
____ Public Admonition

PART 3
ETHICS COMMITTEE

The Ethics Committee of the Judicial Section of the State Bar of Texas issues advisory opinions on ethical issues faced by Texas judges. Be careful; although the reasoning of these opinions is insightful and usually parallels the Commission, the opinions of the Ethics Committee are not binding on the Commission. Some of these opinions are noted in the commentary following the canons of the *Code of Judicial Conduct* provided in Part 4 of this guide. These opinions may also be accessed online at http://www.txcourts.gov/publications-training/judicial-ethics-bench-books/judicial-ethics-opinions/.

PART 4
CODE OF JUDICIAL CONDUCT

Canon 1 of the *Code of Judicial Conduct* requires judges to participate in establishing, maintaining, and enforcing high standards of conduct to uphold the integrity and independence of the judiciary. Canon 3C(2) says that judges should require staff, court officials, and others subject to the judge's direction and control to observe the same standards of fidelity and diligence that apply to the judge. Consequently, clerks should observe the same professional standards as the judge.

This part of the study guide includes portions of the Code that relate to municipal courts. Due to the structure and jurisdiction of the municipal courts, some canons do not apply to the municipal and justice courts and have not been included here.

Practice Note

The Code of Judicial Conduct may be obtained from the Commission or downloaded from https//www.txcourts.gov/media/1452409/texas-code-of-judicial-conduct.pdf. The code consists of specific rules set forth in sections under broad captions, called canons, following an introductory preamble. Commentary has been added to help clerks gain a better understanding of the canons.

Preamble

> Our legal system is based on the principle that an independent, fair, and competent judiciary will interpret and apply the laws that govern us. The role of the judiciary is central to American concepts of justice and the rule of law. Intrinsic to all sections of this Code of Judicial Conduct are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system. The judge is an arbiter of facts and law for the resolution of disputes and a highly visible symbol of government under the rule of law.
>
> The Code of Judicial Conduct is not intended as an exhaustive guide for the conduct of judges. They should be governed in their judicial and personal conduct by general ethical standards. The code is intended, however, to state basic standards, which should govern the conduct of all judges and to provide guidance to assist judges in establishing and maintaining high standards of judicial and personal conduct.

Although the Preamble does not specially mention court support personnel, Canon 3C(2) says that a "judge should require staff, court officials, and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties." Also, Canons 3B(4), 3B(6), and 3B(10) specifically mention court staff and personnel under the judge's direction and control. Although the Commission does not accept complaints against a clerk, (on extremely rare occurrence), a judge may be held responsible for a clerk's actions in a disciplinary proceeding.

14. Upon what principle is our legal system based? _____

    _____

15. Why should clerks observe the same professional standards as judges? _____

    _____

16. What might happen if a clerk's conduct is improper? _____

    _____

Canon 1: Upholding the Integrity and Independence of the Judiciary

> An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing high standards of conduct and should personally observe those standards so that the integrity and independence of the judiciary is preserved. The provisions of this code are to be construed and applied to further that objective.

An honorable judicial system is one that is held in high esteem. It is a system that people respect. It is a system built on the principle of an independent judiciary.

It may be difficult for municipal courts to appear independent when they work in close proximity to law enforcement. Therefore, municipal courts should be separate from and not show favoritism to the police. If the court is located in the same building as the police department, the court should have a separate entrance. The court should have its own telephone line that, when picked up or

sent to voicemail, is answered "Municipal Court." Having a separate room to conduct court business helps the court avoid the appearance of impropriety.

If a clerk is supervised by someone not a part of the municipal court, such as a finance director or a police captain, he or she might have a difficult time appearing unbiased and acting independently. In this instance, the supervisor could be more interested in revenue or prosecuting a case than in impartial justice. Also, some clerks wear different hats; they may be the police secretary or dispatcher in addition to their duties as court clerk. When conducting the business of the court, however, clerks should always exhibit behavior that reflects the independence and impartiality of the judicial system. Remember that public access to the justice system usually occurs through a direct encounter with court personnel.

True or False

17. The judicial system is built on the principle of being independent from the other branches of government. ____

18. When the telephone for the court is answered "police department," it may give the public the impression that they will not be treated fairly or impartially. ____

19. Having a separate room away from the public where peace officers may swear to complaints and conduct other court business helps the court avoid any appearance of impropriety. ____

Canon 2: Avoiding Impropriety and the Appearance of Impropriety in All of the Judge's Activities

> A. A judge shall comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.
>
> B. A judge shall not allow any relationship to influence judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge. A judge shall not testify voluntarily as a character witness.
>
> C. A judge shall not knowingly hold membership in any organization that practices discrimination prohibited by law.

Judges are required to conform to the standards of behavior established by the code and must avoid even the appearance of impropriety. Impropriety is improper conduct not in accordance with fact, truth, correct procedures, and ethical standards. The commission of criminal acts, including driving while intoxicated and disorderly conduct, has been the basis of past sanctions against judges. Judges are required to conform to these standards both on and off the bench and in their personal lives.

Neither a judge nor a clerk should abuse the power inherent in his or her position over other persons. Misuse of office would include:

- using the position or even letterhead showing the position to seek special privileges for himself, herself, or others;
- accepting gifts, favors, or loans for promises to influence official actions;

- doing favors for friends or family;
- endorsing a particular driving safety course or nonprofit for community service work;
- offering preferential treatment;
- accepting donations to charity or the city in exchange for dismissing citations;
- retaliating against another using the powers of the court; and
- misusing public resources, letterhead stationery, or equipment.

Remember that clerks and judges are in positions of public trust and, as such, should be concerned about both actual impropriety and the appearance of impropriety (e.g., stating personal views about people or issues that may be pending before the court or allowing the police officer to take a coffee break in the clerk's office). The canons should govern your behavior in and out of the courtroom.

True or False

20. A municipal judge may use court letterhead to write members of a fraternity urging them to join the local chapter. ____

21. A municipal judge may voluntarily testify for someone else as a character witness. ____

22. A municipal judge or clerk may be a member of the Ku Klux Klan. ____

23. The *Code of Judicial Conduct* governs a municipal judge and clerk's behavior in and out of the courtroom. ____

24. Indicate whether the following behaviors are proper or improper for a clerk. (P=Proper; I=Improper)
    ____ Telling the judge about the belligerent attitude of a defendant scheduled for a bench trial.
    ____Recommending a specific driving safety school to a defendant.
    ____ Using court stationery to offer a product or service for purchase to earn extra money.
    ____ Looking up your girlfriend's traffic record.
    ____ Drinking beer while working overtime at the office.
    ____ Asking an officer to not file a traffic ticket against a friend.
    ____ Closing the court or decreasing fines to put pressure on the city council to increase salary and benefits for court personnel.

Canon 3: Performing the Duties of Judicial Office Impartially and Diligently (in part)

A. Judicial Duties in General. The judicial duties of a judge take precedence over all the judge's other activities. Judicial duties include all the duties of the judge's office prescribed by law. In the performance of these duties, the following standards apply:

B. Adjudicative Responsibilities.

(1) A judge shall hear and decide matters assigned to the judge except those in which disqualification is required or recusal is appropriate.

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

(3) A judge shall require order and decorum in proceedings before the judge.

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

(5) A judge shall perform judicial duties without bias or prejudice.

(6) A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status, and shall not knowingly permit staff, court officials, and others subject to the judge's direction and control to do so.

(7) A judge shall require lawyers in proceedings before the court to refrain from manifesting, by words or conduct, bias or prejudice based on race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status against parties, witnesses, counsel, or others. This requirement does not preclude legitimate advocacy when any of these factors is an issue in the proceeding.

> Note: Canon 3B(8) which deals with ex parte communications is not included here because municipal judges do not have to comply with that section of Canon 3. Instead, Canon 6C(2), specifically for municipal court judges and justices of the peace, deals with ex parte communications.

(9) A judge should dispose of all judicial matters promptly, efficiently, and fairly.

(10) A judge shall abstain from public comment about a pending or impending proceeding which may come before the judge's court in a manner which suggests to a reasonable person the judge's probable decision on any particular case. This prohibition applies to any candidate for judicial office, with respect to judicial proceedings pending or impending in the court on which the candidate would serve if elected. A judge shall require similar abstention on the part of court personnel subject to the judge's direction and control. This section does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court. This section does not apply to proceedings in which the judge or judicial candidate is a litigant in a personal capacity.

(11) A judge shall not disclose or use, for any purpose unrelated to judicial duties, nonpublic information acquired in a judicial capacity. The discussions, votes, positions taken, and writings of appellate judges and court personnel about causes are confidences of the court and shall be revealed only through a court's judgment, a written opinion, or in accordance with Supreme Court guidelines for a court approved history project.

C. Administrative Responsibilities.

(1) A judge should diligently and promptly discharge the judge's administrative responsibilities, without bias or prejudice, and maintain professional competence in judicial administration, and should cooperate with other judges and court officials in the administration of court business.

(2) A judge should require staff, court officials, and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the

judge and to refrain from manifesting bias or prejudice in the performance of their official duties.

(3) A judge with supervisory authority for the judicial performance of other judges should take reasonable measures to assure the prompt disposition of matters before them and the proper performance of their other judicial responsibilities.

(4) A judge shall not make unnecessary appointments. A judge shall exercise the power of appointment impartially and on the basis of merit. A judge shall avoid nepotism and favoritism. A judge shall not approve compensation of appointees beyond the fair value of services rendered.

(5) A judge shall not fail to comply with Rule 12 of the Rules of Judicial Administration, knowing that the failure to comply is in violation of the rule.

D. Disciplinary Responsibilities.

(1) A judge who receives information clearly establishing that another judge has committed a violation of this code should take appropriate action. A judge having knowledge that another judge has committed a violation of this code that raises a substantial question as to the other judge's fitness for office shall inform the State Commission on Judicial Conduct or take other appropriate action.

(2) A judge who receives information clearly establishing that a lawyer has committed a violation of the Texas Disciplinary Rules of Professional Conduct should take appropriate action. A judge having knowledge that a lawyer has committed a violation of the Texas Disciplinary Rules of Professional Conduct that raises a substantial question as to the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects shall inform the Office of the General Counsel of the State Bar of Texas or take other appropriate action.

Canon 3B(1) refers to disqualification and recusal (the process by which a judge is disqualified or recuses himself or herself from hearing a case because of conflict of interest or prejudice). There are several provisions in Texas law to read along with Canon 3.

- Article V, Section 11 of the Texas Constitution. No judge shall sit in any case wherein the judge may be interested, or where either of the parties may be connected with the judge, either by affinity or consanguinity, within such a degree as may be prescribed by law, or when the judge shall have been counsel in the case.
- Section 21.005 of the Government Code. A judge or a justice of the peace may not sit in a case if either of the parties is related to him by affinity or consanguinity within the third degree.
- Article 30.01 of the Code of Criminal Procedure. No judge or justice of the peace shall sit in any case where he may be the party injured, or where he has been counsel for the State or the accused, or where the accused or the party injured may be connected with him by consanguinity or affinity within the third degree, as determined under Chapter 573 of the Government Code.

Thus, disqualification is required in a criminal case if the accused or the plaintiff is related to the judge by consanguinity or affinity within the third degree. *Black's Law Dictionary* defines consanguinity to mean "blood relationship; the connection of persons descended from the same

stock or common ancestor." Affinity means "relation which one spouse because of marriage has to blood relatives of the other." *Appendix B* includes a graphical representation of those relations within the third degree.

Canon 3B(2) requires judges to be faithful to the law and to maintain professional competence in it. Likewise, clerks should be conscientious in learning about the law that governs ministerial duties and court procedures. They should maintain professional competence by attending regular judicial education seminars for court support personnel.

Canon 3B(3) requires the judge to maintain order and decorum in proceedings. Clerks may help by informing participants in court proceedings about proper conduct. The court may want to develop a pamphlet or informational handout of dos and don'ts on courtroom behavior to distribute to court participants.

Canon 3B(4) requires the judge to "be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others… and should require similar conduct of… staff." The conduct of the staff reflects the attitude of the court toward court participants. Being patient, dignified, and courteous lets defendants know that the court is impartial and fair. Sometimes this may be hard to do when defendants are being difficult because they are emotional or fearful of the judicial process. Having a handout about court procedures, understanding that this is a stressful situation for citizens, remaining calm, and handling the defendant patiently and courteously helps citizens get through the process and maintain confidence in the judicial system. Trial judges have been sanctioned for non-verbal expressions of bias against a party and for yelling at attorneys.

Canon 3B(6) specifically lists many of the groups that one must be careful not to show bias or prejudice towards. Remember that clerks represent the court system to the public. If a witness, defendant, victim, attorney, or other user of the court perceives that a court employee is biased against certain types of persons based on their characteristics, that person may assume that the entire system is biased and unfair.

Bias and discrimination can be overt (in the open) or covert (hidden). Treating persons of one racial group rudely is an example of improper overt behavior. Holding certain assumptions about individuals based on race, sex, religion, or other characteristics, and letting these assumptions influence the way one reacts to those individuals is covert bias. The clerk should balance neutrality with sensitivity for the needs and mental states of persons appearing in court. Determining the needs of persons with disabilities, language barriers, and mental illness and victims in family violence cases, for example, should be evaluated on a case-by-case basis.

Canon 3B(9) requires judges to be prompt, efficient, and fair in all judicial matters. The actions of the clerk have a great impact on the judge's administration of justice because administrative functions of the clerk's office often determine how efficiently cases progress through the judicial system. The case *Chapman v. Evans*, 744 S.W.2d 133 (Tex. Crim. App. 1988), highlights the importance of why the court must efficiently manage cases. The Court of Criminal Appeals held that "the primary burden is on the prosecution and the courts to ensure that defendants are speedily brought to trial… Both the trial court and prosecution are under a positive duty to prevent unreasonable delay… Over-crowded trial dockets alone cannot justify the diminution of the criminal defendant's right to a speedy trial." To efficiently manage the workload of the court, clerks should be knowledgeable of court procedures and processes, records management, financial management, and office management. Clerks and judges together should develop an operations

and procedures manual for the court to increase efficiency and give clerks guidance on how to manage office functions.

Canon 3B(10) provides that neither the judge nor the clerk shall make comments about cases pending before the court. Commenting would make it appear to the public that a decision has already been made about the case before the judge heard the evidence and arguments. In addition, neither can make comments about a case on appeal. When controversial cases appear in court, there may be public criticism of the court's handling of the case. It must be accepted silently or handled by the city's public information department or public officials not in the judicial branch. Although clerks and judges may not comment on cases, they can explain court procedures.

Canon 3C(1) requires judges to diligently and promptly discharge administrative responsibilities and to cooperate with other judges and court officials in the administration of court business. Hence, judges and clerks should work together to ensure that cases, all processing, and the management of the day-to-day operations of the court are proper, effective, and prompt.

Canon 3C(2) provides that judges require court staff to observe the standards of fidelity and diligence that apply to the judge. Fidelity means a quality or state of being faithful and accurate in details. Diligence is steady, earnest, and energetic application and effort. In other words, the *Code of Judicial Conduct.* requires a persevering and faithful application of the canons and the law.

Canon 3C(5) requires judges to comply with Rule 12 of the Rules of Judicial Administration and provides that failure to do so would be a violation of the *Code of Judicial Conduct*. Rule 12 concerns judicial records and provides which judicial records are open to public review and which records are exceptions. The text of Rule 12 can be found online at www.tmcec.com/Programs/Judges/Rule_12.

True or False

25. A municipal judge has a duty to take some action against another judge who is violating the *Code of Judicial Conduct*. ____

26. A municipal court clerk should, but is not required under the *Code of Judicial Conduct* to, report to his or her judge unethical conduct of another court employee. ____

27. A municipal judge should report an attorney who presented false evidence to the court. ____

28. A judge would be disqualified from hearing her brother's speeding ticket because they are related by consanguinity within the second degree. ____

29. A judge should not hear her husband's speeding ticket because they are related by affinity within the first degree. ____

30. A municipal court clerk may use racial epithets to refer to witnesses. ____

31. A municipal court administrator may participate in a trip paid for by an attorney who practices before a municipal judge for whom the clerk works. ____

32. Indicate proper or improper conduct for a clerk. (P=Proper; I=Improper)
    ___ Informing defendants how to properly conduct themselves in court.
    ___ Shouting at a belligerent defendant.
    ___ Telling sexual or racial jokes to jurors while they are waiting to be called into the courtroom.
    ___ Not explaining all the court options to members of a certain ethnic group.

___ Responding to a news reporter who asks you to review an article for legal accuracy. It contains information about a Class C misdemeanor assault that is pending in your court and is part of a larger civil suit for sexual harassment.
___ Developing a records management program to help the court manage the progress of the cases through the court.
___Working with the judge to oversee the administration of the court.
___ Providing information requested under Rule 12.

Canon 4: Conducting the Judge's Extra-Judicial Activities to Minimize the Risk of Conflict with Judicial Obligations (in part)

A. Extra-judicial Activities in General. A judge shall conduct all of the judge's extra-judicial activities so that they do not:

(1) cast reasonable doubt on the judge's capacity to act impartially as a judge; or

(2) interfere with the proper performance of judicial duties.

B. Activities to Improve the Law. A judge may:

(1) speak, write, lecture, teach, and participate in extra-judicial activities concerning the law, the legal system, the administration of justice, and non-legal subjects, subject to the requirements of this code; and,

(2) serve as a member, officer, or director of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice. A judge may assist such an organization in raising funds and may participate in their management and investment but should not personally participate in public fund-raising activities. He or she may make recommendations to public and private fund-granting agencies on projects and programs concerning the law, the legal system, and the administration of justice.

C. Civic or Charitable Activities. A judge may participate in civic and charitable activities that do not reflect adversely upon the judge's impartiality or interfere with the performance of judicial duties. A judge may serve as an officer, director, trustee, or non-legal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for the profit of its members, subject to the following limitations:

(1) A judge should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before the judge or will be regularly or frequently engaged in adversary proceedings in any court.

(2) A judge shall not solicit funds for any educational, religious, charitable, fraternal, or civic organization but may be listed as an officer, director, delegate, or trustee of such an organization and may be a speaker or a guest of honor at an organization's fund-raising events.

(3) A judge should not give investment advice to such an organization but may serve on its board of directors or trustees even though it has the responsibility for approving investment decisions.

D. Financial Activities.

(1) A judge shall refrain from financial and business dealings that tend to reflect adversely on the judge's impartiality, interfere with the proper performance of the judicial duties, exploit his or her judicial position, or involve the judge in frequent transactions with lawyers or persons likely to come before the court on which the judge serves. This limitation does not prohibit either a judge or candidate from soliciting funds for appropriate campaign or office holder expenses as permitted by law.

Note: Municipal judges do not have to comply with Canon 4D(2) or 4D(3).

(4) Neither a judge nor a family member residing in the judge's household shall accept a gift, bequest, favor, or loan from anyone except as follows:

(a) a judge may accept a gift incident to a public testimonial to the judge; books and other resource materials supplied by publishers on a complimentary basis for official use; or an invitation to the judge and spouse to attend a bar-related function or activity devoted to the improvement of the law, the legal system, or the administration of justice;

(b) a judge or a family member residing in the judge's household may accept ordinary social hospitality; a gift, bequest, favor, or loan from a relative; a gift from a friend for a special occasion such as a wedding, engagement, anniversary, or birthday, if the gift is fairly commensurate with the occasion and the relationship; a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges; or a scholarship or fellowship awarded on the same terms applied to other applicants;

(c) a judge or a family member residing in the judge's household may accept any other gift, bequest, favor, or loan only if the donor is not a party or person whose interests have come or are likely to come before the judge;

(d) a gift, award, or benefit incident to the business, profession, or other separate activity of a spouse or other family member residing in the judge's household, including gifts, awards and benefits for the use of both the spouse or other family member and judge, provided the gift, award, or benefit could not reasonably be perceived as intended to influence the judge in the performance of judicial duties.

Note: Municipal judges do not have to comply with Canon 4E (Fiduciary Duties).

Note: Municipal judges do not have to comply with Canon 4F (Service as Arbitrator or Mediator) unless the court on which the judge serves may have jurisdiction of the matter or parties involved in the arbitration or mediation.

Note: A municipal judge does not have to comply with Canon 4G (Practice of Law) except: An attorney judge shall not practice law in the court on which he or she serves or in a proceeding in which he or she has served as a judge or in any proceeding related to a proceeding in which he or she has served as a judge.

Note: Municipal court judges do not have to comply with Canon 4H: Extra-Judicial Appointments.

I. Compensation, Reimbursement, and Reporting.

> (1) Compensation and Reimbursement. A judge may receive compensation and reimbursement of expenses for the extra-judicial activities permitted by this Code, if the source of such payments does not give the appearance of influencing the judge's performance of judicial duties or otherwise give the appearance of impropriety.
>
> (a) Compensation shall not exceed a reasonable amount, nor shall it exceed what a person who is not a judge would receive for the same activity.
>
> (b) Expense reimbursement shall be limited to the actual cost of travel, food, and lodging reasonably incurred by the judge and, where appropriate to the occasion, by the judge's family. Any payment in excess of such an amount is compensation.
>
> (2) Public Reports. A judge shall file financial and other reports as required by law.

This canon provides guidance on judges' activities and avoiding impropriety in their activities, including civic, charitable, and community events. The prestige of the court should never be used for fundraising or to promote membership in organizations that the judge or clerk supports. Examples of improper conduct are shown below:

- The court's letterhead may not be used to promote charitable activities, personal financial matters, or the private interests of others.
- No member of the court staff or his or her immediate family may accept any gift, bequest, favor, or loan if the donor is a party or person whose interests have come or are likely to come before the court.
- The judge or any member of the court staff may not solicit funds for any educational, religious, charitable, fraternal, or civic organizations. For example, clerks should not sell candy or other products for their children to raise money for such things as church fundraisers, school band, girl scouts, or boy scouts at the court.

Permitted Activities:

- receiving a gift incidental to a public testimonial;
- receiving books or other material supplied by publishers on a complimentary basis for official use;
- accepting ordinary social hospitality;
- accepting a gift, bequest, favor, or loan from a relative;
- accepting a gift from a friend for a special occasion such as a wedding, engagement, anniversary, or birthday, if the gift is fairly commensurate with the occasion and the relationship; and
- accepting free passes to movies, football games, college plays, etc., only if the gift is from an entity whose interests have not come and are not likely to come before the judge, and if it is clearly understood that the gift is not an effort to seek a favor.

The following checklist of questions helps judges and clerks to reflect on the requirement of maintaining impartiality and avoiding impropriety.

- Does the activity reflect adversely on the impartiality of the court?
- Does the activity detract from the dignity of the office?

- Does the activity involve considerable controversy?
- Does the activity have the appearance of improper political endorsement?
- Does the activity involve membership or leadership in an organization that frequently comes before the court?
- Does the activity involve the use of the prestige of the judicial office to promote the private interest of others?
- Is the judicial office being used for fund-raising or membership solicitation?
- Does the activity involve membership in an organization that illegally discriminates?
- Will the proposed activity or involvement interfere with the proper performance of judicial or ministerial duties?

33. Indicate proper or improper conduct for a clerk. (P=Proper; I=Improper)

___ Writing a weekly column with the judge about legal matters and court activity for the local newspaper.

___ Teaching classes for the Texas Municipal Courts Education Center.

___ Speaking to high school students in a government class on "Your Rights in Traffic Court."

___ Selling tickets for your daughter's booster club to a group taking a driving safety course.

___ Traveling free to Las Vegas on a law firm's private plane. The law firm frequently handles traffic tickets in your court.

___ Accepting gifts from a friend or a relative on special occasions when the friend or relative is not before the court.

___ Accepting free legal publications from TMCEC.

___ Accepting an invitation to a Christmas party that is being conducted by a company that has a pending case in your court.

___ Using court stationery to write a letter to a company that has failed to provide you with promised service.

___ Having your title as court clerk listed by your name on a letter being sent by a local charity organization that is soliciting toys for disadvantaged children.

Canon 5: Refraining from Inappropriate Political Activity (in part)

(1) A judge or judicial candidate shall not:

(i) make pledges or promises of conduct in office regarding pending or impending cases, specific classes of cases, specific classes of litigants, or specific propositions of law that would suggest to a reasonable person that the judge is predisposed to a probable decision in cases within the scope of the pledge;

(ii) knowingly or recklessly misrepresent the identity, qualifications, present position, or other fact concerning the candidate or an opponent; or

(iii) make a statement that would violate Canon 3B(10).

(2) A judge or judicial candidate shall not authorize the public use of his or her name endorsing another candidate for any public office, except that either may indicate support for a political

party. A judge or judicial candidate may attend political events and express his or her views on political matters in accord with this canon and Canon 3B(10).

Note: Municipal judges do not have to comply with Canon 5(3).

(4) A judge or judicial candidate subject to the Judicial Campaign Fairness Act…shall not knowingly commit an act for which he or she knows the Act imposes a penalty…

While political activism is a right of citizens, clerks must be careful not to use the courthouse as a forum for their political ideas. Wearing or displaying political buttons and stickers or allowing a candidate to place political brochures or advertisements in the court can lead to the actual or apparent loss of independence. Ethics Opinion 234 says "The code does not prohibit political activities by the administrator, provided that [he or] she engages in them away from the courthouse, during non-court hours, on [his or] her own time, and without giving the impression that [he or] she speaks for the judge. The administrator must remember that the judge for whom [he or] she works cannot lend the prestige of his office to advance… political interest."

34. Indicate proper or improper conduct for a clerk. (P=Proper; I=Improper)
___ Making public statements in the local restaurant about persons running for city council.
___ Commenting privately to your spouse as to whom would be the best candidate for mayor.
___ Wearing political T-shirts and buttons for local political races while at work.
___ Talking to defendants about who will be the best candidate for mayor.

Canon 6: Compliance with the Code of Judicial Conduct (in part)

Note: The text of Canon 6, Sections A, B, and D through G are not included here.

Canon 6C: Justices of the Peace and Municipal Court Judges.

(1) A justice of the peace or municipal court judge shall comply with all provisions of this code, except the judge is not required to comply:

(a) with Canon 3B(8) pertaining to ex parte communications; in lieu thereof a justice of the peace or municipal court judge shall comply with 6C(2) below;

(b) with Canons 4D(2), 4D(3), 4E, or 4H;

(c) with Canon 4F, unless the court on which the judge serves may have jurisdiction of matter or parties involved in the arbitration or mediation; or

(d) if an attorney, with Canon 4G, except practicing law in the court on which he or she serves or acting as a lawyer in proceeding in which he or she has served as a judge or in any proceeding related thereto.

(e) with Canon 5(3).

(2) A justice of the peace or a municipal court judge, except as authorized by law, shall not directly or indirectly initiate, permit, nor consider ex parte or other communications concerning the merits of a pending judicial proceeding. This subsection does not prohibit communications concerning:

(a) uncontested administrative matters,

(b) uncontested procedural matters,

(c) magistrate duties and functions,

(d) determining where jurisdiction of an impending claim or dispute may lie,

(e) determining whether a claim or dispute might more appropriately be resolved in some other judicial or non-judicial forum,

(f) mitigating circumstances following a plea of nolo contendere or guilty for a fine-only offense, or

(g) any other matters where ex parte communications are contemplated or authorized by law.

Canon 6H: Attorneys.

Any lawyer who contributes to the violation of Canons 3B(7), 3B(10), 4D(4), 5, or 6C(2), or other relevant provisions of this code, is subject to disciplinary action by the State Bar of Texas.

Ex parte communication includes any communication to the judge involving less than all parties who have a legal interest in a pending case. It may be oral or written. For example, judges are prohibited from engaging in the following conduct:

- meeting with either the prosecutor or defense to privately discuss the merits of a pending case;
- personally investigating the facts of a case, for example: driving by the scene of the collision before the case is heard (or sending the clerk to the scene);
- talking with a defendant on the telephone about the merits of the defendant's case;
- dismissing a ticket without a hearing and a prosecutor's motion because it is an old friend;
- hearing the defendant's side of the story privately outside of trial;
- reading correspondence from defendants who write to the judge to tell their side of the story; or
- reading an officer's notes on the back of a citation.

The clerk is often in a role to protect the judge from ex parte communication by screening the mail and telephone calls. Also, clerks may not initiate ex parte communication with defendants or their attorneys. If a defendant blurts out information about the case, clerks must not pass it along to the judge. The public does not always understand that a judge cannot talk to one side without the other side being present. Clerks must remember that Canon 3B(4) requires clerks to be courteous, patient, and dignified with defendants.

Clerks should talk with their judges to establish a policy and procedure for assisting defendants who do not understand the problems with ex parte communication without giving the impression that they cannot go before a judge. The court may want to establish a plea docket for those defendants who want to plead guilty or no contest but want to talk to the judge. When judges review case files, clerks should not tag correspondence to the file that presents evidence. If a judge

does not have a clerk and must see the public and answer the telephone, he or she should immediately tell citizens that he or she cannot hear the facts of the case except at trial.

True or False

35. When a citizen wants to file a case and the clerk is unsure whether the municipal court has jurisdiction, the judge may talk to the person to see if the case should be filed in municipal court. ____
36. A judge may talk with a person who wants to file a claim in municipal court for restitution for $700 for a fence that was damaged by a vehicle that lost control and drove through it. ____
37. A letter to the judge from a defendant telling the defendant's side of his or her case is not considered ex parte communication. ____
38. The officer's notes on the back of a citation are not considered ex parte communication. ____
39. A judge may talk with a defendant on the telephone about his or her case, because a telephone conversation is not an official court appearance. ____
40. It is not ex parte communication to tell the judge about a death threat made by a defendant to the victim. ____
41. It is not ex parte communication to inform the judge about information from a defendant relating to the defendant's case pending in the court. ____

Practice Note

Court clerks have likely heard a defendant state something along the lines of, "I just have one question for the judge." However, once the defendant sees the judge, the defendant may attempt to explain what happened. When screening whom a judge sees, clerks should know that a defendant who is not contesting the case but is pleading guilty or nolo contendere may talk to the judge about mitigating circumstances after the plea. Canon 6C(2) does not prohibit communications concerning uncontested administrative or procedural matters. Remember that defendants or persons wishing to file a case or discuss the facts of the case following a not guilty plea should be referred to the prosecutor.

Canon 7: Effective Date of Compliance

A person to whom this code becomes applicable should arrange his or her affairs as soon as reasonably possible to comply with it.

Canon 8: Construction and Terminology of the Code

A. Construction.

The Code of Judicial Conduct is intended to establish basic standards for ethical conduct of judges. It consists of specific rules set forth in Sections under broad captions called canons.

The sections are rules of reason, which should be applied consistent with constitutional requirements, statutes, other court rules, and decisional law and in the context of all relevant circumstances. The code is to be construed so as not to impinge on the essential independence of judges in making judicial decisions.

The Code is designed to provide guidance to judges and candidates for judicial office to provide a structure for regulating conduct through the State Commission on Judicial Conduct. It is not designed or intended as a basis for civil liability or criminal prosecution. Furthermore, the purpose of the code would be subverted if the code were invoked by lawyers for mere tactical advantage in a proceeding.

It is not intended, however, that every transgression will result in disciplinary action. Whether disciplinary action is appropriate and the degree of discipline to be imposed should be determined through a reasonable and reasoned application of the text and should depend on such factors as the seriousness of the transgression, whether there is a pattern of improper activity, and the effect of the improper activity on others or on the judicial system.

B. Terminology. (in part)

Note: Not all terms are included here.

(1) "Shall" and "shall not" denotes binding obligations the violation of which can result in disciplinary action.

(2) "Should" or "should not" relates to aspirational goals and as a statement of what is or is not appropriate conduct but not as a binding rule under which a judge may be disciplined.

(3) "May" denotes permissible discretion or, depending on the context, refers to action that is not covered by specific proscriptions.

(7) "Knowingly," "knowledge," "known," or "knows," denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.

(8) "Law" denotes court rules as well as statutes, constitutional provisions, and decisional law.

(9) "Member of the judge's (or the candidate's) family" denotes a spouse, child, grandchild, parent, grandparents, or other relative or person with whom the candidate maintains a close familial relationship.

(10) "Family member residing in the judge's household" means any relative of a judge by blood or marriage, or a person treated by a judge as a member of the judge's family, who resides at the judge's household.

(11) "Require." The rules prescribing that a judge "require" certain conduct of others are, like all of the rules in this Code, rules of reason. The use of the term "require" in that context means a judge is to exercise reasonable direction and control over the conduct of those persons subject to the judge's direction and control.

(12) "Third degree of relationship." The following persons are relatives within the third degree of relationship: great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew, or niece.

True or False

42. If a canon says a judge shall or shall not conduct him or herself in a certain manner, the judge does not have discretion in that matter. ____

43. "May" means that the judge has permissible discretion. ____

44. If a rule requires certain conduct of others, the judge must exercise reasonable direction and control over the conduct of anyone who is subject to the judge's direction and control. ____

PART 5
LEGAL ADVICE V. LEGAL INFORMATION

Clerks are frequently asked by defendants, victims, attorneys, news media, and other court users about how the court works. Clerks must be careful, however, not to give legal advice. The clerks' role is to explain procedures and not give advice on the best way to use the court processes. There are several reasons why clerks should not give legal advice.

- Giving legal advice if not a licensed attorney is prohibited as the unauthorized practice of law and may subject the person to criminal charges or liability.
- Giving such advice might advantage the person(s) and compromise the court's impartiality.
- The advice could be incorrect or damaging.
- The clerk may wrongfully assume a judicial, rather than ministerial, function.

Some guidelines to help ensure that clerks are giving only legal information and not legal advice are shown below.

- Only explain court processes and procedures.
- Establish a procedure with the judge to release information requested by the public.
- Answer questions concerning deadlines or due dates.
- Do not advise citizens on how to bring their problems before the court or what remedies to seek.
- Have a procedures pamphlet available that explains the court processes and the defendants' obligations and rights in the process.
- Never give information for the purpose of giving one party an advantage over the other. Remember the absolute duty of impartiality.
- Avoid advising a defendant who asks the question "Do you think I should see the judge?" Instead, explain court processes and procedures and inform the person how to properly bring his or her problems before the court for resolution.
- Avoid helping defendants complete their legal forms, as this assistance is considered legal advice (i.e., avoid assisting with appeal bond forms).

- Have a procedure for handling persons who want to communicate improperly with the judge to present their side of the case before a trial. Such communication is called ex parte and is prohibited by the *Code of Judicial Conduct*.
- Contact the city prosecutor so that he or she may decide how to handle a case if there is an error on the citation or complaint.

The Office of Court Administration has an excellent article on distinguishing legal advice from legal information. This article is reprinted in *Appendix C* with permission.

True or False

45. A clerk may give legal advice if he or she is certain that the advice is correct. ____
46. If a clerk gives legal advice, it may compromise the impartiality of the court. ____
47. If a court provides a sample form to a defendant, the court is obligated to assist that defendant to complete the form. ____
48. If a clerk determines that there is an error on a traffic citation, the clerk should tell the judge so that the judge can dismiss the case. ____
49. What may a clerk do when a defendant is unsure how to handle his or her case? _____

_____

_____

PART 6
PENAL OFFENSES AND OTHER RELEVANT CODES

This section of the study guide includes excerpts from the Penal Code, Title 8: Offenses Against Public Administration (Chapters 36-39) and provisions from the Government Code, which deal with official misconduct and nepotism prohibitions. Only the most relevant portions of the law are included here.

A. Penal Code Offenses

Selected Definitions: Section 1.07

(a) In this code:

(38) "Person" means an individual or a corporation, association, limited liability company, or other entity or organization governed by the Business Organizations Code.

(41) "Public servant" means a person elected, selected, appointed, employed, or otherwise designated as one of the following, even if he has not yet qualified for office or assumed his duties:

(A) an officer, employee, or agent of government;

(B) a juror or grand juror; or

(C) an arbitrator, referee, or other person who is authorized by law or private written agreement to hear or determine a cause or controversy; or

(D) an attorney at law or notary public when participating in the performance of a governmental function; or

(E) a candidate for nomination or election to public office; or

(F) a person who is performing a governmental function under a claim or right although he or she is not legally qualified to do so.

True or False

50. A municipal court clerk is a public servant. ____
51. A deputy court clerk is a public servant. ____
52. A part-time employee of the court is a public servant. ____
53. Municipal court jurors are public servants. ____
54. An attorney representing a client in municipal court is not a public servant. ____
55. A bailiff is not a public servant. ____

1. Chapter 36, Bribery and Corrupt Influence

Section 36.01: Definitions (in part)

In this chapter:

(3) "Benefit" means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any person in whose welfare the beneficiary has a direct and substantial interest.

Section 36.02: Bribery

(a) A person commits an offense if he intentionally or knowingly offers, confers, or agrees to confer on another or solicits, accepts, or agrees to accept from another:

(1) any benefit as consideration for the recipient's decision, opinion, recommendation, vote, or other exercise of discretion as a public servant, party official, or voter;

(2) any benefit as consideration for the recipient's decision, vote, recommendation, or other exercise of official discretion in a judicial or administrative proceeding;

(3) any benefit as consideration for a violation of a duty imposed by law on a public servant or party official; or

(4) any benefit that is a political contribution as defined by Title 15, Election Code, or that is an expenditure made and reported in accordance with Chapter 305, Government Code, if the benefit was offered, conferred, solicited, accepted, or agreed to pursuant to an express agreement to take or withhold a specific exercise of official discretion if such exercise of official discretion would not have been taken or withheld but for the benefit; notwithstanding any rule of evidence or jury instruction allowing factual inferences in the absence of certain evidence, direct evidence of the express agreement shall be required in any prosecution under this subdivision.

(b) It is no defense to prosecution under this section that a person whom the actor sought to influence was not qualified to act in the desired way whether because he or she had not yet assumed office, or he or she lacked jurisdiction or for any other reason.

(c) It is no defense to prosecution under this section that the benefit is not offered or conferred or that the benefit is not solicited or accepted until after:

(1) the decision, opinion, recommendation, vote, or other exercise of discretion has occurred; or

(2) the public servant ceases to be a public servant.

(d) It is an exception to the application of Subdivisions (1), (2), and (3) of Subsection (a) that the benefit is a political contribution as defined by Title 15, Election Code or an expenditure made and reported in accordance with Chapter 305, Government Code.

(e) An offense under this section is a felony of the second degree.

Section 36.07: Acceptance of Honorarium

(a) A public servant commits an offense if the public servant solicits, accepts, or agrees to accept an honorarium in consideration for services that the public servant would not have been requested to provide but for the public servant's official position or duties.

(b) This section does not prohibit a public servant from accepting transportation and lodging expenses in connection with a conference or similar event in which the public servant renders services, such as addressing an audience or engaging in a seminar, to the extent that those services are more than merely perfunctory, or from accepting meals in connection with such an event.

(b-1) Transportation, lodging, and meals described by Subsection (b) are not political contributions as defined by Title 15, Election Code.

(c) An offense under this section is a Class A misdemeanor.

Section 36.08: Gift to Public Servant by Person Subject to His Jurisdiction (in part)

(e) A public servant who has judicial or administrative authority, who is employed by or in a tribunal having judicial or administrative authority, or who participates in the enforcement of the tribunal's decision, commits an offense if he solicits, accepts, or agrees to accept any benefit from a person the public servant knows is interested or likely to become interested in any matter before the public servant or tribunal.

(h) An offense under this section is a Class A misdemeanor.

(i) A public servant who receives an unsolicited benefit that the public servant is prohibited from accepting under this section may donate the benefit to a governmental entity that has the authority to accept the gift or may donate the benefit to a recognized tax-exempt charitable organization formed for educational, religious, or scientific purposes.

Section 36.10 exempts certain gifts and benefits. The prohibition in Sections 36.08 (Gift to Public Servant) and 36.09 (Offering Gift to Public Servant) does not apply to:

- a fee prescribed by law to be received by a public servant or any other benefit to which the public servant is lawfully entitled or for which he gives legitimate consideration in a capacity other than as a public servant;
- a gift or other benefit conferred on account of kinship or a personal, professional, or business relationship independent of the official status of the recipient;
- an item with a value of less than $50, excluding cash or a negotiable instrument as described by Section 3.104, Business and Commerce Code;
- an item issued by a governmental entity that allows the use of property or facilities owned, leased, or operated by governmental entity; or
- transportation, lodging, and meals described by Section 36.07(b).

True or False

56. A municipal court clerk violates Section 36.02 of the Penal Code when he or she accepts money from a citizen to destroy, conceal, or remove traffic citations from the court files even though the clerk never did destroy, conceal, or remove the citations. ____

57. A municipal court clerk may accept payment for making a speech that he or she has been asked to make because he or she is a court clerk. ____

58. A municipal court clerk may accept food, transportation, and lodging from an organization for whom he or she is making a speech. ____

59. A municipal judge or clerk may accept free tickets to a college football game from the dean of a private college that is in the city where the municipal judge's court is located. ____

60. A municipal court clerk may accept gifts from his or her mother. ____

2. Chapter 37, Perjury and Other Falsification

Section 37.01: Definitions (in part)

In this chapter:

(2) "Governmental record" means:

(A) anything belonging to, received by, or kept by government for information, including a court record;

(B) anything required by law to be kept by others for information of government;

(C) a license, certificate, permit, seal, title, letter of patent, or similar document issued by government, by another state, by the United States, or by a foreign government engaged in a reciprocal treaty or memorandum of understanding with the United States;

(D) a standard proof of motor vehicle liability insurance form described by Section 601.081, Transportation Code, a certificate of an insurance company described by Section 601.083 of that code, a document purporting to be such a form or certificate that is not issued by an insurer authorized to write motor vehicle liability insurance in this state, an electronic submission in a form described by Section 502.046(i), Transportation Code, or an evidence of financial responsibility described by Section 601.053 of that code; or

(E) an official ballot or other election record;

(F) the written documentation a mobile food unit is required to obtain under Section 437.0074, Health and Safety Code; or

(G) a temporary tag issued under Chapter 502 or 503, Transportation Code.

(3) "Statement" means any representation of fact.

Section 37.10: Tampering with Governmental Record

(a) A person commits an offense if he:

(1) knowingly makes a false entry in, or false alteration of, a governmental record;

(2) makes, presents, or uses any record, document, or thing with knowledge of its falsity and with intent that it be taken as a genuine governmental record;

(3) intentionally destroys, conceals, removes, or otherwise impairs the verity, legibility, or availability of a governmental record;

(4) possesses, sells, or offers to sell a governmental record or a blank governmental record form with intent that it be used unlawfully;

(5) makes, presents, or uses a governmental record with knowledge of its falsity; or

(6) possesses, sells, or offers to sell a governmental record or a blank governmental record form with knowledge that it was obtained unlawfully.

(b) It is an exception to the application of Subsection (a)(3) that the governmental record is destroyed pursuant to legal authorization or transferred under Section 441.204, Government Code. With regard to the destruction of a local government record, legal authorization includes compliance with the provisions of Subtitle C, Title 6, Local Government Code.

(c)(1) Except as provided by Subdivisions (2), (3), and (4) and by Subsection (d), an offense under this section is a Class A misdemeanor unless the actor's intent is to defraud or harm another, in which event the offense is a state jail felony.

(2) An offense under this section is a felony of the third degree if it is shown on the trial of the offense that the governmental record was:

(A) a public school record, report, or assessment instrument required under Chapter 39, Education Code, data reported for a school district or open-enrollment charter school to the Texas Education Agency…or was a license, certificate, permit, seal, title, letter of patent, or similar document issued by government, by another state, or by the United States, unless the actor's intent is to defraud or harm another, in which event the offense is a felony of the second degree;

(B) a written report of a medical, chemical, toxicological, ballistic, or other expert examination or test performed on physical evidence for the purpose of determining the connection or relevance of the evidence to a criminal action; or

(C) a written report of the certification, inspection, or maintenance record of an instrument, apparatus, implement, machine, or other similar device used in the

course of an examination or test performed on physical evidence for the purpose of determining the connection or relevance of the evidence to a criminal action.

(3) An offense under this section is a Class C misdemeanor if it is shown on the trial of the offense that the governmental record is a government record that is required for enrollment of a student in a school district and was used by the actor to establish the residency of the student.

(4) An offense under this section is a Class B misdemeanor if it is shown on the trial of the offense that the governmental record is a written appraisal filed with an appraisal review board… that was performed by a person who had a contingency interest in the outcome of the appraisal review board hearing.

(5) An offense under this section is a Class B misdemeanor if the governmental record is an application for a place on the ballot under Section 141.031, Election Code, and the actor knowingly provides false information under Subsection (a)(4)(G) of that section.

(6) An offense under this section is a Class A misdemeanor if the governmental record is a temporary tag issued under Chapter 502 or 503, Transportation Code.

(d) An offense under this section, if it is shown on the trial of the offense that the governmental record is described by Section 37.01(2)(D), is:

(1) a Class B misdemeanor if the offense is committed under Subsection (a)(2) or Subsection (a)(5) and the defendant is convicted of presenting or using the record;

(2) a felony of the third degree if the offense is committed under:

(A) Subsection (a)(1), (3), (4), or (6); or

(B) Subsection (a)(2) or (5) and the defendant is convicted of making the record; and

(3) a felony of the second degree, notwithstanding Subdivisions (1) and (2), if the actor's intent in committing the offense was to defraud or harm another.

(e) It is an affirmative defense to prosecution for possession under Subsection (a)(6) that the possession occurred in the actual discharge of official duties as a public servant.

(f) It is a defense to prosecution under Subsection (a)(1), (a)(2), or (a)(5) that the false entry or false information could have no effect on the government's purpose for requiring the government record.

(g) A person is presumed to intend to defraud or harm another if the person acts with respect to two or more of the same type of governmental records or blank governmental record forms and if each governmental record or blank governmental record form is a license, certificate, permit, seal, title, or similar document issued by government.

(h) If conduct that constitutes an offense under this section also constitutes an offense under Section 32.48 (Simulating Legal Process) or 37.13 (Record of a Fraudulent Court), the actor may be prosecuted under any of those sections.

(i) With the consent of the appropriate local county or district attorney, the attorney general has concurrent jurisdiction with that consenting local prosecutor to prosecute an offense under this section that involves the state Medicaid program.

(j) It is not a defense to prosecution under Subsection (a)(2) that the record, document, or thing made, presented, or used displays or contains the statement "NOT A GOVERNMENT DOCUMENT" or another substantially similar statement intended to alert a person to the falsity of the record, document, or thing, unless the record, document, or thing displays the statement diagonally printed clearly and indelibly on both the front and back of the record, document, or thing in solid red capital letters at least one-fourth inch in height.

True or False

61. Municipal court complaints are governmental records. ____
62. Correspondence received from the defendant is a governmental record. ____
63. The Office of Court Administration's monthly reports are governmental records. ____
64. Copies of state reports retained by the court are governmental records. ____
65. A municipal court clerk is in violation of Section 37.10, Tampering with a Government Record, if he or she types a false statement in an arrest warrant before giving it to the judge to sign. ____
66. A municipal court clerk is in violation of Section 37.10, Tampering with a Government Record, if he or she erases and corrects a mistake he or she made in entering information on a docket. ____

3. Chapter 38, Obstructing Governmental Operation

Section 38.122: Falsely Holding Oneself Out as a Lawyer

(a) A person commits an offense if, with intent to obtain an economic benefit for himself or herself, the person holds himself or herself out as a lawyer, unless he or she is currently licensed to practice law in this state, another state, or a foreign country and is in good standing with the State Bar of Texas and the state bar or licensing authority of any and all other states and foreign countries where licensed.

(b) An offense under Subsection (a) of this section is a felony of the third degree.

(c) Final conviction of falsely holding oneself out to be a lawyer is a serious crime for all purposes and acts, specifically including the State Bar Rules.

Section 38.123: Unauthorized Practice of Law

(a) A person commits an offense if, with intent to obtain an economic benefit for himself or herself, the person:

(1) contracts with any person to represent that person with regard to personal causes of action for property damages or personal injury;

(2) advises any person as to the person's rights and the advisability of making claims for personal injuries or property damages;

(3) advises any person as to whether or not to accept an offered sum of money in settlement of claims for personal injuries or property damages;

(4) enters into any contract with another person to represent that person in personal injury or property damage matters on a contingent fee basis with an attempted assignment of a portion of the person's cause of action; or

(5) enters into a contract with a third person which purports to grant the exclusive right to select and retain legal counsel to represent the individual in any legal proceeding.

(b) This section does not apply to a person currently licensed to practice law in this state, another state, or a foreign country and in good standing with the State Bar of Texas and the state bar or licensing authority of any and all other states and foreign countries where licensed.

(c) Except as provided by Subsection (d) of this section, an offense under Subsection (a) of this section is a Class A misdemeanor.

(d) An offense under Subsection (a) of this section is a felony of the third degree if it is shown on the trial of the offense that the defendant has previously been convicted under Subsection (a) of this section.

4. Chapter 39, Abuse of Office

Section 39.01: Definitions (in part)

In this chapter:

(1) "Law relating to a public servant's office or employment" means a law that specifically applies to a person acting in the capacity of a public servant that directly or indirectly:

(A) imposes a duty on the public servant; or

(B) governs the conduct of the public servant.

(2) "Misuse" means to deal with property contrary to:

(A) an agreement under which the public servant holds the property;

(B) a contract of employment or oath of office of the public servant;

(C) a law, including provisions of the General Appropriations Act specifically related to government property, that prescribes the manner of custody or disposition of the property; or

(D) a limited purpose for which the property is delivered or received.

Section 39.02: Abuse of Official Capacity (in part)

(a) A public servant commits an offense if, with intent to obtain a benefit or with intent to harm or defraud another, he intentionally or knowingly:

(1) violates a law relating to the public servant's office or employment; or

(2) misuses government property, services, personnel, or any other thing of value belonging to the government that has come into the public servant's custody or possession by virtue of the public servant's office or employment.

(b) An offense under Subsection (a)(1) is a Class A misdemeanor.

(c) An offense under Subsection (a)(2) is:

(1) a Class C misdemeanor if the value of the use of the thing misused is less than $100;

(2) a Class B misdemeanor if the value of the use of the thing misused is $100 or more but less than $750;

(3) a Class A misdemeanor if the value of the use of the thing misused is $750 or more but less than $2,500;

(4) a state jail felony if the value of the use of the thing misused is $2,500 or more but less than $30,000;

(5) a felony of the third degree if the value of the use of the thing misused is $30,000 or more but less than $150,000;

(6) a felony of the second degree if the value of the use of the thing misused is $150,000 or more but less than $300,000; or

(7) a felony of the first degree if the value of the use of the thing misused is $300,000 or more.

(d) A discount or award given for travel, such as frequent flyer miles, rental car or hotel discounts, or food coupons, are not things of value belonging to the government for purposes of this section due to the administrative difficulty and cost involved in recapturing the discount or award for a governmental entity.

Section 39.03: Official Oppression

(a) A public servant acting under color of his office or employment commits an offense if he:

(1) intentionally subjects another to mistreatment or to arrest, detention, search, seizure, dispossession, assessment, or lien that he knows is unlawful;

(2) intentionally denies or impedes another in the exercise or enjoyment of any right, privilege, power, or immunity, knowing his conduct is unlawful; or

(3) intentionally subjects another to sexual harassment.

(b) For purposes of this section, a public servant acts under color of his office or employment if he acts or purports to act in an official capacity or takes advantage of such actual or purported capacity.

(c) In this section, "sexual harassment" means unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature, submission to which is made a term or condition of a person's exercise or enjoyment of any right, privilege, power, or immunity, either explicitly or implicitly.

(d) An offense under this section is a Class A misdemeanor, except that an offense is a felony of the third degree if the public servant acted with the intent to impair the accuracy

of data reported to the Texas Education Agency through the Public Education Information Management System…

Section 39.06: Misuse of Official Information

(a) A public servant commits an offense if, in reliance on information to which the public servant has access by virtue of the person's office or employment and that has not been made public, the person:

(1) acquires or aids another to acquire a pecuniary interest in any property, transaction, or enterprise that may be affected by the information;

(2) speculates or aids another to speculate on the basis of the information; or

(3) as a public servant, including as a school administrator, coerces another into suppressing or failing to report that information to a law enforcement agency.

(b) A public servant commits an offense if, with intent to obtain a benefit or with intent to harm or defraud another, he discloses or uses information for a nongovernmental purpose that:

(1) he has access to by means of his or her office or employment; and

(2) has not been made public.

(c) A person commits an offense if, with intent to obtain a benefit or with intent to harm or defraud another, he solicits or receives from a public servant information that:

(1) the public servant has access to by means of his office or employment; and

(2) has not been made public.

(d) In this section, "information that has not been made public" means any information to which the public does not generally have access, and that is prohibited from disclosure under Chapter 552, Government Code.

(e) Except as provided by Subsection (f), an offense under this section is a felony of the third degree.

(f) An offense under Subsection (a)(3) is a Class C misdemeanor.

True or False

67. The *Code of Judicial Conduct* is a law relating to a public servant's office or employment. ____

68. The Code of Criminal Procedure is a law relating to a public servant's office or employment. ____

69. A municipal judge or clerk may use a car furnished by the city for a vacation trip. ____

70. A municipal judge may use a city telephone to make local personal telephone calls. ____

71. A municipal court clerk may use court letterhead to write a cover letter for an application for a job for which the clerk is applying. ____

72. A municipal court clerk may use court letterhead to write a recommendation for a deputy court clerk seeking another job. ____

73. A municipal judge may make a court clerk address the judge's Christmas cards for him or her during the clerk's workday. ____

74. A municipal judge may make listening to his or her dirty jokes a condition of employment for a court clerk. ____

75. A municipal court clerk who learns in a city staff meeting that the city wants to acquire a certain piece of property for a park may pass that information on to a friend who is a real estate agent. ____

B. Government Code, Chapter 573 – Nepotism Provisions

A chart showing consanguinity and affinity relationships can be found in Appendix A.

1. Public Officials

Section 573.001: Definitions (in part)

In this chapter:

(2) "Position" includes an office, clerkship, employment, or duty.

(3) "Public official" means:

(A) an officer of this state or of a district, county, municipality, precinct, school district, or other political subdivision of this state;

(B) an officer or member of a board of this state or of a district, county, municipality, school district, or other political subdivision of this state; or

(C) a judge of a court created by or under a statute of this state.

2. Consanguinity and Affinity

Section 573.022: Determination of Consanguinity (Blood Relationships)

(a) Two individuals are related to each other by consanguinity if:

(1) one is a descendant of the other; or

(2) they share a common ancestor.

(b) An adopted child is considered to be a child of the adoptive parent for this purpose.

Section 573.023: Computation of Degree of Consanguinity (Blood Relatives)

(a) The degree of relationship by consanguinity between an individual and the individual's descendant is determined by the number of generations that separate them. A parent and child are in the first degree, a grandparent and grandchild in the second degree, a great-grandparent and great-grandchild in the third degree and so on.

(b) If an individual and the individual's relative are related by consanguinity, but neither is descended from the other, the degree of relationship is determined by adding:

(1) the number of generations between the individual and the nearest common ancestor of the individual and the individual's relative; and

(2) the number of generations between the relative and the nearest common ancestor.

(c) An individual's relatives within the third degree by consanguinity are the individual's:

(1) parent or child (relatives in the first degree);

(2) brother, sister, grandparent, or grandchild (relatives in the second degree); and

(3) great-grandparent, great-grandchild, aunt who is a sister of a parent of the individual, uncle who is a brother of a parent of the individual, nephew who is a child of a brother or sister of the individual, or niece who is a child of a brother or sister of the individual (relatives in the third degree).

True or False

76. A public official includes a judge of a court created by or under a statute of this State. ____

77. A parent and her child are related by consanguinity. ____

78. A parent and his adopted child have a degree of consanguinity between them. ____

79. Who are a municipal judge's relatives within the first degree by blood? _____

_____

80. Who are a municipal judge's relatives within the second degree by blood? _____

_____

81. Who are a municipal judge's relatives within the third degree by blood? _____

_____

82. List your own living relatives within the third degree by consanguinity. _____

_____

_____

Section 573.024: Determination of Affinity (Relationship by Marriage)

(a) Two individuals are related to each other by affinity if:

(1) they are married to each other; or

(2) the spouse of one of the individuals is related by consanguinity to the other individual.

(b) The ending of a marriage by divorce or death of a spouse ends relationships by affinity created by that marriage unless a child of that marriage is living, in which case the marriage is considered to continue as long as a child of that marriage lives.

83. Is a municipal court clerk's spouse related to him or to her by consanguinity or by affinity?

_____

84. Is a municipal court clerk's spouse's sister related to the clerk by consanguinity or by affinity? _____

85. If the municipal judge's spouse dies and the municipal judge has no living children, how is the dead spouse's sister related to the municipal judge? _____

Section 573.025: Computation of Degree of Affinity (Relatives by Marriage)

(a) A husband and wife are related to each other in the first degree by affinity. For other relationships by affinity, the degree of relationship is the same as the degree of the underlying relationship by consanguinity. For example: if two individuals are related to each other in the second degree by consanguinity, the spouse of one of the individuals is related to the other individual in the second degree by affinity.

(b) An individual's relatives within the third degree by affinity are:

(1) anyone related by consanguinity to the individual's spouse in one of the ways named in Section 573.023(c); and

(2) the spouse of anyone related to the individual by consanguinity in one of the ways named in Section 573.023(c).

86. List the municipal judge's relatives within the first degree by marriage. Second degree by marriage. Third degree by marriage. _____
_____
_____

87. List your own living relatives within the third degree by affinity? _____
_____

3. Subchapter C: Nepotism Prohibitions

Section 573.041: Prohibition Applicable to Public Official

A public official may not appoint, confirm the appointment of, or vote for the appointment or confirmation of the appointment of an individual to a position that is to be directly or indirectly compensated from public funds or fees of office if:

(1) the individual is related to the public official within a degree described by Section 573.002; or

(2) the public official holds the appointment or confirmation authority as a member of a state or local board, the legislature, or a court and the individual is related to another member of that board, legislature, or court within a degree described by Section 573.002.

Note that Section 573.041 does not apply to:

- an appointment or employment of a personal attendant by an officer of the state or political subdivision of the state for attendance on the officer who, because of physical infirmities, is required to have a personal attendant; or
- an appointment or employment of a person by a municipality that has a population of less than 200.

Section 573.044: Prohibition Applicable to Trading

A public official may not appoint, confirm the appointment of, or vote for the appointment or confirmation of the appointment of an individual to a position in which the individual's services are under the public official's direction or control and that is to be compensated directly or indirectly from public funds or fees of office if:

(1) the individual is related to another public official within a degree described by Section 573.002; and

(2) the appointment, confirmation of the appointment, or vote for appointment or confirmation of the appointment would be carried out in whole or partial consideration for the other public official appointing, confirming the appointment, or voting for the appointment of an individual who is related to the first public official within a degree described by Section 573.002.

Section 573.062: Continuous Employment (in part)

(a) A nepotism prohibition prescribed by Section 573.041 or by a municipal charter or ordinance does not apply to an appointment, confirmation of an appointment, or vote for an appointment or confirmation of an appointment of an individual to a position if:

(1) the individual is employed in the position immediately before the election or appointment of the public official to whom the individual is related in a prohibited degree; and

(2) that prior employment of the individual is continuous for at least:

(A) 30 days, if the public official is appointed;

(B) six months, if the public official is elected at an election other than the general election for state and county officers; or

(C) one year, if the public official is elected at the general election for state and county officers.

(b) If, under Subsection (a), an individual continues in a position, the public official to whom the individual is related in a prohibited degree may not participate in any deliberation or voting on the appointment, reappointment, confirmation of the appointment or reappointment, employment, reemployment, change in status, compensation, or dismissal of the individual if that action applies only to the individual and is not taken regarding a bona fide class or category of employees.

Section 573.081: Removal in General (in part)

(a) An individual who violates Subchapter C [Sections 573.041 and 573.044 printed here] or Section 573.062(b) shall be removed from the individual's position…

(b) A removal from a position shall be made immediately and summarily by the original appointing authority if a criminal conviction against the appointee for a violation of Subchapter C or Section 573.062(b) becomes final.

Section 573.083: Withholding Payment of Compensation

A public official may not approve an account or draw or authorize the drawing of a warrant or order to pay the compensation of an ineligible individual if the official knows the individual is ineligible.

Section 573.084: Criminal Penalty

(a) An individual commits an offense involving official misconduct if the individual violates Subchapter C [Sections 573.041 and 573.044 printed here] or Sections 573.062(b) or 573.083.

(b) An offense under this section is a misdemeanor punishable by a fine not less than $100 or more than $1,000.

True or False

88. A municipal judge may hire his or her spouse's sister as a municipal court clerk. ____
89. A municipal judge may hire his or her brother's daughter to file a backlog of municipal court documents and pay her with the judge's own money. ____
90. The presiding municipal judge may hire the child of a sister of an alternate municipal judge to type the docket sheets. ____
91. A municipal judge may hire the mayor's daughter as a municipal court clerk in exchange for a job as the mayor's secretary for the municipal judge's first cousin. ____
92. A city with a municipal judge who is disabled and uses a wheelchair may hire the judge's daughter to be the judge's aide and pay her out of city funds. ____
93. If a person is about to be appointed municipal court clerk for a city and the prospective clerk's aunt is the city secretary, how long must the aunt have worked in that position to _____ be able to keep her job after the municipal court clerk is appointed?
94. If the municipal court clerk's aunt stays with the city, may the aunt fill out the clerk's merit raise evaluation? ____
95. Generally, the city council has a choice about retaining an appointed municipal court clerk who is convicted of official misconduct in the form of nepotism. ____
96. A violation of the nepotism statute is an offense involving official misconduct. ____
97. What may happen to a municipal judge convicted of hiring his or her niece as a municipal court clerk? _____

PART 7
ETHICAL DILEMMAS

A dilemma is a choice or a situation between equally unsatisfactory alternatives, or a difficult or perplexing situation. Generally, people try to rationalize or deny the wrongness of a situation, or they see what they want to see. Resolution can only be reached if the problem is viewed objectively so that the person can determine the correct course of action.

A. Identifying Ethical Dilemmas

- Identify the issue or problem.
- Determine the kind of problem it really is. Is it an ethical problem or some other issue such as training?
- Break the problem down into workable elements.
- Determine whose problem it is.
- Document any problems and issues, communications, and efforts to resolve the situation.

B. Solving Ethical Dilemmas

- Decide not to overlook the issue. Issues do not go away, and eventually someone may be treated unfairly. Handle the problem immediately.
- Know and understand the *Code of Judicial Conduct* and how it applies to court clerks. Abide by these standards.
- If you have a problem and do not know how to handle it, go to someone who does, or seek outside help from the Commission on Judicial Conduct.
- Do not have the attitude "It's all or nothing." Develop more than one resolution to ethical problems.
- Decide whether the choice is one that you can live with.
- Consider others that may be involved in the dilemma. Are there any choices that you know that others cannot live with?
- Realize that communication is the best way to solve most problems.
- Determine if more than one option is available.
- Evaluate the options.
- Select the most workable solution and act on your choice.

Unless a written standard or law is broken, sometimes ethical standards are hard to assess because they cannot be adequately measured. Clerks should assess their attitudes and values and follow the steps above to work through an issue or problem.

Practice Note

Every year, reports surface in the media regarding scandals related to courts in Texas. Sometimes the scandal is "ticket-fixing;" other times it is embezzlement. It is the responsibility of every member of the court staff to be on the lookout for wrongdoing and report it to the proper authority.

Minor violations of the canons of judicial conduct should usually be brought to the attention of the individual, the court administrator, or presiding judge, before reporting to the Commission on Judicial Conduct. Intentional and knowing violations should be reported to the

Commission immediately, as well as to local officials. All allegations should be well documented and reported to superiors.

The Commission staff is also available to discuss problems that may arise and to clarify the canons. Violations of the Penal Code and Government Code should be directed to the police department, city management, or the county or district attorney.

98. A clerk who had a personality clash with another employee went to her supervisor and said that the other employee did not know how to do the job. Is there an ethical problem here? If so what is it? What should the clerk have done? _____

_____

_____

_____

99. A city secretary who supervises the deputy clerks is not familiar with many legal requirements; this causes a clash between the clerks and city secretary. Is this an ethical problem? What should the clerks do? _____

_____

_____

_____

100. Before trial, the judge comes to the clerk's office and wants to know if there is any information she should know about the cases before going to trial. What information may the clerk tell the judge that would not be considered ex parte communication? _____

_____

_____

_____

101. A deputy court clerk, with whom you have become good friends, uses the judge's signature stamp to dismiss a case against her boyfriend. You find out about it. What do you do? ___

_____

_____

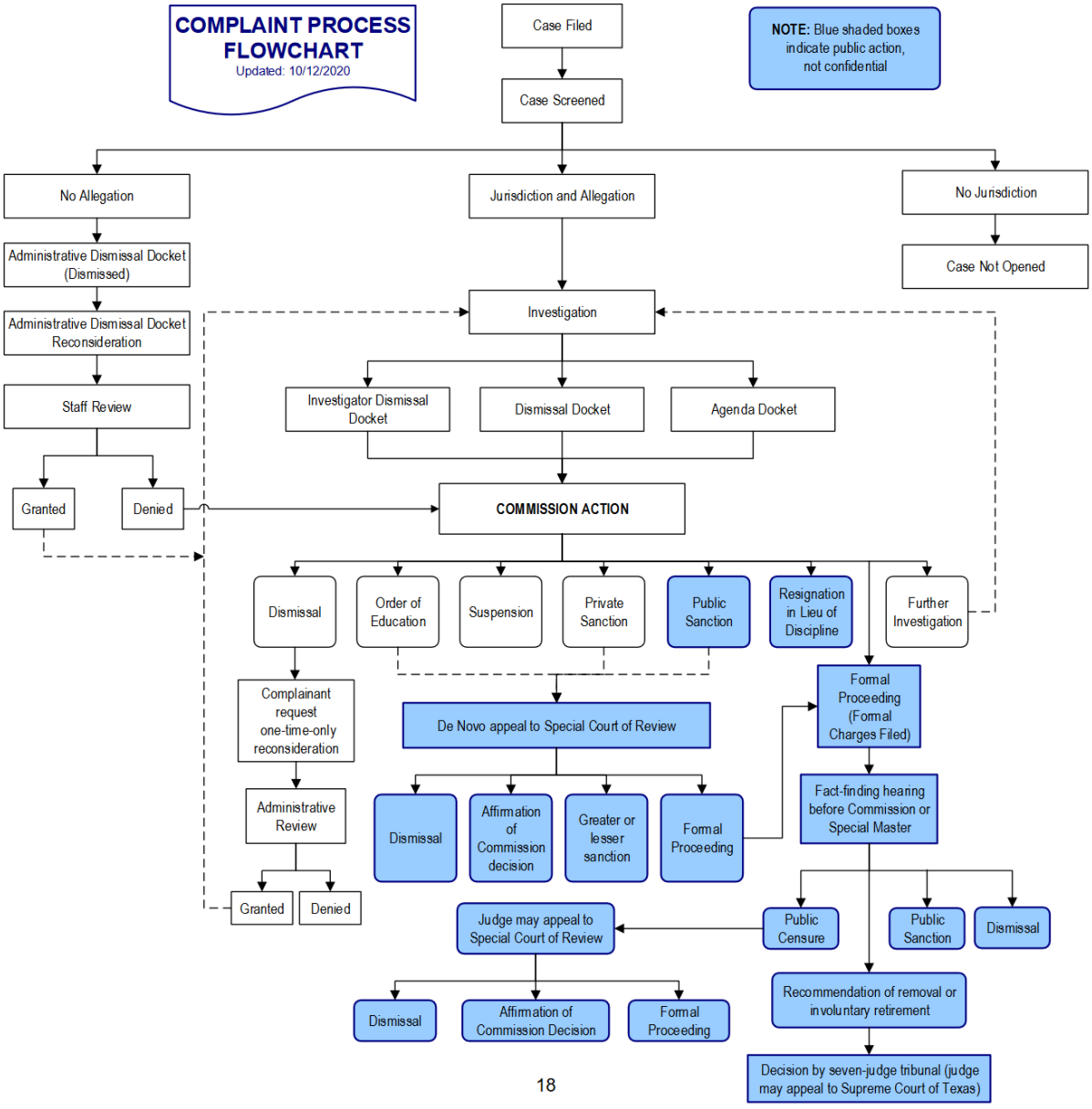
_____

102. Should a municipal court clerk report to the Commission on Judicial Conduct a judge's willful violation of the *Code of Judicial Conduct*? _____

_____

_____

APPENDIX A: COMPLAINT PROCESS FLOWCHART



APPENDIX B: CONSANGUINITY AND AFFINITY

Figure 1 – Relation by Consanguinity

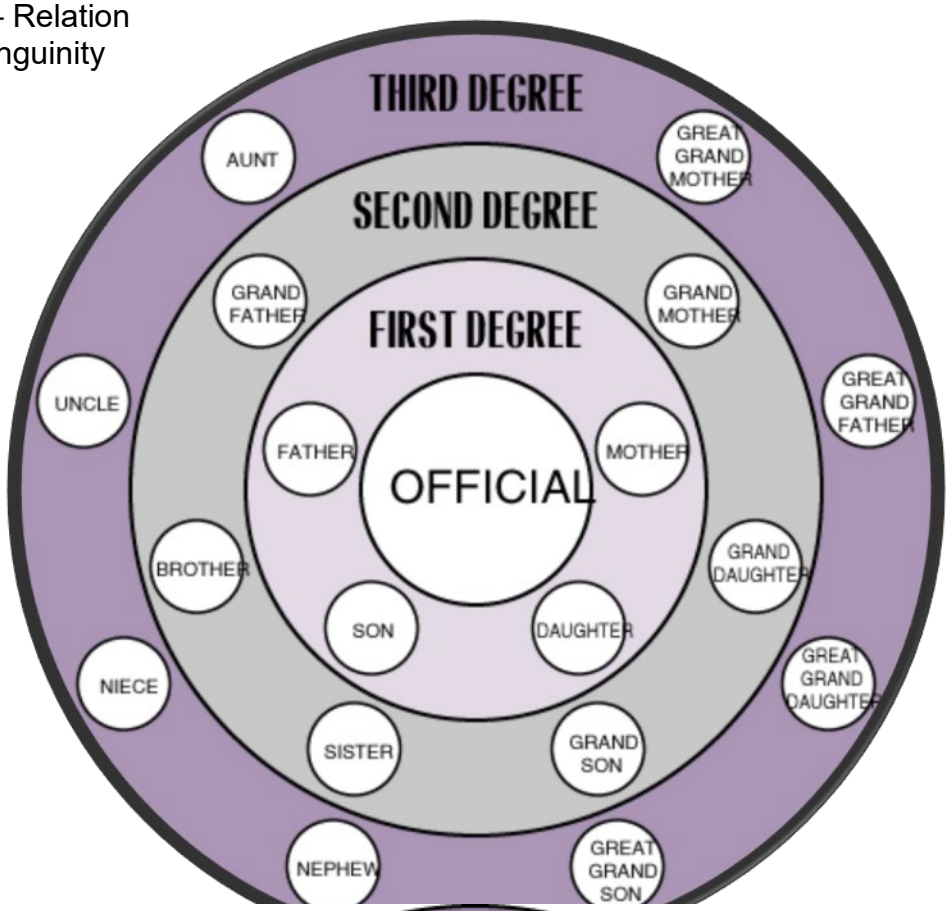
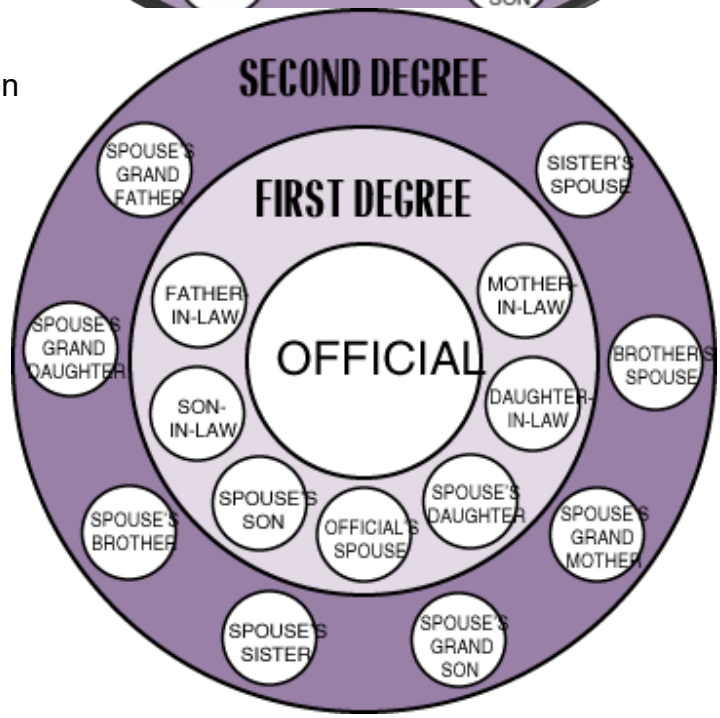


Figure 2 – Relation by Affinity



Legal Information vs. Legal Advice

Guidelines and Instructions for Clerks and Court Personnel
Who Work with Self-Represented Litigants in Texas
State Courts

Edited for use in Texas by: Texas Office of Court
Administration Texas Access to Justice
Commission Texas Access to Justice Foundation
Texas Legal Services Center
September 2015

Table of Contents

Introduction

Each year thousands of people represent themselves in Texas courts. It is crucial that clerks and court personnel understand how to help the self-represented without giving legal advice. This manual will help explain the difference between legal information and legal advice.

You are the face and voice of justice in Texas. How you respond to questions about the court system affects how people feel about justice, as well as their access to justice. If someone does not understand how to use the court system, and you do not provide available and needed information, that person may be denied access to the courts and to justice.

This manual is specifically intended for the use of clerks and court personnel who provide telephone and counter assistance. It is recommended that you keep the manual in a place where it is easily accessible. Of course, it cannot anticipate all the possible questions that self- represented parties might ask. If you are unsure if your response to a question would constitute giving legal advice, refer to this manual. You can also check with your supervisor.

The manual also contains a one-page list of some things clerks and court personnel can and cannot do (*see page 17*). This list is designed to be used as a handout or a sign posted at the clerk's counter or public window so that people can read and understand the guidelines that you are required to follow.

The law is complicated and confusing. Encourage people to talk to a lawyer about their situation. The *Resources and Referral Information* section of this manual describes a variety of ways people can get help.

Roles and Responsibilities of Clerks and Court Personnel

PROVIDE ACCESS TO THE COURTS

- One of the basic principles of the American justice system is that the doors of our courthouses are open to everyone.
- Most members of the public, however, are not familiar with courts or court procedures and require some level of assistance.
- Access to justice is, in effect, denied if members of the public do not know how to use the court system, and the courts do not assist them in some meaningful way.
- The court is obligated to explain court processes and procedures, to provide quality service, and to provide accurate information to all members of the public.
- An understanding of what information can be provided to the public will significantly affect access to the courts and the administration of justice.

PROVIDE SERVICE WITH ACCURATE INFORMATION

- Accessibility to the judicial system is affected by the accuracy of information provided by the court to members of the public, along with the manner in which it is presented.
- Clerks and court personnel are responsible for giving court users the service they need and deserve by providing accurate information in a competent, cooperative, and timely manner.
- The public's first and only contact with the judicial system may be with clerks and court personnel, whose responses have an impact on how people view their court experience.
- The court should treat all court users fairly and equally: attorneys, defendants, self-represented litigants, and others. In other words, clerks and court personnel should feel comfortable providing the same information to self-represented litigants that they provide on a routine basis to attorneys. All members of the public are entitled to the same information. Providing information to a lawyer that would not be provided to a self-represented litigant is not equal. Similarly, providing information to a self-represented litigant that would not be provided to a lawyer is not equal.
- Clerks and court staff should learn the rules about *ex parte* (one-sided) communication with the judge, and should not let members of the public use them to circumvent that principle.
- Effective service may reduce the number of times court users must come to the courthouse, and thus reduce stress on the court system.
- Provide accurate information because even seemingly small mistakes can affect people's lives or the outcome of court cases. It is better to be honest and say "I don't know" than to give incorrect information.

Why Clerks and Court Personnel Must Not Give Legal Advice, But Should Provide *Legal Information*

CLERKS AND COURT PERSONNEL MUST REMAIN NEUTRAL

- Remain neutral and do not promote or recommend a particular course of action to court users.
- Although you may have processed many similar types of cases, you do not know what is in a court user's best interest. Only they or their attorneys can make that determination.

CLERKS AND COURT PERSONNEL MUST REMAIN IMPARTIAL

- Impartiality is similar to neutrality, but focuses on equal treatment of court users.
- Court knowledge must be shared fairly and equally.
- Never give advice or information that favors one side or the other.
- Do not disclose confidential information or become involved in or facilitate an *ex parte* communication.

CLERKS AND COURT PERSONNEL MUST NOT ENGAGE IN THE UNAUTHORIZED PRACTICE OF LAW

- Only attorneys licensed to practice by the Supreme Court may give legal advice.
- Do not engage in the unauthorized practice of law by providing legal advice.
- Even court personnel who themselves are licensed attorneys may not give legal advice to court users because doing so would violate the principles of neutrality and impartiality.

The unauthorized practice of law statute, Section 81.101 of the Texas Government Code, states:

> (a) In this chapter the "practice of law" means the preparation of a pleading or other document incident to an action or special proceeding or the management of the action or proceeding on behalf of a client before a judge in court as well as a service rendered out of court, including the giving of advice or the rendering of any service requiring the use of legal skill or knowledge, such as preparing a will, contract, or other instrument, the legal effect of which under the facts and conclusions involved must be carefully determined.
>
> (b) The definition in this section is not exclusive and does not deprive the judicial branch of the power and authority under both this chapter and the adjudicated cases to determine whether other services and acts not enumerated may constitute the practice of law.
>
> (c) In this chapter, the "practice of law" does not include the design, creation, publication, distribution, display, or sale by means of an Internet web site, of written materials,

books, forms, computer software, or similar products if the products clearly and conspicuously state that the products are not a substitute for the advice of an attorney. This subsection does not authorize the use of the products or similar media in violation of Chapter 83 and does not affect the applicability or enforceability of that chapter.

The above statute does not provide an exhaustive list of what constitutes the practice of law. The Supreme Court of Texas has held that *the courts* ultimately decide what is and is not the practice of law.

What is Legal Advice?

Court users are asking for legal advice when they *ask whether or not* they *should* proceed in a certain fashion. ***Telling a member of the public what to do rather than how to do it may be giving legal advice.***

Legal advice is a written or oral statement that:

- Interprets some aspect of the law, court rules, or court procedures;
- Recommends a specific course of conduct a person should take in an actual or potential legal proceeding; or
- Applies the law to the individual person's specific factual circumstances.

What is Legal Information?

Clerks and court personnel may:

- Provide public information contained in dockets, calendars, case files, indexes, and other reports.
- Recite common, routinely-employed court rules, court procedures, administrative practices, and local rules, and explain generally how the court and judges function.
- Refer self-represented litigants to a law library or the court's website for statutes, court rules, or forms.
- Explain the meaning of terms and documents used in the court process.
- Answer questions concerning deadlines or due dates (without calculating due dates).
- Identify and refer self-represented litigants to court forms.

Clerks and court personnel may NOT:

- Recommend whether to file a certain pleading.
- Recommend wording or content for a pleading.
- Recommend specific people against whom to file pleadings.
- Recommend specific claims or arguments to assert at trial.
- Recommend what type of damages to seek or from whom to seek them.
- Recommend techniques for presenting evidence in pleadings or at trial.
- Recommend which objections to raise or which motions to file.
- Recommend whether a party should ask for a continuance.
- Recommend whether or not parties should try to settle their dispute prior to trial.
- Interpret applications of statutes.
- Perform legal research for a party by researching case law, statutes, opinions, etc.
- Predict the outcome of a case.

What is *Ex Parte* Communication?

Black's Law Dictionary defines *ex parte* as "on one side only; by or for one party; done for one party only."

Ex parte refers to situations in which only one party appears before a judge or communicates with a judge.

With few exceptions, the court rules require that all documents filed with the court must be given to all other parties in the case so that the other parties have an opportunity to respond. Thus, it is improper to give information to the judge unless that information has been provided to the other parties in the case.

If a party submits a written *ex parte* communication for a judge, ask the judge what the judge would like to do with the communication. The judge will say either to send a copy to all the parties before the judge reviews it or to send it back to the individual who submitted the document. Check for any other local policies on this issue.

If a party asks to talk to a judge, suggest that they write down what they want to say and file it with the court. This written communication should:

- Include a proper heading, including the case number.
- Be dated and signed, with the name printed under signature.
- Include the party's address and telephone number over the heading.

- Be copied to the opposing party or counsel following Texas Rules of Civil Procedure.

The original should be submitted to the clerk and the party should keep a copy for their records.

If the party has an emergency situation and there is no time to submit a written request, communicate with the judge *if* allowed by local rules. The party should be warned that the request may not be granted.

Quality Service: Strategies for Answering Difficult Questions

It may not always be clear that it is appropriate to answer a member of the public's question. However, there are several things that can be done to assist court users and make it easier to identify whether the question is asking for legal information or legal advice.

LISTEN CLOSELY AND ASK QUESTIONS

- Let members of the public ask their questions and listen carefully to what they are asking.
- Be an active listener and respond reflectively. If necessary, repeat or rephrase the question to state what you think they are asking.
- Take the time to clarify what court users need. If someone asks a question that is not clear, ask follow-up questions to clarify what they mean.
- Ask court users if they have completely read any paperwork they may have.

BE PATIENT

- Think how much the court user will appreciate someone taking the time to answer questions and explain an unfamiliar process.
- Coming to court can be stressful, confusing, and intimidating; so take the time to welcome and greet court users.
- The same questions may have been asked many times before, but remember that this is the first time for this particular court user.
- Remain calm even when the court user is not. Attitude is key. Some people may just need to vent. Take it professionally, not personally.

EXPLAIN ANSWERS and GIVE REASONS

- Providing the reasons why certain information cannot be given helps minimize people's frustration and increases their understanding of the court system. If a question cannot be answered, explain how important it is that clerks and court personnel remain **neutral and impartial**. Always be clear and concise when providing information. Ask the person how they would feel if the clerk or court personnel gave legal advice to the other side.

- The phrase "I cannot give legal advice" should never be used as an excuse not to provide service. Politely state that clerks and court personnel cannot explain or interpret the law or say how it would apply to a case because that would be giving legal advice. Also, explain that clerks and court personnel do not have legal training and if the clerk tries to give information about which they are not completely informed, it might jeopardize the outcome of the case for the party.
- If a question cannot be answered, try to give a good referral such as to a local lawyer referral service, legal clinic, the court's website, or go to www.TexasLawHelp.org. Remember: **do not** recommend specific attorneys; remain neutral and impartial at all times.

Procedural Explanations
vs.
Procedural Recommendations

Provide procedural information and explanations on how to accomplish various actions within the court system. Explaining various procedures increases the public's understanding of the court system and provides greater access to the courts.

Do not make any recommendation that would indicate a direct advantage or disadvantage of a particular procedure. It is not appropriate to tell court users what is the best course of action for them to take, nor is it appropriate to give opinions about the probable outcome of a case.

CAN PROVIDE **Procedural Explanations**	**CANNOT PROVIDE** **Procedural Recommendations**
Question: Can you tell me how to file a small claims action?	***Question:*** Can you tell me whether it would be better to file a small claims action or a civil action?
Response: Yes. You need to fill out a sworn small claims statement and file it with the clerk's office. When you file the affidavit, you will have to pay a filing fee. The clerk will issue you a case number and issue paperwork called the citation. Tell the clerk where the person you are suing may be found because the person must be served before the court can grant you any relief. The small claims form is on the court's website.	***Response:*** I cannot tell you which process would be best for your situation because I cannot give you legal advice. You may want to talk to an attorney about this issue to determine which process best fits your situation. You may also contact other legal resource organizations in your area, or you may conduct research at the local law library.

General Information about Court Operations
vs.
Confidential or Restricted Information about Court Operations

Answer questions about court policies and procedures if the information could not be inappropriately used to affect the status or outcome of a case. It is important not to disclose information that would allow one party or another to have an unfair advantage.

As a general rule, it is appropriate to provide information on how to do something, but it is not appropriate to answer the "how" question when it involves the disclosure of **confidential** or **restricted** information.

CAN PROVIDE General Information About Court Operations	CANNOT PROVIDE Confidential or Restricted Information About Court Operations
Question: When will my divorce go to court?	***Question:*** Can you tell me when Judge Doe will be on vacation so I don't have to appear in front of him again?
Response: This time frame may depend on the type of service in the case. Hearings are only needed on contested cases and it will depend upon the status of the pleadings as to when it is set. There are general instructions and appropriate forms for uncontested divorce on the court's website, or you may wish to obtain legal help if your case is going to go to trial.	***Response:*** I cannot give you personal information about the judge.

Explaining Legal Terms
vs.
Providing Legal Interpretations

Explain legal terms so that people will have access to the court and understand the court system. While it is appropriate to explain legal terms, it is not appropriate to provide legal interpretations.

CAN PROVIDE Legal Definition	CANNOT PROVIDE Legal Interpretation
Question: What does "certificate of service" mean?	***Question:*** My neighbors leave their kids at home all day without supervision. Isn't that child neglect?
Response: The rules require parties to file proof with the court that they complied with the requirement to serve other parties. This is called "certificate of service." The rules require parties to give copies of any document filed with the court to all other parties in the case. The methods for service available to Texas litigants are outlined in the court rules and state statutes, in particular you may wish to look at Rule 21a of the Texas Rules of Civil Procedure. The rules are available on the court's website.	***Response:*** I am not an attorney or a judge and cannot make that legal determination. I can, however, refer you to Child Protective Services who may be able to help you. If you are concerned that the children are in any kind of danger, contact law enforcement.

Tip: The Texas Rules of Civil Procedure are available at http://www.txcourts.gov/media/1055394/trcp-20150901.pdf.

The Self Help section is available at http://www.txcourts.gov/programs-services/self-help.aspx.

Providing Forms and Approved Instructions
vs.
Filling Out Forms

Another important way to facilitate access to the court is by providing forms and assistance where resources allow. It is important to know what forms and written instructions are available from the court and other agencies.

Often court users will not know what forms to request in order to bring their matters before the court. When this happens, clerks and court personnel should direct them to available resources for forms such as the court's website, law libraries, and legal clinics.
Answer procedural questions about how to complete court papers and forms. For example, tell a court user whether a form needs to be notarized or what factual information the form is asking for,

but do not say what words to put on the forms. If someone asks what to say in a form, tell the person to use his or her own words. Due to time and resource constraints,
suggest that people fill out as much of their form as possible before asking for assistance.

The Americans with Disabilities Act (ADA) requires reasonable accommodation to people with disabilities, which may include helping them fill out forms. Some legal clinics and legal service agencies will help people with disabilities fill out forms.

When helping someone fill out forms, write down exactly what the person dictates, word for word. Do not correct the person's grammar, and do not paraphrase or edit what the person says. This can be considered giving legal advice, and threatens the court's impartiality. Once the form is filled out, read it back to the party to confirm that what is written is correct. Write or stamp "dictated by court user, written verbatim by court staff," and your name or initials in the margin, and why the assistance was necessary.

CAN PROVIDE **Providing Forms and Approved Instructions**	**CANNOT PROVIDE** **Filling Out Forms**
Question: I need to file for divorce and I have no idea where to begin. Is there some place I can go to find out how to get started?	***Question:*** The self-help divorce petition says I should list as my separate property any gifts I received while we were married. My parents gave us money to make our house payments for several months. Should I list that money as my separate property?
Response: Sure. The Texas Law Help website has forms and instructions for uncontested divorces. Go to www.TexasLawHelp.org to find a full list of free forms. The court charges a fee to file your papers. This fee varies from county to county and may depend on whether children are involved.	***Response:*** I cannot help you decide what information to enter. If you have questions about what information is appropriate to enter on the forms, you can ask an attorney or visit a legal clinic. Information about legal clinics is available on the court's website.

Public Case Information
vs.
Confidential Case Information

Some documents or entire cases are confidential and the information cannot be disclosed. Ask a supervisor what records or cases are public and what are not.

Do not disclose the outcome of a matter submitted to a judge for decision until the outcome is part of the public record or the judge directs disclosure of the matter.

Do not speculate on the possible outcome of a matter submitted to a judge or a jury until the outcome is part of the public record. This also applies in cases when a matter has not yet been submitted to the court.

Generally, court case records are open to the public, and some records are made public by law. For example, search warrants and the affidavits that support them are public. Also, records in paternity suits are available for public inspection.

Some court case records may be sealed by the judge in civil cases under Rule 76a of the Texas Rules of Civil Procedure. The access to other kinds of court case records, such as records in mental health proceedings and juvenile case records, is limited by law. There are several other kinds of court case records that may be protected law. Be sure to check with your supervisor if there is a question about what records are public and what are not.

If court case records are confidential or protected by law, do not read them unless necessary to do your job. These records may contain highly personal information about parties, and it is inappropriate to read them unless required for your work.

CAN PROVIDE **Public Case Information**	**CANNOT PROVIDE** **Confidential Case Information**
Question: My mother died four months ago, and I lost my paperwork regarding her probate case. Can you give me the case number, and can I get copies of the pertinent documents?	***Question:*** I think there is a mental health case for my uncle in your court. His name is John Smith. Can you tell me anything about his case?
Response: Yes. I need to know her name. I'll check our records and give you the case number. Then, you can visit our courthouse and view the file.	***Response:*** Mental health cases are private and therefore I cannot provide you with any information. This type of information can only be disclosed by court order.

Tip: The Office of Court Administration publishes manuals for district clerks and county clerks which address requests for court case records. They are available at http://www.txcourts.gov/publications-training/training-materials/manuals-bench-books/clerk-manuals-handbooks.aspx

Options
vs.
Opinions

Provide information on the various procedural options that are available and what the differences are between the options. It is important to explain options because the person is often not aware of those options. People have better access to the courts when options are explained.

It is also important to advise people of **all** appropriate options. Providing only some of the options may indirectly influence a decision by limiting the person's choices.

Do not give an opinion about what specific remedies to seek or which option the person should use or otherwise advise someone on whether to bring the problem before the court. Remain neutral and do not take a position that will encourage or discourage a particular course of action.

CAN PROVIDE Options	CANNOT PROVIDE Opinions
Question: What can I do if I cannot afford to pay the filing fee?	***Question:*** My ex-husband hasn't paid the debts that he agreed to pay in our divorce settlement. Now he's filed for bankruptcy. The creditors are coming after me. This is ruining my credit. I don't live in Texas anymore. What can I do? He had an agreement and he's not following it. Can I be made responsible for this debt?
Response: You can request an *affidavit of inability to pay costs form*. This form allows you to open your case without paying the fee. The forms are available on the court's website and on Texas Law Help's website.	***Response:*** I cannot advise you what you can do because I cannot give you legal advice. The bankruptcy filing further complicates this matter. You may want to consult an attorney. You can contact a local lawyer referral service to find out if there are any free legal advice clinics that you could attend to get further information, or see Texas Law Help's Find Legal Assistance web page.

Citing Statutes, Court Rules and Ordinances
vs.
Researching Statutes, Court Rules and Ordinances

It is appropriate to share known statutory and court rule citations, especially as they apply to procedures. However, it is not appropriate to conduct legal research. There are two factors that help distinguish between the two:

- If the information is something clerks and court personnel should know as a part of their job, then it is not considered legal research, even if it has to be looked up in the statutes, rules of civil procedure or local court rules.
- If the information is readily available and does not have to be compiled, then it is unlikely to be considered legal research. If the information has to be compiled, then it probably is legal research.

CAN PROVIDE **Cites of Statutes, Court Rules and Ordinances**	**CANNOT PROVIDE** **Research of Statutes, Court Rules an Ordinances**
Question: Can I get a copy of a document from a case? Is it a public records?	***Question:*** What laws govern tort claims?
Response: Court records and documents are public record unless they have been sealed under Rule 76a of the Texas Rules of Civil Procedure, or they are confidential under some other law. The law requires that we charge a copying fee. If the document needs to be certified, there is an additional fee and per page copy fee.	***Response:*** I cannot perform legal research for you, but you can do that research yourself or contact an attorney to assist you. The statutes and rules are available online and at the law library. Contact the State Law Library for help getting started in your research.

General Referrals
vs.
Subjective or Biased Referrals

Because the court, clerks, and court personnel must remain impartial in all matters, do not make referrals to a specific lawyer, law firm, or paralegal service. Instead, refer people to the court's website, local lawyer referral service, the State Bar, or the yellow pages of the telephone book.

It is also helpful to keep lists of contact information for local government agencies and departments where people are frequently referred. Sometimes it is appropriate to make a call to the referred agency or department (if time permits) to make sure it can accommodate the person before sending them there.

CAN PROVIDE General Referral	CANNOT PROVIDE Subjective or Biased Referral
Question: I need a process server. Where do I find one?	***Question:*** Can you recommend a good process server?
Response: We do not have lists of process servers at the court. Pleadings may be served by a sheriff, a constable or you can also check in the phone book or on the internet for certified private process servers.	***Response:*** I'm sorry, but the court must remain impartial. I cannot recommend a specific process server. I suggest that you check the phone book or the internet for a certified private process server.

Tip: Develop and have available a list of general resources and referrals. Good general referrals include the yellow pages and the Internet. A list of certified private process servers is available at http://www.txcourts.gov/jbcc/process-server-certification.aspx.

Permissible
vs.
Impermissible Forms of *Ex Parte* Communication

Do not transmit information to a judge unless that information has been provided to the other parties in the case. To uphold this principle, follow these guidelines:

- Do not communicate to the judge case information acquired through personal knowledge, read in the newspaper, or heard on the radio or from someone else.
- Do not transmit verbal information to a judge on behalf of a party or attorney concerning a case unless it involves scheduling or other administrative matters.
- Screen the judge's calls. Do not transfer phone calls to a judge from parties or attorneys without learning what the caller wants to talk to the judge about and whether it is associated with a case before the judge, and then ask the judge if he/she wants to take the call.
- Communications about scheduling or other administrative matters are permitted because they do not deal with the litigation's substance or merits, and no party gains an advantage as a result of the *ex parte* contact.

CAN PROVIDE Permissible Forms of *Ex Parte* Communication	CANNOT PROVIDE Impermissible Forms of *Ex Parte* Communication
Question: Has the judge ruled on the motion to dismiss yet?	***Question:*** I am a prosecutor in the DWI case today. Please tell the judge that I don't think we're going to have the trial today because the defendant has already admitted he was drunk.
Response: No, the judge has not ruled on the motion yet. It is still under advisement.	***Response:*** I cannot tell the judge information about potential evidence in the case because it would be an impermissible *ex parte* communication. I can relay to the judge that the prosecutor states the trial will not go forward, or I can ask the judge if he would be willing to speak to you.

This is a list of some things clerks and court personnel can and cannot do.

We can	explain and answer questions about how the court works.	**We cannot**	tell you whether or not you should bring your case to court.
We can	provide the number of the local lawyer referral service, legal services program, Texas State Bar lawyer referral service, and other services where legal information is available.	**We cannot**	tell you what words to use in your court papers. However, we will check your papers for completeness. For example, we check for signatures, notarization, correct county name, correct case number and presence of attachments.
We can	give general information about court rules, procedures and practices.	**We cannot**	recommend what to say in court.
We can	provide court schedules and information on how to get a case scheduled.	**We cannot**	give an opinion about what will happen if you bring your case to court.
We can	give you information from your case file.	**We cannot**	talk to the judge for you or let you talk to the judge in private.
We can	give you samples of court forms that are available.	**We cannot**	change an order signed by a judge.
We can	usually answer questions about court deadlines.	**We cannot**	tell you what deadlines apply in your case.

Resources and Referral Information

Texas Law Help
www.texaslawhelp.org

The Texas Law Help website is a resource for people who do not have an attorney. Topics offered on the website include:

- Civil Rights
- Consumer Cases
- Wills and Estates
- Family Law
- Forms & Instructions
- Juvenile Cases
- Landlord Tenant
- Mediation
- Domestic Violence
- Seniors
- Spanish Resources
- Veteran Issues

Alternative Dispute Resolution
http://www.texasadr.org/

Going to court litigation may not always be the best way to resolve a problem. Alternative dispute resolution (ADR) is one way to work out an agreement. Mediation and arbitration, for example, both involve neutral, third parties who may facilitate a resolution. ADR can be used for many types of cases, including co-parenting, divorce, probate, contract disputes, other civil cases and appeals.

Legal Assistance Organizations and Other Non-Profit Organizations
www.texaslawhelp.org
www.lsc.gov

Contact information for Texas agencies and organizations such as Legal Aid of NorthWest Texas, Texas RioGrande Legal Aid, Lone Star Legal Aid, Advocacy, Inc., Texas Legal Services Center's Legal Hotline for Texans, and the Texas Advocacy Project's Family Law Hotline and Family Violence Hotline, and immigration law resources. On the Texas Law Help website, select the *Find Legal Assistance* tab. This tab also contains information about other organizations that assist with various legal problems, including consumer protection, landlord-tenant, OSHA complaints, complaints about nursing homes, and assistance with utility companies. On the Legal Services Corporation website, select Texas on the map of the United States. Most legal aid programs have income guidelines that determine the people or families they can serve. Persons must apply for assistance. Because of resource limitations, not everyone who qualifies will receive assistance.

Finding an Attorney
The State Bar of Texas Lawyer Referral Information Service is a free service provided by the Texas State Bar to help people find an attorney. Access the State Bar of Texas Lawyer Referral Information Service on the Texas Bar website at **www.texasbar.com** to Find *a Lawyer. Get a referral* on the right side of the page. Most lawyer referral programs refer people to attorneys who charge a nominal fee for the initial consultation; further fees will be negotiated by the attorney and client if they agree to continue.

Other resources include the yellow pages or friends who may have recommendations. Do not provide lawyer referrals. Another resource is **www.martindale.com**, an online version of the print lawyer directory Martindale-Hubbell. This site can be searched by location and subject specialty, and provides information about a lawyer's education and experience, as well as the ratings other lawyers give them.

Limited Legal Help
Many people cannot afford to hire an attorney. Limited legal help, also known as "limited scope legal representation," is an alternative way to get legal help. Under this kind of arrangement, an attorney and client agree that the attorney will provide specific services for a predetermined fee. For example, the attorney and client could agree that the attorney do one or more (but not all) of the following:

- will only advise the client about the strength of the case;
- help draft a document;
- review a document the client has drafted;
- coach the client for a negotiation;
- help with the discovery process;
- coach the client for a hearing;
- appear in court on behalf of the client for one hearing only; or
- any combination of these kinds of services.

Hiring an attorney to handle part of a case can be an affordable alternative to hiring one to take care of the entire case (also called "full representation"), and may be preferable to representing yourself in court -- a process that takes time and patience and can be confusing. People who act as their own attorney are expected to know and follow the same rules that attorneys follow.

Not all cases are suited for limited legal help. Attorneys who are interested in providing limited scope representation may be found using the resources described above in the **Finding an Attorney** section. Feel free to ask attorneys if they are willing to provide limited scope representation.

State Bar of Texas
www.texasbar.com

The State Bar of Texas Client-Attorney Assistance Program helps resolve problems between clients and attorneys. Also, a person with a complaint against an attorney may file a formal complaint ("grievance") against the attorney with the State Bar. On the State Bar's website, select *Client Assistance & Grievance* for more information. The State Bar's Texas Lawyers Care department publishes a referral directory of legal services and other resources for low-income Texans.

Texas Law Libraries

Law libraries have print and online resources including statutes, regulations, court rules, and court decisions, as well as legal encyclopedias, form books, and books about specific areas of law. Most law books are written for legal professionals, but some books are written for non-lawyers. Law library staff cannot give legal advice, but they can show people how to use their resources.

Texas State Law Library
www.sll.state.tx.us
205 West 14th Street Austin,
Texas 78701-1614 (512) 463-1722

Texas Statutes and Legislative Process
www.statutes.legis.state.tx.us (Statutes)
www.capitol.state.tx.us (Texas Legislature)

The first website contains state statutes. The second website contains information about bills in the Texas Legislature and the legislative process.

Texas Court System
www.txcourt.gov

The Texas Judicial Branch website contains information about the Texas court system.

Texas Forms

Legal form books provide sample language that can be used to prepare documents to file with the court. Some forms are fill-in-the-blank, while others only provide language that must be tailored to the situation. Forms are not available for every situation.

- Some courts have forms available online or in the clerk's office or county law library. Check on your court's or county's website.
- Some court forms are available at http://texaslawhelp.org/resource/texas-forms (click on *a list of forms and topics*.)
- Texas continuing legal education materials often include forms. Search the catalogs of university law libraries for the relevant topic, such as contracts, and include "Texas" in the search.

ANSWERS TO QUESTIONS

PART 1

1. Ethics is the discipline dealing with what is good and bad and with moral duty and obligation. It is a set of moral principles or values.
2. Integrity is strict personal honesty and independence. It is adherence to one's moral values or putting into practice one's values and beliefs.

PART 2

3. The objectives of the Commission are:

   (1) to preserve the integrity of all judges in the State;

   (2) to ensure public confidence in the judiciary; and

   (3) to encourage judges to maintain high standards of both professional and personal conduct.
4. To achieve these goals, the Commission issues sanctions and secures the removal of judges from office who violate legal or ethical standards. In addition, the Commission participates as faculty members in continuing education programs at all levels of the judiciary.
5. The State Commission on Judicial Conduct was created by an amendment to the Texas Constitution in 1965. Article V, Section 1-a of the Texas Constitution and Chapter 33 of the Texas Government Code are the sources of authority under which the Commission operates.
6. False (the complaint must be written).
7. True.
8. False.
9. False.
10. True.
11. True.
12. True.
13. Rank the following actions in order of severity. (1=the most severe.)
    1. Removal or Censure.
    4. Private Admonition.
    2. Public Reprimand.
    3. Public Admonition.

PART 4

14. Our legal system is based upon the principle that an independent, fair, and competent judiciary will interpret and apply the laws that govern us.
15. It is required by the *Code of Judicial Conduct*. Canon 3C(2) of the Code says that judges should require staff, court officials, and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge.
16. The judge may be held responsible.

Canon 1

17. True.
18. True.
19. True.

Canon 2

20. False.
21. False.
22. False.
23. True.
24. Indicate whether the following behaviors are proper or improper for a clerk. (P=Proper; I=Improper)
    I - Telling the judge about the belligerent attitude of a defendant scheduled for a bench trial.
    I - Recommending a specific driving safety school to a defendant.
    I - Using court stationery to offer a product or service for purchase to earn extra money.
    I - Looking up your girlfriend's traffic record.
    I - Drinking beer while working overtime at the office.
    I - Asking an officer to not file a traffic ticket against a friend.
    I - Closing the court or decreasing fines to put pressure on the city council to increase salary and benefits for court personnel.

Canon 3

25. True.
26. True.
27. True.
28. True.
29. True.
30. False.
31. False.
32. Indicate proper or improper conduct for the clerk. (P=Proper; I=Improper)
    P - Informing defendants how to properly conduct themselves in court.
    I - Shouting at a belligerent defendant.
    I - Telling sexual or racial jokes to jurors while they are waiting to be called into the courtroom.
    I - Not explaining all the court options to members of a certain ethnic group.
    I - Responding to a news reporter who asks you to review an article for legal accuracy. It contains information about a Class C misdemeanor assault that is pending in your court and is part of a larger civil suit for sexual harassment.
    P - Developing a records management program to help the court manage the progress of the cases through the court.

P - Working with the judge to oversee the administration of the court.
P - Providing information requested under Rule 12.

Canon 4

33. Indicate proper or improper conduct for a clerk. (P=Proper; I=Improper)
P - Writing a weekly column with the judge about legal matters and court activity for the local newspaper.
P - Teaching classes for the Texas Municipal Courts Education Center.
P - Speaking to high school students in a government class on "Your Rights in Traffic Court."
I - Selling tickets for your daughter's booster club to a group taking a driving safety course.
I - Traveling free to Las Vegas on a law firm's private plane. The law firm frequently handles traffic tickets in your court.
P - Accepting gifts from a friend or a relative on special occasions when the friend or relative is not before the court.
P - Accepting free legal publications from the Texas Municipal Courts Education Center.
I - Accepting an invitation to a Christmas party that is being conducted by a company that has a pending case in your court.
I - Using court stationery to write a letter to a company which has failed to provide you with promised service.
I - Having your title as court clerk listed by your name on a letter being sent by a local charity organization that is soliciting toys for disadvantaged children.

Canon 5

34. Indicate proper or improper conduct for a clerk. (P=Proper; I=Improper)
I - Making public statements in the local restaurant about persons running for city council.
P - Commenting privately to your spouse as to who would be the best candidate for mayor.
I - Wearing political T-shirts and buttons for local political races while at work.
I - Talking to defendants about who will be the best candidate for mayor.

Canon 6

35. True.
36. True (the municipal court does not have jurisdiction of this case so the judge may talk with the defendant to explain that he or she has no authority over this case, and it must be filed in another court).
37. False.
38. False.
39. False.

40. True (because the clerk is not an interested party, but it could be improper conduct for the same reason that ex parte communication is prohibited, i.e., apprising the judge of the merits of a pending judicial proceeding without all interested parties present).
41. False.

Canons 7 and 8

42. True.
43. True.
44. True.

PART 5

45. False.
46. True.
47. False (helping a defendant complete a form is giving legal advice).
48. False.
49. The clerk may explain the court procedures and processes and give the defendant a pamphlet that explains these processes and the defendant's obligations and rights. Do not advise the defendant on how to handle his or her case.

PART 6

50. True.
51. True.
52. True.
53. True.
54. False.
55. False.

Chapter 36

56. True.
57. False.
58. True.
59. False.
60. True.

Chapter 37

61. True.
62. True.
63. True.
64. True.
65. True.
66. False.

Chapters 38 and 39

67. True.
68. True.
69. False.
70. True.
71. False.
72. True.
73. False.
74. False.
75. False.

Government Code, Chapter 573

76. True.
77. True.
78. True.
79. The judge's father, mother, and children.
80. The judge's father, mother, children, brothers, sisters, grandparents, and grandchildren.
81. The judge's father, mother, children, brothers, sisters, grandparents, grandchildren, great-grandparents, great-grandchildren, uncles, aunts, nephews, and nieces.
82. Answers will vary from clerk to clerk.
83. Affinity.
84. Affinity.
85. Neither by consanguinity nor by affinity.
86. The judge's relatives within the first degree by marriage are his or her spouse, his or her spouse's parents, his or her spouse's children, his parent's spouse, or his children's spouses. Those within the second degree include those above plus his spouse's brothers, sisters, grandparents, and grandchildren, and his brothers, sisters, grandparent's or grandchildren's spouses. Those within the third degree include all those above plus his spouse's great-grandparents, great-grandchildren, uncles, aunts, nieces, and nephews, as well as any spouses of his great-grandparents, great-grandchildren, uncles, aunts, nieces, and nephews.
87. Answers will vary from clerk to clerk.
88. False.
89. True.
90. False.
91. False.
92. True.
93. 30 days.
94. No.
95. False.
96. True.

97. He or she may be fined $100 to $1000 and be removed from office.

PART 7

98. A personality clash is not an ethical problem, but when the clerk told her supervisor that the other person did not know how to do her job just because of their personal differences, it became an ethical problem. The ethical problem is the clerk's lie about the other employee. If the two employees could not work out their differences, they should have asked a supervisor to mediate, and both demonstrated an effort to not let their differences affect their work.

99. This is not an ethical problem. The city secretary's problem is a lack of training and education. This problem can be remedied by the city secretary reading materials from the Texas Municipal Courts Education Center.

100. The clerk may discuss with the judge administrative matters concerning the scheduling of the cases for trial or such matters as motions for continuances. The clerk may not discuss the merits of any of the cases, any information blurted out by defendants, or any conversations he or she had with any of the witnesses (usually peace officers).

101. This is not only an ethical violation, but it is also a crime. It is tampering with a governmental record. You should report it to your supervisor, judge, and chief of police immediately.

102. Canon 3D requires judges to take appropriate action upon receiving information clearly establishing that another judge has committed a violation of the Code of Judicial Conduct. If the violation raises a substantial question as to the other judge's fitness for office, the judge shall inform the State Commission on Judicial Conduct or take other appropriate action. Depending on the circumstances, the appropriate action may be reporting the judge to the city council or the Commission. If in doubt, you should call the Commission to discuss the issue.

4

Charging and Pre-Trial

Table of Contents

INTRODUCTION

Anyone, including the public, may seek to file charges in municipal courts. This is accomplished by one of two legal instruments: citation or complaint. This alone is unique, but the charging process also differs greatly from other state criminal courts. Sometimes the process may be more formal, as when a peace officer issues a person a citation. Other times, the process may be less defined, as when a citizen seeks to file charges against a neighbor for a city ordinance violation. Court personnel should be aware that, regardless of how the offense occurs, there are specific requirements that must be met to provide notice of a criminal charge or initiate court proceedings. In addition, although responsibility for the criminal case belongs to the prosecutor, the clerk is responsible for processing the case. This may include the creation of the court's case file, documenting proceedings in the case, creating certain legal documents, and maintaining accurate court records. This chapter discusses the law behind these processes, referred to here as pre-trial procedure.

PART 1
CHARGING INSTRUMENTS

A. Purpose

1. Notifies Defendant of Charge

One of the fundamental rights afforded defendants, including defendants accused of fine-only misdemeanors, is notice of specific charges filed against them. Art. 1.05, C.C.P. A charging instrument must notify a person of the offense alleged so that he or she may prepare a defense. *Vallejo v. State*, 408 S.W.2d 113 (Tex. Crim. App. 1966). Defendants are entitled to notice not later than the day before the date of any proceeding in the prosecution of the defendant under the complaint. Art. 45.018/45A.101(g), C.C.P.

2. Initiates Proceedings

The filing of the complaint or citation initiates proceedings in the court. *Ex parte Greenwood*, 307 S.W.2d 586 (Tex. Crim. App. 1957). When the court accepts a complaint or citation, the case is considered to be filed. As a general rule, a charging instrument must be filed with the municipal court to vest jurisdiction in the court. Until jurisdiction is vested in the court, the court has no authority to do anything with the case.

B. Types

There are generally two instruments used to file criminal charges in municipal courts. The first is the citation, commonly known to the public as "a ticket." Citations are written notices to appear issued by a peace officer. Under certain circumstances, a citation may also serve as the formal charging instrument through trial. The second instrument is the complaint. This term should not be confused with the word complaint as it is commonly used by the public or as it is used when charging an offense in county court. In the most general sense, the complaint in municipal court is a sworn allegation charging an accused with an offense. In most municipal court cases, the complaint serves as the formal charging instrument through trial. There are also certain circumstances where a complaint must be filed.

1. Citation & Written Promise to Appear

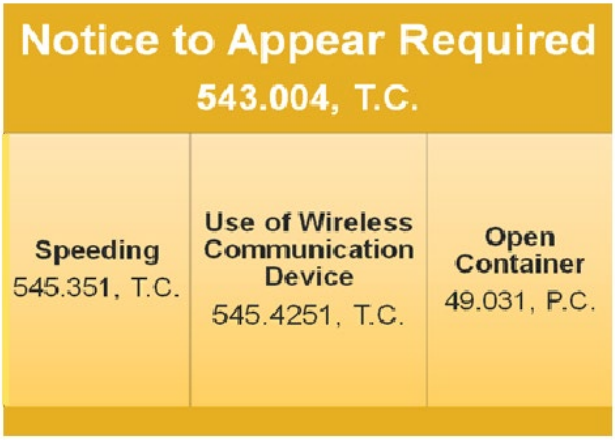
A written notice to appear issued by a peace officer is commonly called a "citation" or "ticket" and is filed with the court to initiate proceedings. Section 543.003 of the Transportation Code authorizes peace officers to issue written notices to appear in lieu of making a full custodial arrest for *Rules of the Road* offenses (i.e., those offenses found in Subtitle C, Title 7 of the Transportation Code). Article 14.06(b) of the Code of Criminal Procedure further provides authority for a peace officer to issue a citation for all Class C or fine-only misdemeanors, except for public intoxication. Any time a person is subject to a full custodial arrest in lieu of a citation being issued, the charges filed in municipal court must be initiated by sworn complaint. In other words, the issuance of a citation often (but not always) serves as a substitution for a full custodial arrest and alleviates the need for a formal complaint.

a. Arrest & Public Intoxication

Peace officers generally may not issue a citation for public intoxication under Article 14.06(b) of the Code of Criminal Procedure, so a sworn complaint must be filed to initiate proceedings for that offense. Public intoxication is likely an exception because one of the elements of that offense is that the person is intoxicated to the degree that the person may endanger that person or another. It may not be in the interest of the public or the individual to simply issue a citation requiring the promise to appear when that person, at the time of arrest, is intoxicated and a danger to that person or another. The law provides, however, that law enforcement may release an individual in lieu of actually arresting them at the time if specific requirements are met. The requirements for release are outlined in Article 14.031 of the Code of Criminal Procedure.

b. Required Citation Offenses

There are three instances in the Transportation Code where a law enforcement officer is required to issue a citation rather than take the person into custody. These offenses are speeding, use of a wireless communication device under Section 545.4251, T.C., and violation of the open container law under Section 49.031, P.C. If a person makes a written promise to appear and signs the citation, the officer must issue the citation.



1. A citizen comes to court to complain about a neighbor's dog running at large but does not want to make a written complaint. No complaint is filed with the court. May the municipal court hear this case? Why or why not?_____

   _____

2. For what Class C misdemeanor offenses is an officer required to issue a citation? ____

   _____

True or False

3. If a municipal court does not have a complaint or citation filed, the court may not accept a plea of guilty from the defendant. ____
4. Municipal court defendants do not have a right to notice of the crime with which they are being charged. ____
5. Defendants are entitled to notice−a copy of the complaint−at least five days prior to trial. ____
6. If a person is arrested, the officer can file a citation with the court. ____
7. The offense of public intoxication may not be filed in municipal court by citation but must be initiated by a sworn complaint. ____

2. Complaint

The complaint is a sworn allegation charging an accused with the commission of a Class C or fine-only misdemeanor offense in municipal or justice court. Art. 45.018/45A.002(1), C.C.P. The complaint must allege that the accused committed an offense against the laws of this State and must assert that the affiant has good reason to believe and does believe that the accused committed an offense. Art. 45.019(a)(4)/45A.101(a), C.C.P. All elements necessary to constitute an offense must be alleged in the complaint. *Villareal v. State*, 729 S.W.2d 348 (Tex. App. − El Paso 1987, no pet.).

a. When a Citation Serves as the Complaint

A citation issued for a fine-only misdemeanor offense may substitute for the sworn complaint to which defendants can plead not guilty, guilty, or nolo contendere. Art. 27.14(d), C.C.P. However, a legible duplicate copy must have been given to the defendant. Attorney General Opinions JM-876 (1988) and JM-869 (1988).

b. When a Defendant Pleads Not Guilty

If a defendant pleads not guilty, the court must file a complaint that complies with the requirements of Chapter 45/45A of the Code of Criminal Procedure. Art. 27.14(d), C.C.P. If a defendant wants the prosecution to proceed only on the citation, the defendant may waive the filing of a sworn complaint. If the prosecutor agrees with the defendant, the agreement must be in writing, signed by both the prosecutor and the defendant, and filed with the court. Without such an agreement, a sworn complaint must be filed in the case. Art. 27.14(d), C.C.P.

c. When a Defendant Fails to Appear

When a defendant fails to appear, a complaint must be filed that conforms to the requirements of Chapter 45/45A of the Code of Criminal Procedure. Art. 27.14(d), C.C.P. In both the case of the defendant pleading not guilty and the defendant failing to appear, the complaint that is filed replaces the citation as the charging instrument.

C. Requirements

The requirements for a citation are discussed in the *Traffic Law* chapter of this Study Guide. The requirements for a complaint are found in Article 45.019/45A.101 of the Code of Criminal

Procedure. Generally, the complaint may be filed within two years of the date of the offense and not afterward (within three years if the misdemeanor is assault with family violence under Section 22.01 of the Penal Code). Art. 12.02(b), C.C.P. This is called the "statute of limitations." The day upon which the offense is committed and the day upon which the charges are brought are not considered. Art. 12.04, C.C.P.

1. Written

The complaint must be written. Art. 45.019(a)(1)/45A.101(a)(1), C.C.P. Although the prosecutor is responsible for composing the wording on a complaint, the preparation of the complaint is a ministerial task that commonly falls on the court clerk, especially in this era of electronic ticket writers and court software that automatically generates complaints based on the citations entered. Court clerks should be cautious, however, to not exceed their authority. A court clerk has no discretion to remedy legal errors in the criminal charge or advise the prosecutor.

a. Wording

The complaint shall begin: "In the name and by the authority of the State of Texas" and shall conclude: "Against the peace and dignity of the State." If the offense is a city ordinance violation, it may also conclude: "Contrary to the said ordinance." Art. 45.019(a)(7)/45A.101(a)-(b), C.C.P.

Article 45.019/45A.101(a), (c) also requires that the complaint include:

- the name of the accused, if known, and if unknown, a reasonably definite description (note that a defendant's name cannot be changed on the complaint even with his or her consent; if the State wants to change the name, a new complaint must be sworn. *Franklyn v. State*, 762 S.W.2d 228 (Tex. App.−El Paso 1988, writ ref'd);
- that the accused has committed an offense against the laws of this State;
- that the offense was committed in the territorial limits of the city in which the complaint is made;
- the date of the offense as definitely as the affiant is able to provide (remembering that the date of the offense must be before the filing of the complaint and within the statute of limitations. *Green v. State*, 799 S.W.2d 756 (Tex. Crim. App. 1990); and
- that the affiant has good reason to believe and does believe the accused has committed an offense.

Frequently, defendants are charged with committing more than one offense on a traffic citation. When a clerk receives a citation with multiple offenses listed on it, each offense is a separate charge and should be alleged on a separate complaint. Each complaint will contain the name of the defendant, the date of the offense, and one of the offenses cited, in addition to the other requisites of the complaint.

b. Location of Offense

The specific location within the court's jurisdiction where a violation was committed need not be alleged if the violation is one that could occur at any place within that jurisdiction. *Bedwell v. State*, 155 S.W.2d 930 (Tex. Crim. App. 1941). For example, the offense of assault by threat does not require that a location be alleged, as long as the complaint alleges that the offense occurred within the territorial limits of the city. Although preparing the language of the complaint is a

responsibility often delegated to court clerks, remember that every element in the complaint must be proven by the prosecutor if the case goes to trial; therefore, it is the prosecutor's duty to create the language and allege sufficient elements to charge the offense.

c. Culpable Mental States

Generally, a person commits an offense only if he or she voluntarily engages in criminal conduct, including an act, an omission, or possession. Sec. 6.01(a), P.C. This is a legal concept described as the "mens rea" or "guilty mind." This is the idea that a certain mental state is required in order to be guilty of a criminal offense. The required culpable mental state must generally be alleged in the complaint where it is required for the offense. *Honeywell v. State*, 627 S.W.2d 417 (Tex. Crim. App. 1981). If the offense does not prescribe a culpable mental state, a culpable mental state is nevertheless required unless the definition plainly dispenses with any mental element. Sec. 6.02(b), P.C. For an offense that is a violation of a city ordinance punishable by a fine exceeding $500, a culpable mental state is required to be pled in the complaint regardless of whether one is prescribed in the offense. Sec. 6.02(f), P.C. There are four defined in Texas law. Section 6.03 of the Penal Code defines the four culpable mental states as:

Intentionally - A person acts intentionally with respect to the nature of the conduct or to a result of the conduct when it is the person's conscious objective or desire to engage in the conduct or cause the result.

Knowingly - A person acts knowingly with respect to the nature of the conduct or to circumstances surrounding the conduct when the person is aware of the nature of the conduct or that the circumstances exist. A person acts knowingly when the person is aware that the conduct is reasonably certain to cause the result.

Recklessly - A person acts recklessly with respect to circumstances surrounding the conduct or the result of the conduct when the person is aware of but consciously disregards a substantial and unjustifiable risk that the circumstances exist, or the result will occur. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint.

Criminal Negligence - A person acts with criminal negligence with respect to circumstances surrounding the conduct or the result of the conduct when the person ought to be aware of a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint.

Not all offenses defined in Texas law, however, require a mental state. These offenses are called strict liability offenses. *Zulauf v. State*, 591 S.W.2d 869 (Tex. Crim. App. 1979). This means that it is an offense, regardless of mental state, to either do something that is prohibited or not do something that is required. Many offenses like this can be found in the Transportation Code and

in traffic laws across the country. The general offense statute for Subtitle C, Title 7 of the Transportation Code incorporates this concept for offenses in the Rules of the Road. The offense of speeding, for example, does not require that the person knew the speed or intended to speed; rather, only that the person was driving the car at a speed greater than that permitted by the law. As the Court of Criminal Appeals noted more than 100 years ago, "Very few people in driving a car have an evil intent; but the Legislature, in protection of the public, has decreed it wise to limit the speed at which these cars may run, and each one is required to keep within that limit." *Goodwin v. State*, 63 Tex.Cr.R.140, 138 S.W. 399 (1911).

542.301, T.C. General Offense

A person commits an offense if the person performs an act prohibited or fails to perform an act required by Subtitle C, Transportation Code

2. Signed

A complaint must be signed. Art. 45.019/45A.101(a)(6), C.C.P. A complaint not signed by the affiant is defective. *Bender v. State*, 353 S.W.2d 39 (Tex. Crim. App. 1962). A signature on the complaint may be rubber-stamped or contain an electronic signature. *Parsons v. State*, 429 S.W.2d 476 (Tex. Crim. App. 1968). Article 45.012(h)/45A.051(h) of the Code of Criminal Procedure provides that a statutory requirement that a document contain a signature is satisfied if the document contains the signature as captured by an electronic device. This rule applies to the signature of any person, judge, clerk of the court, or defendant. The name of the affiant need not appear in the body of the complaint.

3. Sworn

A complaint must be sworn, i.e., must be made under oath. Art. 45.019/45A.101, C.C.P. The person swearing to the complaint must have good reason to believe and in fact believe that the defendant committed the act alleged in the complaint. The person swearing to the complaint is declaring the truth of the information contained in the complaint.

a. Oath

Statutes do not provide specific wording for the oath administered to an affiant swearing to a complaint. The following is a sample oath a court may want to consider using: "Do you solemnly swear (or affirm) that the information contained in this complaint is true and correct (so help you God)?"

b. Affiant

The person swearing to the complaint is the affiant. Any credible person acquainted with the facts of the alleged offense either by personal knowledge or hearsay may be an affiant. *Cisco v. State*, 411 S.W.2d 547 (Tex. Crim. App. 1967). An example of an affiant with personal knowledge is a peace officer who personally observed a person speeding and swears to the complaint. An example of a hearsay affiant is a person who has not observed the offense but reviews an arrest report and then swears to the complaint. This person has good reason to believe, based upon information provided by the officer who personally observed the offense, that the offense was committed and can be a court clerk or deputy court clerk.

The following is a list of procedures on how to administer an oath to an affiant:

- affiant reviews complaint;
- affiant and person administering oath both raise their right hand;
- oath is administered;
- affiant signs complaint; and
- person administering oath signs jurat.

c. Jurat

Jurat is a Latin term meaning "to swear." The jurat, which typically appears below an affidavit, is the formal certification affirming when and before whom the complaint is sworn. Practically speaking in municipal court, it is the statement at the bottom of the complaint that begins, "Subscribed and sworn to me on this (day, month, year)." Article 45.019(e)/45A.101(e) of the Code of Criminal Procedure lists the persons who have authority to administer the oath to someone swearing to a municipal court complaint and includes the municipal judge, court clerk, deputy court clerk, city secretary, city attorney, or deputy city attorney. Section 602.002 of the Government Code also provides authority for a clerk to administer any oath.

Practice Note

Why does formal certification matter? If the jurat is defective or missing something, then the conviction would be void. This would negate everything done at trial. A jurat may be void if it does not contain a signature (*Carter v. State*, 398 S.W.2d 290 (Tex. Cr. App. 1966)) or even if it is undated (*Shackelford v. State*, 516 S.W.2d 180 (Tex. Crim. App. 1974)).

4. Seal

Municipal court complaints are required to have a court seal. Article 45.012(g)/45A.052 of the Code of Criminal Procedure requires municipal courts to impress a seal on all documents, except subpoenas, issued out of the court and to use the seal to authenticate the acts of the judge and clerk. This statute is a general statute that applies only to non-record municipal courts. Municipal courts of record have a specific statute, Section 30.000125 of the Government Code, regarding their seal. These two statutes are similar in that they both require the seal to be impressed on all documents, except subpoenas, and used to authenticate the acts of the judge and clerk. The two statutes are different in that Article 45.012/45A.052 does not provide for the wording of the seal for non-record courts, but Section 30.000125 does contain specific wording for the municipal courts of record seal. That statute requires the following phrase to be included on the seal: "Municipal Court of/in_____, Texas." Non-record municipal courts may want to consider using the same or similar wording on their seal.

The court seal may be created by electronic means, including optical imaging, optical disk, or other electronic reproduction technique that does not permit changes, additions, or deletions to an original document created by the same type of system. Art. 45.012(g)/45A.052(c), C.C.P.

D. Objections by Defendant

A defendant waives and forfeits the right to object to a defect, error, irregularity in form, or substance of the complaint if the defendant does not object before the commencement of the trial on the merits. A court may require that objections be made at an earlier time such as at a pre-trial hearing. Art. 45.019(f)/45A.102, C.C.P.

E. Errors in the Complaint

Remember that complaints, like citations, cannot be amended. If there is an error on a citation, the way to cure that error is to file a new sworn complaint. If there is an error on a complaint, the way to cure that error is to dismiss the defective complaint and refile a corrected complaint, so long as it is still within the statute of limitations.

8. If a citation has been filed to initiate the proceedings in court, when does a sworn complaint generally have to be filed? _____

_____

9. Since the preparation of the complaint is a ministerial duty, who usually prepares the complaint? _____
10. Why does the complaint have to allege the date of the offense? _____

_____

11. Who may administer the oath to an affiant swearing to a complaint in a municipal court? __

_____

_____

12. Define the word "jurat." _____

_____

13. What words are required to be on the seal of a municipal court of record? _____

_____

14. May a court seal be created electronically? _____
15. What is the purpose of the court seal? _____

_____

16. List the culpable mental states from the highest to the lowest. _____

_____

17. If a statute does not state that a culpable mental state is required, which culpable mental state should be alleged in the complaint? _____
18. Which city ordinances must allege a culpable mental state even though the offense may not prescribe one? _____

_____

19. When the sworn complaint is filed, is this a new case or the same case that was initiated by the citation? _____
20. When may the trial be on the citation instead of the sworn complaint? _____

21. If a citation is filed with the court and the defendant fails to appear, what must be filed? __

_____

True or False

22. A complaint is a charging instrument filed in municipal court. ____
23. Citizens have the right to file a complaint with the court. ____
24. When an officer loses a citation and finds it three months later and then files it with the court, the court has jurisdiction to try the case. ____
25. A complaint gives notice to a defendant of the offense with which he or she is charged so that the defendant can prepare a defense. ____
26. A complaint must begin with the following words: "In the name and by the authority of the State of Texas." ____
27. A city ordinance complaint for the offense of a dog running at large may also conclude with the words "Contrary to the said ordinance." ____
28. A complaint does not have to state that the offense was committed in the city in which it occurred. ____
29. The specific location where an offense occurs must always be stated in the complaint. ____
30. If a defendant's name is misspelled on a sworn complaint, the court clerk may correct it and the prosecution may proceed on the complaint. ____
31. Penal Code offenses do not require a culpable mental state. ____
32. Many Transportation Code offenses do not require a culpable mental state. ____
33. A person who recklessly damages someone else's property even though they might not have intended to do it may be charged with a crime. ____
34. If someone swears to a complaint, he or she is declaring by oath the truth of the information contained in the complaint. ____
35. Only the officer who personally observed an offense may be an affiant on a complaint. ____
36. A court clerk may not be an affiant on a complaint. ____
37. A hearsay affiant is one who is acquainted with the facts of the case but did not personally observe the offense. ____
38. A complaint that is not signed by the affiant is still a valid complaint. ____
39. A complaint is defective if either the affiant or the jurat stamps their signature instead of handwriting it. ____
40. A signature of the affiant or jurat can be electronically captured. ____
41. A person swearing to a complaint must sign his or her name in front of the person administering the oath. ____
42. The date the complaint is sworn does not have to be noted in the jurat. ____
43. A complaint is valid as long as it has been sworn to even if the person administering the oath does not sign the jurat. ____
44. If the prosecutor decides to file the offense of failure to appear on old cases that have already gone to warrant, the failure to appear must have occurred less than two years previously. ____

45. If a defendant is being charged with more than one offense, the court may put all the offenses on one complaint. ____

46. A defendant may plead guilty, not guilty, or nolo contendere to a filed citation. ____

PART 2
DOCKETS

A. Maintenance

A docket is a formal record of court proceedings. The judge must keep a docket and enter proceedings in each trial. Art. 45.017/45A.053, C.C.P. Keeping a docket is not discretionary, so the judge usually delegates the maintenance of the docket to the court clerk.

B. Format and Information

There is no requirement that the docket be kept in a well-bound book. Attorney General Opinion DM-139. Information in a docket may be processed and stored by use of electronic data processing equipment at the discretion of the judge. Arts. 45.012(b)(3)/45A.051(b)(3) and 45.017(b)/45.051(c), C.C.P. If a court stores and maintains the docket electronically, the court is not required to simultaneously maintain a paper copy of the docket.

Article 45.017/45A.053 of the Code of Criminal Procedure requires the following information be entered in the docket:

- the style and file number of each criminal action;
- the nature of the offense charged;
- the plea offered by the defendant and the date the plea was entered;
- the date the warrant, if any, was issued and the return thereon;
- the time when the examination or trial was held and if a trial was held, whether it was by jury or by the judge;
- the verdict of the jury, if any, and the date of the verdict;
- the judgment and sentence and the date each was given;
- the motion for new trial, if any, and the decision thereon; and
- whether an appeal was taken and the date of that action.

As a case proceeds through the judicial system, the clerk enters the required information on the docket. Remember that only brief entries of the information are required.

47. When a judge or clerk enters proceedings on a docket, what is he or she doing? _____

_____

48. Why does the court keep a docket? _____

49. Why may a clerk enter proceedings on a docket? _____

_____

True or False

50. The style and file number of each case must be entered on the docket. ____

51. A docket does not have to include the type of offense with which the person is charged. ____

52. When a judge issues a warrant, only the date that it is issued must be noted on the docket. ____

53. The docket must show whether the trial was conducted by the judge or by the jury. ____

54. Who has the authority to decide whether to process and store the information on the docket electronically? _____

55. If information is stored electronically, does the court still have to maintain a simultaneous record in a docket book that is a bound book? _____

PART 3
UNCONTESTED PROCEEDINGS

Defendants who do not wish to contest the charges against them may plead either guilty or nolo contendere and pay a fine. In some instances, the law may allow the court to require the defendant to comply with other sanctions. Adult defendants can plead guilty or nolo contendere without appearing in open court by delivering or mailing to the court a plea and waiver of jury trial or payment of the fine and costs. Defendants who do not want to contest charges against them may still present evidence to mitigate the fine to be used during the court's determination of punishment at the court's discretion. Arts. 27.14(a) and 45.022/45A.153(a), C.C.P. In addition, for pleas heard in open court, the judge must inquire, during or immediately after imposing the sentence, into the defendant's ability to pay all or part of the fine or costs. Art. 45.041(a-1)/45A.252(a), C.C.P.

A. Pleas of Guilty or Nolo Contendere

Nolo Contendere

Latin term meaning "I do not wish to contest." Nolo contendere has the same legal effect as a guilty plea; however, it may not be used against the defendant as an admission of guilt in a civil suit.

A plea of guilty is a formal admission of guilt wherein the defendant confesses to committing the charged crime. A plea of nolo contendere means the defendant is not contesting the charges filed against them. Literally, nolo contendere is a Latin phrase meaning, "I do not wish to contest." It is a more formal way of indicating a no contest plea, and the term is generally interchangeable with no contest. The plea has a similar legal effect as pleading guilty (i.e., the defendant is found guilty and is assessed a fine and costs); however, the defendant does not admit or deny the charges. The principal difference between a plea of guilty and a plea of nolo contendere is that the nolo contendere plea

may not be used against the defendant in a civil action arising from the same act, for example, a lawsuit seeking damages from a car crash.

Regardless of which plea is entered, either plea must be made intelligently and voluntarily. Defendants who plead guilty or nolo contendere must also waive the right to a jury trial in writing. Art. 45.025/45A.155, C.C.P. When a defendant waives a trial by jury, the judge then determines the punishment.

B. Payment of Fine – Plea of Nolo Contendere

Defendants may pay a fine by mail or by delivering the payment to the court in person or through the defendant's counsel. The amount accepted by the court constitutes a written waiver of a jury trial and a finding of guilty in open court, as though a plea of nolo contendere had been entered by the defendant. After a clerk receives the payment, the clerk must give the case to the judge to formally accept the payment. After the judge enters a judgment, the clerk notes the judgment on the docket. Art. 27.14(c), C.C.P.

C. Appearances

Defendants who do not wish to contest their cases must still make some type of appearance to dispose of their case. Adult defendants may appear in person or by counsel in open court, by mail, by delivering a plea and waiver of jury trial to the court, or by payment of the fine and costs. Art. 27.14, C.C.P.

1. Open Court

a. Identifying Defendant and Hearing Plea

Adult defendants generally may appear in person or by counsel in open court to enter a plea. Art. 27.14(a), C.C.P. At this point, the judge identifies the defendant, explains the charge, and requests a plea. This procedure is sometimes referred to as the arraignment. However, there is no statutory requirement for an arraignment in a municipal court like there is in criminal cases in a county or district court. Art. 26.02, C.C.P. However, like at an arraignment, the purpose of a defendant's presence at an appearance docket in a municipal court is typically used to identify the defendant and to hear the defendant's plea.

b. Required Inquiry on Sentencing

During or immediately after imposing the sentence in open court, the judge is required to inquire into whether the defendant has sufficient resources to immediately pay all or part of the fine and costs. Art. 45.041(a-1)/45A.252(a), C.C.P. If the judge determines that the defendant does not have sufficient resources, then the judge shall determine which alternatives to payment are appropriate under the law. Alternatives to payment could include installment payments or community service.

Practice Note

A conversation about personal finances in open court can often be an uncomfortable process for both the judge and the defendant. One practice is that the court instruct defendants to submit any documentation regarding financial status or income ahead of time or separately for the judge to review. The majority of municipal judges across the state were already asking, "can you pay this today?" prior to the law explicitly requiring the inquiry. But courts should give thought to the process and procedure to give the defendant a meaningful opportunity to provide this information.

2. Delivery of Plea in Person

Adult defendants can make an appearance by delivering in person to the court a plea of guilty or nolo contendere and a waiver of jury trial. Art. 27.14(b), C.C.P. If the court receives the plea and waiver before the defendant is scheduled to appear, the court shall dispose of the case without requiring a court appearance by the defendant. If the court receives the plea and waiver after the time the defendant is scheduled to appear in court but at least five business days before a scheduled trial date, the court shall also dispose of the case without requiring a court appearance by the defendant. The clerk usually receives these types of pleas and transmits them with the waiver of jury trial to the judge to accept and enter a judgment. Only the judge has the authority to request and accept a plea, and this duty may not be delegated to other court personnel. Attorney General Opinion H-386 (1974).

The court must give notice to the defendant either in person or by regular mail of the amount of any fine or costs assessed in the case, information regarding the alternatives to full payment of the fine or costs assessed, if the defendant is unable to pay that amount, and, if requested by the defendant, the amount of an appeal bond. Typically, the clerk provides notice when the defendant delivers the plea and waiver to the court. After the defendant receives the notice, he or she must pay the fine and costs assessed or post an appeal bond before the 31st day after receiving the notice. Art. 27.14(b), C.C.P.

3. Mailed Plea

Adult defendants may also make an appearance by mailing a plea of guilty or nolo contendere and a waiver of jury trial to the court. If the court receives the plea and waiver before the defendant is scheduled to appear or after the defendant is scheduled to appear but at least five business days before a scheduled trial date, the court simply disposes of the case without requiring a court appearance. Art. 27.14(b), C.C.P. If a defendant makes his or her appearance by mail, the court must notify the defendant by regular mail of the amount of the fine or costs assessed in the case, information regarding the alternatives to full payment of the fine or costs assessed, if the defendant is unable to pay that amount, and, if requested by the defendant, the amount of an appeal bond. The defendant must pay the fine and costs or post an appeal bond before the 31st day after receiving the notice. Art. 27.14(b), C.C.P.

A document is considered timely filed with the clerk of a court if it is deposited with the U.S. Postal Service in a first-class postage prepaid envelope properly addressed to the clerk on or before the date the document is required to be filed and is received not later than the 10th day after it is required to be filed. Do not count Saturdays, Sundays, or legal holidays when calculating this time

period. This is called the "Mailbox Rule." Art. 45.013/45A.054, C.C.P. Consequently, courts should consider waiting an additional 10 days after a person is scheduled to appear before preparing warrants or filing failure to appear or violation of promise to appear charges.

Practice Note

An important exception to the above rule is for a defendant charged with a misdemeanor involving family violence. A defendant charged with a misdemeanor involving family violence, as defined by Section 71.004 of the Family Code, cannot plea by mail and must make a court appearance to enter his or her plea. Before accepting the plea in court, the judge is then required to provide a family violence admonishment to the defendant, either orally or in writing, in open court. The specific admonishment language is provided in Article 27.14(e)(1) of the Code of Criminal Procedure.

4. Pleas by Defendants Detained in Jail

Judges may permit a defendant who is detained in jail to enter a plea of guilty, nolo contendere, or not guilty. Art. 45.023(b)/45A.151(c), C.C.P. If the defendant enters a plea of guilty or nolo contendere, the judge may, after giving the magistrate warnings required under Article 15.17 of the Code of Criminal Procedure and advising the defendant of the defendant's right to a trial by jury, accept the defendant's plea and:

- assess a fine, determine costs, and accept payment of the fine and costs;
- give the defendant credit for time served;
- determine whether the defendant is indigent; or
- discharge the defendant.

The statute also provides that a defendant who enters a plea in jail may make a motion for new trial not later than 10 days after the rendition of judgment and sentence. If such a motion is made, the judge shall grant the motion for new trial. Consequently, courts should be mindful when processing the payment of fines and costs following a plea by a defendant detained in jail that if the defendant makes a timely motion for new trial within the 10 days, the judge must grant that motion.

D. Alternative Sentencing

If a defendant does not want to contest a charge, he or she may request a driving safety course, teen court, or deferred disposition in lieu of having a judgment of conviction entered against him or her. Each of these alternatives requires the defendant to first plead guilty or nolo contendere. Unless the defendant is eligible for a driving safety course by statute, the decision to allow a defendant a form of alternative sentencing is completely in the judge's discretion.

These forms of alternative sentencing are also available after a finding of guilty at trial; therefore, alternative sentencing methods, including deferred disposition and driving safety courses, are discussed at length in the *Post-Trial Procedures* chapter of this Study Guide.

True or False

56. A defendant who pleads nolo contendere will be found guilty by the court. ____

57. A defendant involved in a collision who pleads nolo contendere to the traffic charge may have the plea held against him in a civil suit. ____

58. Pleading guilty means that a defendant admits to having committed the crime. ____

Provide a Short Answer

59. What is the purpose of an arraignment?_____

_____

60. When a defendant delivers a plea of guilty or nolo contendere to the court, what additional information must be included with the plea? _____

_____

61. May the court require an adult defendant's personal appearance if the defendant delivers the plea of guilty or nolo contendere and a waiver on or before his or her appearance date? ___

_____

62. When a defendant delivers the plea and waiver to the court and requests the amount of fine and appeal bond, what is the court required to do? _____

_____

True or False

63. When a defendant pays a fine and court costs without sending in a plea, the payment constitutes a plea of nolo contendere and a written waiver of jury trial. ____

64. If a defendant's charge is the result of having caused a traffic collision, the judge has the authority to require that person to make an appearance in open court. ____

65. A defendant has 31 days to either pay a fine or present the court with an appeal bond from the time that he or she receives notice of the amount owed following a plea by mail. ____

66. When a defendant mails a plea of guilty or nolo contendere and waiver of jury trial to the court, the court considers that the defendant has made an appearance. ____

67. If a defendant mails the plea and waiver to the court after his or her appearance date but at least five business days before a scheduled trial date, the court may make the defendant make a personal appearance. ____

68. A defendant who makes an appearance by mail has the right to appeal his or her case. ____

69. When the defendant mails the money to the court, he or she is pleading guilty. ____

70. If an adult defendant's attorney appears in open court, the defendant must also appear in open court. ____

71. If a judge takes a plea from a person detained in jail on a Class C misdemeanor, the judge must grant any motion for new trial if made within five days of the judgment. ____

72. Mailed pleas are considered timely made if deposited in the U.S. Postal Service properly addressed and stamped on or before the appearance date. ____

PART 4
FAILURE TO APPEAR

A. Failure to Appear (FTA)

When a defendant is released from custody and intentionally and knowingly fails to appear in accordance with the terms of release, he or she can be charged with the separate offense of Bail Jumping and Failure to Appear (FTA). The offense is a Class C misdemeanor if the offense for which the actor's appearance was required is punishable by fine only. Sec. 38.10, P.C. A defendant that has not been in custody and, consequently, has never promised to appear, cannot be charged with the offense of failure to appear. Remember, a person that has been detained by a peace officer and then released upon the issuance of a citation has been released from custody on the condition they subsequently appear in court. Likewise, a person who has been arrested and released by a magistrate either on bail or under a subsequent order to appear has been released from custody on the condition they subsequently appear in court.

B. Violate Promise to Appear (VPTA)

A person who willfully violates a written promise to appear in court commits a misdemeanor regardless of the disposition of the charge on which the person was arrested. Sec. 543.009, T.C. The offense of Violate Promise to Appear (VPTA) may be charged only when the underlying offense is an offense in Subtitle C of Title 7 of the Transportation Code, i.e., a Rules of the Road offense (found in Chapters 541-600). Since no specific penalty is provided for the offense, the court must look to the general penalty found in Section 542.401 of the Transportation Code, which is a fine of not less than $1 or more than $200.

C. Filing FTA or VPTA

Only the prosecutor, as a representative of the State of Texas, may bring charges and decide whether to file an FTA or VPTA. Clerks and judges do not make this decision. Without direction from the prosecutor, a court cannot create a separate case for either of these criminal offenses. Both charges are initiated by a sworn complaint and filed on a new docket with a new cause number. Usually the bailiff, warrant officer, marshal, or clerk is the affiant.

Practice Note

What about a warrant for failing to appear? A court may not issue a warrant for failure to appear at the initial court setting unless certain requirements have been met, including sending notice of a date and time within 30 days when the defendant may appear and receive an explanation of the consequences. These are outlined in Article 45.014(e)/45A.103(e) of the Code of Criminal Procedure and further discussed below in Part 5 under *Warrant of Arrest*.

True or False

73. A defendant who has been served with a summons and then fails to appear should be charged with the offense of Failure to Appear. ____
74. A defendant who is released without bail and then fails to appear may not be charged with the offense of Failure to Appear. ____
75. The culpable mental state of the offense of Failure to Appear is intentionally or knowingly. ____
76. The offense of Failure to Appear is a Class C misdemeanor if the offense for which the person was required to appear is also a Class C misdemeanor. ____
77. The maximum amount of fine that may be assessed for the offense of Failure to Appear is $200. ____
78. A municipal court clerk may sign as affiant on a complaint for Failure to Appear. ____
79. The culpable mental state for the offense of Violation of Promise to Appear is willful conduct. ____
80. If the charge for which the defendant's appearance was required is dismissed, the offense of Violation of Promise to Appear must also be dismissed. ____
81. When a defendant charged with the offense of Failure to Maintain Financial Responsibility fails to appear, he or she may be charged with Violation of Promise to Appear. ____
82. The maximum fine that a court may assess for the offense of Violation of Promise to appear is $200. ____

PART 5
WARRANT, CAPIAS, CAPIAS PRO FINE, AND SUMMONS

What is a "writ?" Originally, a writ was a letter or command from the King, usually written in Latin and physically sealed. Now, a "writ" is referred to as a written order of the court ordering a person to perform or refrain from some specified act. Municipal courts deal with several types of writs, including an arrest warrant and a capias. For a judge to issue a warrant or capias, the judge must have probable cause to issue such an order.

Although municipal court clerks are not authorized to determine probable cause, they typically prepare affidavits of probable cause for peace officers and others. After an affidavit is sworn, it is presented to a judge or a magistrate who determines if the probable cause in the affidavit is sufficient to issue an arrest warrant. After a judge issues a warrant, the clerk's role as custodian of the records is to coordinate with the police department for the handling of the warrant. Some courts give the police department a copy of the warrant; some give them the original. Some courts are connected electronically with the police department; some courts provide the police department with a list of defendants to whom warrants have been issued.

Article 15.26 of the Code of Criminal Procedure makes it the official duty of the magistrate's clerk to be the custodian of arrest warrants or affidavits made in support of the warrant. Warrants and affidavits are public information after the warrants are executed. The clerk has an affirmative duty to make copies of warrants and supporting affidavits available for public inspection after the warrants are served.

A. Probable Cause

One of the cornerstones of American criminal law is the idea that there must be a reason before the government can deprive a person of his or her liberty. Both the United States and Texas Constitutions provide that no warrant shall issue, but upon probable cause. Amend. IV, U.S. Const.; Art. I, Sec. 9, Tex. Const. and Art. 1.06, C.C.P. The term probable cause can sometimes be difficult to precisely define, but courts have broadly defined it as the amount of evidence necessary to cause a person to believe someone has committed a crime. An arrest warrant, a summons, and a capias require probable cause before being issued.

Practice Note

A municipal court clerk lacks authority to determine probable cause. Only a judge or magistrate has the authority to determine whether probable cause exists. *Sharp v. State*, 677 S.W.2d 513 (Tex. Crim. App. 1984). Probable cause can be presented to a judge or magistrate by an affidavit or by additional wording contained in a complaint. The test in determining if a complaint shows probable cause is whether it provides a neutral and detached magistrate with sufficient information to support an independent judgment that probable cause exists for the issuance of a warrant. *Knox v. State*, 586 S.W.2d 504 (Tex. Crim. App. 1979).

B. Service of Process

1. Process Defined

Processes are written orders issued by a judge or a magistrate and include a warrant of arrest, capias, capias pro fine, and summons.

2. City Police Officers and Marshals

City police officers and marshals serve municipal court process under the same rules and laws governing the service of process by sheriffs and constables. Art. 45.202/45A.103, C.C.P. A city police officer or marshal may serve all process issuing out of a municipal court anywhere in the county in which the municipality is situated. If the municipality is in more than one county, they may serve process throughout those counties.

C. Warrant of Arrest

1. Defined

A warrant of arrest is a written order from a magistrate directed to a peace officer or some other person specially named to take a person into custody to be dealt with according to law. Art. 15.01, C.C.P.

2. Authority to Issue

A magistrate may issue a warrant of arrest for all classifications of offenses, misdemeanors to felonies. Municipal judges and city mayors are magistrates and have that additional authority to issue arrest warrants for higher crimes. Art. 2.09/2A.151, C.C.P. A municipal judge may also issue

arrest warrants as a judge for fine-only misdemeanors filed in a municipal court. Art. 45.014/45A.104, C.C.P.

a. Issued by Judge

When a sworn complaint or affidavit based on probable cause is filed, the judge may issue a warrant of arrest for charges over which the judge has jurisdiction. Art. 45.014/45A.104, C.C.P.

A warrant issued pursuant to Article 45.014/45A.104 of the Code of Criminal Procedure must:

- issue in the name of "The State of Texas;"
- direct the proper peace officer or some other person specially named in the warrant;
- include a command that the body of the accused be taken and brought before the authority issuing the warrant, at the time and place therein named;
- state the name of the person whose arrest is ordered, if known, and if not known, describes the person as in the complaint;
- state that the person is accused of some offense against the laws of the State naming the offense; and
- be signed by the judge and name his or her office in the body of the warrant or in connection with his or her signature.

Note that an arrest warrant issued by a municipal judge under Chapter 45/45A of the Code of Criminal Procedure orders the officer to bring the arrested person before the court. Additionally, Article 45.014(e)/45A.104(e) of the Code of Criminal Procedure requires that, before an arrest warrant may issue for the defendant's failure to appear at the initial court setting, the court must provide by telephone or regular mail notice that includes:

- a date and time, within a 30-day period following the date that notice is provided, when the defendant must appear;
- name and address of the court with jurisdiction;
- information regarding alternatives to full payment of fine or costs if the defendant is unable to pay that amount; and
- an explanation of the consequences if the defendant fails to appear.

b. Issued by Magistrate

A magistrate may issue a warrant of arrest in any case in which the magistrate is authorized by law to verbally order the arrest of an offender; when a person makes an oath before the magistrate that a person has committed an offense against the laws of the State; and in any case named in the Code of Criminal Procedure where the magistrate is specially authorized to issue a warrant. Art. 15.03, C.C.P.

Article 15.02 of the Code of Criminal Procedure provides that a warrant issued by a magistrate must:

- issue in the name of "The State of Texas;"
- specify the name of the person whose arrest is ordered, if known; if unknown, then some reasonably definite description of the person;
- state that the person is accused of some offense against the laws of the State naming the offense; and

- be signed by the magistrate and name his or her office in the body of the warrant or in connection with his or her signature.

A warrant issued by a magistrate, except a mayor, extends to every part of the State, and any peace officer to whom the warrant is directed is authorized to execute it in any county in the State. Art. 15.06, C.C.P. The peace officer receiving the warrant must execute it without delay.

The officer or person executing a warrant of arrest shall, without unnecessary delay but no later than 48 hours after the arrest, take the person or have him or her taken before the magistrate who issued the warrant or before the magistrate named in the warrant if the magistrate is in the same county where the person is arrested. If the issuing or named magistrate is in another county, the person arrested shall without unnecessary delay be taken before some magistrate in the county in which the person was arrested. Art. 15.16, C.C.P. If it is more expeditious to the person arrested, the officer may take the person before a magistrate in a county other than the county of arrest. Art. 15.16(b), C.C.P.

c. Issued by Mayor

A warrant issued by a mayor as a magistrate cannot be executed in another county other than the one in which it is issued. The exception to this is when it is endorsed by a judge of a court of record, in which case it may be executed anywhere in the State, or if it is endorsed by a magistrate in the county in which the accused is found, it may be executed in that county. If it is endorsed by a magistrate where the accused is found, the endorsement is as follows: "Let this warrant be executed in the County of _____." If the warrant is endorsed by a judge of a court of record, the endorsement is "Let this warrant be executed in any county of the State of Texas." Any other words of the same meaning will be sufficient. The endorsement shall be dated and signed officially by the magistrate making it. Art. 15.07, C.C.P.

D. Capias

1. Defined

A capias is a writ issued by the judge of the court having jurisdiction of a case after commitment or bail and before trial or by a clerk at the direction of the judge and directed "to any peace officer of the State of Texas," commanding the officer to arrest a person accused of an offense and bring the arrested person before that court immediately on a day or at a term stated in the writ. Art. 23.01, C.C.P.

2. Authority to Issue

In misdemeanor cases, the capias issues from a court having jurisdiction of the case. Art. 23.04, C.C.P. Where a forfeiture of bail is declared, a capias shall be immediately issued for the arrest of the defendant. Art. 23.05, C.C.P.

Municipal court clerks may prepare the capias, but the municipal judge must issue the capias. Although Article 23.01 provides that the capias may be issued by the clerk at the direction of the judge, this provision only applies to district clerks under certain conditions. The 80th Legislature codified the *Sharp v. State* case that involved a City of Houston municipal court clerk who issued a capias writ for a defendant accused of violating the "helmet safety law." The defendant was later arrested on that writ and, as a result of this arrest, was charged with and convicted of possession of methamphetamine. The appellate court held that authority was not vested in the deputy

municipal court clerk under Texas law to issue a capias. Because a magistrate had failed to direct the issuance of the capias and to determine probable cause, the defendant's arrest was illegal, and the evidence discovered as a direct result of the arrest was suppressed.

3. Requisites

Article 23.02 of the Code of Criminal Procedure provides the requirements of a capias. It must:

- run in the name of "The State of Texas;"
- name the person whose arrest is ordered, or if unknown, describe the person;
- specify the offense of which the defendant is accused and state that the offense is against the penal laws of the State;
- name the court to which and the time when it is returnable (note that a capias does not lose its force if not executed and returned at the time fixed in the writ; rather it may be executed at any time afterward and all proceedings under such capias shall be as valid as if the same had been executed and returned within the time specified in the writ. Art. 23.07, C.C.P.); and
- be dated and attested to officially by the authority issuing the same.

4. Return

A return of the capias shall be made to the court from which it is issued. If it has been executed, the return shall state what disposition has been made of the defendant. If it has not been executed, the cause of the failure to execute it shall be fully stated. If the defendant has not been found, the return shall further show what efforts have been made by the officer to find the defendant, and what information the officer has as to the defendant's whereabouts. Art. 23.18, C.C.P.

The clerk is responsible for coordinating the handling of the capias between the court and police department. If a peace officer is unable to serve the capias and returns it to the court, the clerk should bring this information to the attention of the judge and the prosecutor.

E. Capias Pro Fine

A capias pro fine is an order of the court directing a peace officer to bring a defendant who fails to satisfy a judgment before the court immediately or to place the defendant in jail until the business day following the date of the defendant's arrest if he or she cannot be brought before the court immediately. Art. 45.045/45A.259, C.C.P. This writ is only issued post-judgment after a hearing and is discussed in the *Post-Trial Procedures* chapter of this Study Guide.

F. Summons

1. Defined

A summons gives notice to a person, association, or corporation that a charge has been filed against him or her in a court. It provides the address of the court and a date and time the defendant is required to appear.

2. Requisites

a. For a Defendant

A summons issued by a judge for a misdemeanor follows the same form and procedure as in a felony case. Art. 23.04, C.C.P. The summons is in the same form as a capias, except it summonses a defendant to appear before the proper court at a stated time and place. Art. 23.03(c), C.C.P.

Article 23.03(d) of the Code of Criminal Procedure requires that a summons include the following notice, clearly and prominently stated in English and in Spanish: "It is an offense for a person to intentionally influence or coerce a witness to testify falsely or to elude legal process. It is also a felony offense to harm or threaten to harm a witness or prospective witness in retaliation for or on account of the service of the person as a witness or to prevent or delay a person's service as a witness to a crime."

A summons issued by a magistrate for a defendant is in the same form as a warrant, except it summonses a defendant to appear before a magistrate at a stated time and place. Art. 15.03(b), C.C.P.

b. For a Corporation or Association

If the court is issuing a summons for a corporation or association, the form of the summons is different. It shall be in the form of a capias and shall provide that the corporation or association appear before the court named at or before 10 a.m. of the Monday next after the expiration of 20 days after it is served. If service is upon the Secretary of State or the Commissioner of Insurance, the summons shall provide that the corporation or association appear at or before 10 a.m. of the Monday next after the expiration of 30 days after service. A certified copy of the complaint must be attached to the summons. Art. 17A.03, C.C.P.

3. Authority to Issue

a. Judicial Authority

In a misdemeanor case, the summons is issued by a court having jurisdiction in the case. Art. 23.04, C.C.P. This summons should not be confused with a jury summons, which is a notice a clerk sends to a prospective juror requiring his or her appearance for jury service. A summons may also be issued for a corporation or association under Article 17A.03, C.C.P.

In most cases, the summons for a defendant may be issued only upon request of the attorney representing the State. Art. 23.04, C.C.P. However, when a complaint is filed against a corporation or association, the clerk is directed by statute to issue a summons to the corporation or association. Art 17A.03, C.C.P.

b. Magistrate Authority

A magistrate may issue a summons for Class A and B misdemeanors and felonies, and in any case where a warrant may be issued. Art. 15.03, C.C.P.

4. Service

a. On the Defendant

Articles 23.03(c) and 15.03(b) of the Code of Criminal Procedure provide for how a peace officer serves a summons. The methods of service are:

- delivering a copy to the defendant personally;
- leaving it at the defendant's dwelling house or usual place of abode with some person of suitable age and discretion residing therein; or
- mailing it to the defendant's last known address.

b. On the Corporation

Peace officers can serve a summons on a corporation in the following ways:

- by personally delivering a copy of it to the corporation's registered agent for service;
- if a registered agent has not been designated or the officer cannot locate the agent after diligent effort, by personally serving the president or a vice president of the corporation; or
- if the attempt to affect service is unsuccessful, by serving the summons on the Secretary of State by personally delivering a copy of it to the Secretary or the Assistant Secretary of State, or to any clerk in charge of the corporation department at the Secretary of State's Office. Art. 17A.04, C.C.P.

c. On the Association

A peace officer shall personally deliver a copy of a summons to a high managerial agent at any place where business of the association is regularly conducted. If the officer certifies on the return that diligence was used to attempt service but failed to serve a high managerial agent or employee of suitable age and discretion, then the officer may serve it to any member of the association. Art. 17A.05, C.C.P.

5. Enforcement

When a defendant fails to respond to a summons issued by a judge who has jurisdiction over the case, the judge enforces the summons by issuing a capias. Art. 23.03(b), C.C.P.

If counsel fails to appear for the corporation or association, it is deemed to be present in person for all purposes and the court shall enter a plea of not guilty and the court may proceed with trial, judgment, and sentencing. Art. 17A.07, C.C.P. No individual may be arrested upon a complaint, judgment, or sentence against a corporation or association. Art. 17A.03(b), C.C.P.

When a defendant fails to respond to a summons issued by a magistrate, the magistrate enforces the summons by issuing a warrant of arrest. Art. 15.03(b), C.C.P.

G. Fees Attached to Writs

1. Arrest Reimbursement Fee

Courts must collect a $5 reimbursement fee upon conviction when a peace officer issues a written notice to appear in court for a violation of a traffic law, municipal ordinance, or penal law of this

State or makes a warrantless arrest. Art. 102.011(a) C.C.P. The definition of conviction for the purpose of collecting the arrest fee is defined in Section 133.101 of the Local Government Code and provides that a person is considered to have been convicted in a case if:

- a judgment, a sentence, or both a judgment and a sentence are imposed on the person;
- the person receives community supervision, deferred adjudication, or deferred disposition; or
- the court defers final disposition of the case or imposition of the judgment and sentence.

Note that if a charge is initiated by the filing of a complaint, such as a citizen complaint or a code enforcement officer's complaint, the arrest fee may not be collected. Why? There has been no arrest and release with the issuance of a citation in these instances. Likewise, if a peace officer files a charge by complaint and obtains a warrant of arrest, the court may not collect the arrest fee. The arrest fee is not to be collected for the offenses of failure to appear and violation of promise to appear since these charges are initiated by complaint and a warrant is issued.

2. Warrant Reimbursement Fee

Warrant reimbursement fees are costs collected because of services performed by a peace officer. Article 102.011(a)(2) of the Code of Criminal Procedure requires that a $50 warrant reimbursement fee be collected upon conviction if a warrant, capias, or capias pro fine is processed or executed by a peace officer.

H. Search Warrants

1. Defined

A search warrant is a written order issued by a magistrate and municipal judges are magistrates under Article 2.09/2A.151 of the Code of Criminal Procedure. The search warrant directs a peace officer to search and seize property or things and bring the seized property before the magistrate. Art. 18.01, C.C.P. A search warrant must be supported by a sworn affidavit setting forth substantial facts establishing probable cause for its issuance. This affidavit is public information once the search warrant is executed, unless it has been ordered to be sealed, and the clerk must make a copy of the affidavit available for public inspection during normal business hours. Art. 18.01(b), C.C.P.

2. Authority to Issue

Among municipal judges, generally only attorneys sitting in a court of record may issue evidentiary search warrants to order seizure of non-contraband items. The exception to this mere evidence rule is if the county does not have a municipal court of record or a county judge that is an attorney, then any magistrate may issue an evidentiary search warrant. Art. 18.01(i), C.C.P. Additionally, Article 18.01 of the Code of Criminal Procedure authorizes any magistrate who is a licensed Texas attorney to issue an evidentiary search warrant to collect a blood specimen from persons accused of certain intoxication or alcohol offenses who refuse to submit to a breath or blood alcohol test. Art. 18.01(j), C.C.P. Consequently, an attorney judge of a municipal court of record can generally issue evidentiary warrants, any attorney judge can issue a blood warrant, and only those non-attorney judges in counties without attorney judges in a municipal court of record or a county court may issue evidentiary search warrants, including those to collect blood specimens.

3. Nuisance Abatement

The governing body of a municipality may, by ordinance, provide authority for a judge of a municipal court of record to issue a search warrant for the purpose of investigating a health and safety or nuisance abatement ordinance violation. Sec. 30.00005, G.C.

Also, a municipality may, by ordinance, provide authority for a municipal judge of a court of record to issue a seizure warrant for the purpose of securing, removing, or demolishing property that is a nuisance or removing debris from a property. Sec. 30.0005, G.C.

Answer True/False or Provide a Short Answer

83. Clerks are required to have copies of warrants and affidavits on file for public viewing after the warrants have been executed. ____
84. The amount of evidence necessary for a finding of probable cause is evidence that causes a judge to believe that a specific person has committed a crime. ____
85. A judge does not need probable cause to issue a capias. ____
86. Complaints alone are enough evidence to establish probable cause. ____
87. Probable cause must always be in a separate affidavit from a complaint. ____
88. Judges must always remain neutral when assessing probable cause. ____
89. Why can a municipal court clerk not issue a warrant or capias? _____
_____
90. When a city is situated in only one county, where may city peace officers execute municipal court warrants, summons, and capiases? _____
91. When a city is situated in more than one county where may city peace officers execute warrants? _____
92. May a city peace officer execute a warrant of arrest in a neighboring city? _____
93. What kind of order is a warrant of arrest? _____
94. Mayors do not have the authority to issue warrants for felonies. ____
95. In what name must a warrant be issued? _____
96. To whom is a warrant directed? _____
97. When a person is arrested on a warrant, where should the officer take that person? _____
_____
98. If the court does not know the name of the person for whom the warrant is being issued, what description must be on the warrant? _____
99. Must the warrant state the offense for which the person is being charged? _____
100. Where must the judge's office be named in the warrant? _____
101. A warrant issued by a magistrate must command that the person be brought before a magistrate. ____
102. The officer's first responsibility when he or she arrests a person is to take the person before the magistrate named in the warrant within 10 hours of the arrest. ____

103. If a person is arrested in a county other than the one from which the warrant was issued, the peace officer must transport the person immediately to the magistrate who issued the warrant. ____

104. Who has the authority to serve a warrant issued by a magistrate or a municipal judge? _____

105. A warrant issued by a municipal judge may only be served in the county in which the city is located. ____

106. A warrant issued by a judge must command that the person be brought before the court. ____

107. A judge can issue a warrant of arrest for a defendant charged with a Class C or fine-only misdemeanor in the judge's court upon the filing of a sworn complaint or probable cause affidavit. ____

108. The judge does not need to determine probable cause before issuing the arrest warrant for a defendant who has failed to appear in the court. ____

109. Who must endorse a warrant issued by a mayor so that it can be served in any county in the state? _____

110. What is the required wording of the endorsement? _____

_____

111. All mayors have authority to issue a capias. ____

112. A judge who has the authority to hear a case has the authority to issue a capias. ____

113. A municipal court clerk has the authority to issue a capias. ____

114. The court must know the name of the defendant before it can issue a capias. ____

115. The capias does not have to state a time when it is returnable to the court. ____

116. When a defendant is arrested on a capias, the officer must bring the person before the court immediately or on a certain day stated in the capias. ____

117. When must a court issue a capias? _____

118. What happens if a peace officer does not execute a capias by the date fixed in the capias? _____

119. Where is a capias returned to? _____

120. What information is required to be on the return when the peace officer was unable to execute the capias? _____

121. A municipal court clerk has the authority to issue a summons. ____

122. A municipal judge may issue a summons. ____

123. Mayors have no authority to issue a summons. ____

124. A municipal court summons must follow the same form and procedure of the summons issued by the district court. ____

125. A summons issued by the municipal judge is supposed to be in the same form as a felony warrant of arrest. ____

126. A summons for a corporation or association requires the court to wait 20 days after service on the corporation or association before requiring an appearance by counsel for the corporation or association. ____

127. The summons does not have to contain a notice in Spanish that it is an offense to intentionally influence, coerce, or harm a witness. ____

128. A summons tells the defendant to appear in court at a stated time and place. ____

129. The only time that a municipal judge may issue a summons is when the city prosecutor makes a request for its issuance. ____

130. A summons issued for a corporation or associate must be served in person. ____

131. A copy of the summons must be personally delivered to a defendant. ____

132. A summons may be served by mailing it. ____

133. Municipal court clerks have the authority to serve a summons. ____

134. What is the form of a summons issued by a magistrate?_____

_____

135. What does a summons issued by a magistrate do? _____

_____

136. When may a magistrate issue a summons? _____

_____

137. When a defendant fails to respond to a summons issued by the court (judge), what type of order does the court issue? _____

138. When a defendant fails to respond to a summons issued by a magistrate, what type of order does the magistrate issue? _____

139. Courts only collect the arrest fee when a defendant is arrested and taken to jail. ____

140. The arrest reimbursement fee is $5. ____

141. The city must remit $1 of the arrest reimbursement fee to the State for every arrest that a city officer makes. ____

142. The warrant reimbursement fee can be collected upon conviction of a defendant only when a peace officer executes the warrant. ____

143. If another law enforcement agency executes the warrant, the court is required to send the $50 warrant reimbursement fee to the other law enforcement agency even if the defendant is found not guilty. ____

144. The warrant reimbursement fee must be allocated to the police department budget. ____

145. A search warrant is a verbal order of a magistrate. ____

146. A search warrant may command a peace officer to search for and seize a person's property. ____

147. A municipal judge who is not a licensed attorney may issue any type of search warrant. ____

148. After a search warrant is executed, the clerk must make a copy of the affidavit and have it available to the public. ____

PART 6
BAIL

A. Definition of Bail

"Bail" is the security given by the accused that he or she will appear and answer before the proper court the accusation brought against him or her and includes bail bonds and personal bonds. Art. 17.01, C.C.P.

B. When Bail is Fixed

Defendants accused of fine-only offenses have a constitutional and statutory right to bail. Art. I, Sec. 11, Tex. Const.; Art. 1.07, C.C.P. Bail in a fine-only misdemeanor case may be set in two different instances. A person who is arrested must be taken before a magistrate for certain warnings under Article 15.17 of the Code of Criminal Procedure. The magistrate, after giving the required warnings, shall admit the person to bail if allowed by law; thus, the first instance would be bail set by the magistrate prior to formal charges being filed. The second instance would be bail set by the judge. However, a municipal judge may only require a defendant to give bail to secure the defendant's appearance under limited circumstances (i.e., the defendant fails to appear with respect to the applicable offense, the judge determines the defendant has sufficient resources or income to give a bail bond, and the judge determines the bail bond is necessary to secure the defendant's appearance in accordance with the Code of Criminal Procedure). Art. 45.016/45A.107, C.C.P.

Many of the rules regarding bail are applicable to all courts. They apply when a judge or magistrate sets and takes bail, when a peace officer takes bail, or when a witness is required to give bail. Art. 17.38, C.C.P.

In 2021, the Texas Legislature made substantial changes regarding bail set by magistrates in criminal cases other than Class C misdemeanors.

C. Records of Bail

A magistrate or other officer who sets the amount of bail or who takes bail must record the following information in a well-bound book:

- the name of the person whose appearance the bail secures;
- the amount of bail;
- the date bail is set;
- the magistrate or officer who sets bail;
- the offense or other cause for which the appearance is secured;
- the magistrate or other officer who takes bail;
- the date the person is released; and
- the name of the bondsman, if any. Art. 17.39, C.C.P.

If a state law relating to the keeping of records by a local government officer or employee requires the records to be kept in a "book," "record book," or "well-bound book," or contains any similar requirement that a record be maintained in bound paper form, the record may be maintained on microfilm or stored electronically in accordance with the requirements of Chapters 204 and 205 of

the Local Government Code and rules adopted under those chapters, unless the law specifically prohibits those methods. Sec. 201.004, L.G.C.

D. Bail Bonds

There are two types of bail bonds: surety bonds and cash bonds.

1. Surety Bond

A surety bond is a written undertaking entered into by a defendant and the defendant's sureties guaranteeing the appearance of the defendant (the principal) before some court or magistrate to answer a criminal charge. Art. 17.02, C.C.P. If the defendant fails to appear, the surety or sureties are liable to the court for the bond amount.

2. Cash in Lieu of Surety (Cash Bond)

A defendant in any criminal action may deposit with the custodian of funds of the court in which the prosecution is pending money in the amount of the bond in lieu of having sureties. Art. 17.02, C.C.P.

Cash funds deposited must be receipted by the officer receiving the money and deposited with the custodian of the funds of the court (usually, the city designates the court clerk as the custodian of the court funds). Article 17.02 of the Code of Criminal Procedure requires that the bond shall be refunded to the person whose name is on the receipt issued when the bond was posted. If a receipt is not produced, then the bond can be refunded to the defendant. The law is silent, however, as to how long the court should wait for a receipt to be produced by a third party.

E. Personal Bond

In certain instances, a magistrate has the discretion to release a person on a personal bond, in lieu of having sureties. Art. 17.03, C.C.P. This means the defendant is giving their word that they will appear and if not, faces potential civil liability for the amount of the bond. There is a notable difference between how a magistrate may utilize a personal bond and how a personal bond is used in municipal court proceedings. When a municipal judge requires a defendant to post a bond, a personal bond is what is generally required. Art. 45.016/45A.107, C.C.P.

PART 7
BOND FORFEITURES

When a defendant posts bond, he or she agrees as a condition of being released to appear in court. Failure to comply with the conditions of the bond causes the court to declare forfeiture of the bail. The term "forfeiture" simply means to become liable for the payment of a sum of money because of a certain act (typically, non-appearance). A bond forfeiture is a lawsuit to recover the amount of a bond from a defendant or surety because of the violation of the conditions of the bond. Generally, Chapter 22 of the Code of Criminal Procedure governs bond forfeiture proceedings. However, Article 45.044/45A.256 of the Code of Criminal Procedure provides an alternative method of forfeiting a cash bond applicable to municipal and justice courts.

A. Procedures when Forfeited

When a defendant fails to appear in court, bail is required to be forfeited. Art. 22.01, C.C.P. Before bail is forfeited, the defendant's name must be called distinctly at the courthouse door. Art. 22.02,

C.C.P. If the defendant fails to appear or to answer, the clerk prepares a judgment nisi for the judge's signature. A judgment nisi recites the amount of the forfeiture, who is liable for the judgment, and that the judgment will be made final unless good cause is shown as to why the defendant did not appear.

The clerk enters the judgment nisi on the scire facias docket, which is a civil docket especially for bail forfeitures. The clerk then prepares a "citation," which is a civil notice of the forfeiture proceeding. For much more detailed information on bond forfeiture proceedings, see the chapter on *Bond Forfeitures* in the Level II Study Guide.

B. Alternative Procedures for Forfeiting a Cash Bond

In cases involving Class C misdemeanors, Article 45.044/45A.256 of the Code of Criminal Procedure permits forfeiture of a cash bond for the fine and costs if the defendant:

- enters a written and signed plea of nolo contendere and a waiver of jury trial; and
- fails to appear according to the terms of the defendant's release.

The judge must immediately notify the defendant of the conviction, forfeiture, and the right to apply for a new trial within 10 days from the judgment. If the defendant applies for a new trial, the court must permit the defendant to withdraw the previously entered plea of nolo contendere and waiver of jury trial.

If the defendant does not request a new trial within 10 days of the judgment, the judgment becomes final, and the court reports the court costs to the State Comptroller and turns the fine portion of the bond over to the general revenue fund of the city. If the defendant has been in jail, the court must also give jail-time credit at $150 for a period of time specified in the judgment. Period of time is defined to mean not less than eight hours or more than 24 hours. This may result in the court refunding part or all of the bond.

Answer True/False or Provide a Short Answer

149. When a defendant posts a bond with the court, he or she is promising to appear in court at a later date. ____

150. Only a magistrate may set a bond. ____

151. Defendants may not use cash as security on a bail bond. ____

152. When the court allows a personal bond, the defendant is released from custody on the defendant's word that he or she will appear in court without sureties or other security. _____

153. A cash bond received by a peace officer must be deposited with the custodian of the funds of the court. ____

154. Do defendants charged with Class C misdemeanors in municipal court have to follow the same bail rules as someone posting a bond for trial in district court? _____

155. When a defendant complies with the conditions of a bond by making all required appearances in court, may a court keep the bond to pay the fine if the defendant is convicted? _____

156. When is the court required to forfeit a defendant's bail? _____

157. When a defendant fails to appear after having posted a bond, what must the court do? ____

_____

158. What is a judgment nisi? _____

_____

159. What is a scire facias docket? _____

_____

160. When may a municipal judge forfeit a cash bond for a Class C misdemeanor without going through the bond forfeiture proceedings in Chapter 22? _____

_____

161. If the defendant wants a new trial, what must the defendant do? _____

_____

162. When the defendant requests a new trial, what must the court do? _____

_____

163. When the defendant does not request a new trial, what does the court do with the bond money?

_____

_____

_____

ANSWERS TO QUESTIONS

PART 1

1. No, because no complaint has been filed, so the court has no jurisdiction over the case. The charging instrument must be filed with the court to vest jurisdiction of a case in the court.
2. An officer shall issue a citation if the offense charged is speeding or use of a wireless communication device under Section 545.4251, T.C., or violation of the open container law under Section 49.031, P.C., and the person makes a written promise to appear.
3. True.
4. False (all defendants have a right to notice).
5. False (defendants are entitled to notice not later than the day before any proceeding).
6. False (the citation is in lieu of the arrest, as a substitute for the custodial arrest).
7. True.
8. A sworn complaint must be filed when the defendant fails to appear or when the defendant pleads not guilty unless the defendant and prosecutor agree in writing to proceed on the citation.
9. The clerk
10. The defendant is entitled to notice of the charge he or she is accused of committing and knowing the date may help the defendant prepare a defense. Also, the complaint must be filed within the statute of limitations.
11. A municipal judge, court clerk, deputy court clerk, city secretary, city attorney, or deputy city attorney.
12. The certificate of the person before whom the complaint is sworn. It is the clause written at the foot of a complaint stating when and before whom the complaint was sworn.
13. "Municipal Court of/in _____, Texas."
14. Yes, under Article 45.012(g)/45A.052 of the Code of Criminal Procedure.
15. To authenticate the acts of the judge and clerk.
16. Intentionally, knowingly, recklessly, criminal negligence.
17. Intentionally, knowingly, or recklessly.
18. If the ordinance violation is punishable by a fine exceeding $500.
19. The same case. The sworn complaint replaces the citation.
20. When the defendant waives the filing of a sworn complaint, the prosecutor and defendant agree in writing, and the agreement is filed with the court.
21. A sworn complaint.
22. True.
23. True.
24. True.
25. True.
26. True.
27. True.
28. False (the complaint must state the offense occurred in the territorial limits of the city).

29. False.
30. False.
31. False.
32. True.
33. True.
34. True.
35. False. However, there is an important notable exception. “School offenses” alleged against a child require a complainant to have personal knowledge. See, Sec. 37.146(a)(1), Education Code.
36. False.
37. True.
38. False.
39. False.
40. True.
41. True.
42. False.
43. False.
44. True.
45. False (it is not within the court’s purview).
46. True.

PART 2

47. The judge or clerk is noting brief entries of the proceedings in a particular case.
48. The law requires that a judge keep a docket.
49. The maintenance of a docket is a ministerial duty. A clerk may enter proceedings on a docket because the law specifically states the information that must be contained in it.
50. True.
51. False.
52. False (the docket must also contain the return date).
53. True.
54. The judge.
55. No.

PART 3

56. True.
57. False.
58. True.
59. Arraignment is the procedure where the judge identifies the defendant, explains the charge, and requests a plea. There is no specific term for this process in the procedures that government municipal courts. Consequently, “arraignment” is commonly misused to describe a defendant’s initial appearance in municipal court.

60. The waiver of jury trial.
61. Generally, Art. 27.14(b) of the Code of Criminal Procedure provides for entry of a plea by mail. That subsection, however, has an important exception for a defendant charged with a misdemeanor involving family violence. In that case, the defendant is required to appear in open court to enter a plea. Further, the judge is required to admonish the defendant using specific language regarding family violence that is provided by the Code of Criminal Procedure.
62. The court must give the defendant notice of any fine and costs assessed, information regarding alternatives to full payment if the defendant is unable to pay the amount, and the amount of the appeal bond that the court will approve.
63. True.
64. False.
65. True.
66. True.
67. False.
68. True.
69. False (it is considered a no contest plea).
70. False.
71. False (the judge must grant the motion if made within 10 days of the judgment).
72. True.

PART 4

73. False (the defendant has not been in or released from custody; custody is a required element of the offense of Failure to Appear).
74. False (the offense of Failure to Appear occurs when a person is lawfully released from custody, *with or without bail*, on condition that he subsequently appear, and the person intentionally or knowingly fails to appear in accordance with the terms of his release).
75. True.
76. True.
77. False(the maximum fine is $500).
78. True.
79. True.
80. False (the two are separate charges).
81. False (Failure to Maintain Financial Responsibility is not a Rules of the Road offense; the correct charge would be Failure to Appear).
82. True.

PART 5

83. True.
84. True.
85. False.

86. False. However, probable cause may exist if there is additional information which causes the judge to believe that this defendant has committed the crime alleged in the complaint.
87. False.
88. True.
89. A municipal court clerk may not issue a warrant or capias because he or she does not have the authority to determine probable cause. Only a judge or magistrate may determine probable cause.
90. The city police officer may only serve process in the county in which the city is located.
91. The city police officer may execute warrants throughout each county in which the city is located.
92. It depends on whether the neighboring city is located in the same county in which the peace officer's city is located.
93. A written order; a writ.
94. False (as a magistrate, a mayor does have the authority. See Art. 2.09/2A.151, C.C.P.).
95. In the State of Texas.
96. To the proper officer.
97. The officer is required to bring the accused before the court if the judge issued the warrant or before the magistrate if the warrant was issued by a magistrate.
98. The description in the complaint if the warrant is issued by a judge, or a reasonably definite description if the warrant is issued by a magistrate.
99. Yes.
100. Either in the body of the warrant or in connection with the judge's signature.
101. True.
102. False (the officer must take the person before a magistrate without unnecessary delay, but not later than 48 hours after the arrest).
103. False.
104. Any peace officer or someone specially named in the warrant.
105. True.
106. True.
107. True.
108. False (the judge must always determine probable cause).
109. Either a judge of a court of record or a magistrate in the county in which the warrant is being executed must endorse a warrant issued by a mayor.
110. If a magistrate endorses the warrant, the wording is "Let this warrant be executed in the County of _____." If a judge of a court of record endorses the warrant, the wording is "Let this warrant be executed in any county of the State of Texas."
111. False (a mayor who is also the judge of the city may issue a capias; however, a capias may only be issued by a judge with authority to hear the case and not by a magistrate. In general-law cities that have not adopted an ordinance to create the position of municipal judge, the mayor is the judge).
112. True.

113. False.
114. False.
115. False.
116. True.
117. A capias is required to be issued when a forfeiture of bail is declared.
118. The capias is still valid and may be executed at any time.
119. The return is made to the court from which the capias was issued.
120. The officer must state the reason for failing to execute the warrant, and if the defendant cannot be located, what efforts have been made to find the defendant.
121. False (there is no authority for a clerk to issue a summons).
122. True.
123. False (a mayor may issue a summons as a magistrate or if the mayor is also the municipal judge, the mayor may issue the summons as a judge).
124. True.
125. False (in the form of a felony capias).
126. True.
127. False.
128. True.
129. True.
130. True.
131. False See, Article 15.03(b), C.C.P. A summons for an individual may be mailed to the defendant's last known address.
132. True.
133. False.
134. A summons issued by a magistrate is in the same form as a warrant except that it shall summons the defendant to appear before a magistrate at a stated time and place.
135. It gives notice to a person that charges have been filed in court against him or her and gives the defendant a day and time to appear in court.
136. Anytime that he or she may issue a warrant of arrest.
137. A capias.
138. A warrant of arrest.
139. False (the arrest fee is also assessed when a defendant is issued a citation by a peace officer).
140. True.
141. False (the city need only remit to the State when the officer is employed by the State).
142. False (the warrant reimbursement fee applies also if a peace officer processes the warrant).
143. False (the warrant reimbursement fee only is assessed upon conviction).
144. False (the warrant reimbursement fee goes into the city's general revenue fund).
145. False (it is a written order).
146. True.
147. False.

148. True.

PART 6 and 7

149. True.
150. False (a judge can require a defendant to post a bond in municipal court under Article 45.016/45A.107, C.C.P.).
151. False.
152. True.
153. True.
154. No. See, Art. 45.016/45A.107, C.C.P.
155. Legally, the bond is to be refunded and fines/costs assessed against the defendant. The defendant is entitled to jail credit, so the amount held in bond and the amount owed after judgment may not match up. Legally, the bond shall be refunded, and the defendant shall pay new money to satisfy the judgment. Practically, courts convert the bond to make it easier on both the defendant and the court.
156. When the defendant fails to appear.
157. Article 22.02 of the Code of Criminal Procedure requires that the court order the defendant's name called outside the courtroom. This is an element of the bond forfeiture lawsuit. This requirement makes sure that the defendant had notice that his or her case was being called before the court.
158. A judgment nisi recites the amount of the forfeiture, who is liable for the judgment, and that the judgment will be made final unless good cause is shown as to why the defendant did not appear.
159. It is a civil docket in which the court enters proceedings of a bond forfeiture.
160. A judge may take a bond for the fine and costs when a defendant has entered a written and signed conditional plea of nolo contendere and a waiver of jury trial, and the defendant fails to appear according to the terms of the defendant's release.
161. The defendant must make a request for a new trial within 10 days from the date the judgment was entered.
162. The court must allow the defendant to withdraw the plea of nolo contendere and enter a plea of not guilty and reinstate the defendant's bond.
163. The court reports the court costs to the comptroller's office and deposits the fine portion of the bond in the general revenue fund of the city. If the defendant has been in jail, the court is also required to give jail-time credit and may have to refund that credit to the defendant.

5

Trial Process and Procedure

Table of Contents

INTRODUCTION

The American criminal justice system is based on an adversarial process. This means that the prosecution and defense are opposing sides with different goals. The theory of this process is that the judge or jury will be able to determine the truth when the opposing sides each present their best arguments and show the weaknesses in the other's case. In a bench trial, the judge considers each side's evidence and is the finder of fact (the finder of fact determines if the facts have been proven in the case). Likewise, in a jury trial, the jury weighs evidence offered by each side and is the ultimate finder of fact.

The adversarial process, however, is sometimes criticized as focusing on victory for either side instead of emphasizing the truth of what occurred or the facts of a specific case. Supporters of the system believe that approaching the same set of facts from totally different perspectives uncovers the most accurate truth. To this end, lawyers are bound by their professional ethics to present the facts truthfully.

This chapter provides an overview of trials in municipal courts. It also examines defendants' rights in the trial process and issues that may arise either at trial or during preparation for trial. This includes formal pre-trial hearings, court reporters, language access, and different kinds of contempt sanctions for misconduct in the court.

PART 1
RIGHTS OF THE ACCUSED

Defendants appearing in municipal courts generally have the same rights and guarantees afforded any person accused of a crime at any level of the criminal judicial system. These rights, such as the right to due process, are provided under the U.S. Constitution and the Texas Constitution. Specific procedures within these constitutional bounds are generally found in Chapter 45/45A of the Code of Criminal Procedure (Justice and Municipal Courts). Chapter 45/45A primarily outlines criminal procedure in both municipal and justice courts; but clerks should also be aware that if Chapter 45/45A does not provide a rule of procedure, the court will apply general provisions found elsewhere in the Code of Criminal Procedure. Rights and responsibilities within the court may also be found in other codes or even prior judicial decisions in case law. Consequently, there is a large body of law with which every court practitioner should be familiar.

In all criminal prosecutions, defendants have the right to:

- a speedy public trial by an impartial jury;
- demand to know the nature and cause of the accusation;
- receive a copy of the charging instrument (complaint);
- represent themselves (as a *pro se* defendant);
- retain and be represented by an attorney;
- confront and be confronted by witnesses against them (the defendant can also cross-examine any State witness);
- compel witnesses to come to court and testify on their behalf (by subpoena);
- testify on their own behalf; and
- not be compelled to testify against themselves (and the decision not to testify may not be considered in determining innocence or guilt).

A. Jury Trial

The right to a trial by jury is one of the fundamental rights afforded to those charged with criminal offenses in the United States. The right is specifically enumerated in the 6th Amendment of the U.S. Constitution, Article I, Section 10 of the Texas Constitution, and the Code of Criminal Procedure. Article I, Section 15 of the Texas Constitution further extends the right to all criminal cases in Texas, including misdemeanors punishable by fine only. It is such an important right in Texas that a defendant starts off with the right to a jury trial and must waive it in writing to proceed without a jury. Art. 45.025/45A.155, C.C.P. If the defendant does not waive the trial by jury, then the court is required to proceed with the jury trial. Art. 45.027(a)/45A.156(a), C.C.P.

Art. 45.027(a)/45A.156(a), C.C.P.

Six qualified persons shall be selected to serve as jurors in the case.

Jury trials have roots in the English common law. Formerly, trials were sometimes used as tools of oppression or a means to eliminate political enemies through false criminal charges. The determination of guilt or innocence by a jury places the decision into the hands of the defendant's peers, rather than a single person who may be influenced by other interests. As observed by the U.S. Supreme Court, "Fear of unchecked power, so typical of our State and Federal Governments in other respects, found expression in the criminal law in this insistence upon community participation in the determination of guilt or innocence." *Duncan v. Louisiana*, 391 U.S. 145 (1968).

Six qualified jurors are required for misdemeanors tried in municipal courts. Arts. 33.01 and 45.027/45A.156(a), C.C.P. The selected individuals must be residents of the municipality for which the court is established. Sec. 62.501, G.C.

B. Speedy Trial

The right to a speedy trial can be found in the Sixth amendment to the U.S. Constitution and has been explored in several cases at both the state and federal level. In addition, Article I, Section 10 of the Texas Constitution includes the guarantee that any accused shall have the right to a speedy trial. This is also codified in Article 1.05 of the Code of Criminal Procedure. The law does not provide a clearly defined rule to determine whether the right to a speedy trial has been violated; and the right does not detail a specific number of days or months. *Barker v. Wingo*, 407 U.S. 514, 523 (1972). When a speedy trial issue is raised by the defendant, the judge must consider the individual circumstances on a case-by-case basis.

Barker v. Wingo, 407 U.S. 514, 527 (1972)

It is impossible to pinpoint a precise time when the right must be asserted or waived … a defendant has no duty to bring himself to trial; the State has that duty.

It is the responsibility of the State, as well as the court, to make sure that there is a speedy resolution to cases on the docket. In *Chapman v. Evans,* 744 S.W.2d 133 (Tex. Crim. App. 1988), the Court of Criminal Appeals stated: "The primary burden is on the prosecution and the courts to ensure that defendants are speedily brought to trial… Both the trial court and prosecution are under a positive duty to prevent unreasonable delay… [O]ver crowded trial dockets alone cannot justify the diminution of the criminal defendant's right to a speedy trial." Consequently, it is important for courts to address

issues that may affect the speedy resolution of cases, such as proper docketing or excessive continuances, to ensure that the right to a speedy trial is not violated.

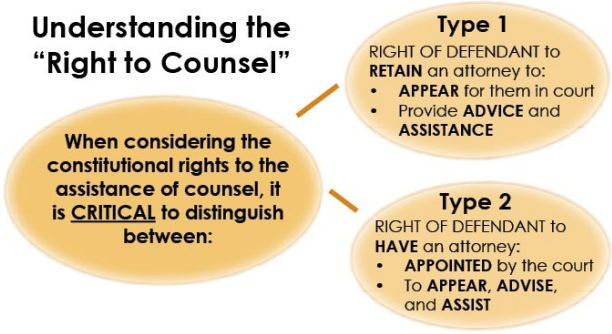
C. Right to Counsel

Art. I, Sec. 10, Texas Constitution

The accused shall have the right of being heard by himself or counsel.

A defendant in a municipal court facing criminal charges has the right to be represented by counsel, just as he or she would in any other criminal court. Article I, Section 10, Texas Constitution; Article 1.051(a), C.C.P. This is an important right, even when the defendant is facing a fine-only offense, as an attorney will have legal knowledge and experience in court that the defendant does not. An unrepresented individual may find himself or herself facing serious consequences in a municipal court, including prohibitions on the possession of firearms, convictions for crimes of moral turpitude, and suspensions of the privilege to operate a vehicle.

The right to counsel means that a defendant may be represented by a licensed attorney. A defendant always has the right to represent himself or herself *pro se*, but the right to counsel does not mean that non-attorney family members or others may represent the defendant. As discussed in Chapter 2, individuals that are not licensed Texas attorneys may not represent another person in court. In discussing the right to be represented by an actual, currently-licensed Texas attorney, the Texas Court of Criminal Appeals has said, "It has been uniformly recognized that a layman masquerading as an attorney—that is, one who has never been a licensed attorney in any jurisdiction—can never be considered 'counsel' under the Sixth Amendment regardless of the skill exercised by the layman." *Cantu v. State*, 930 S.W.2d 594, 596 (Tex. Crim. App 1996).



When attempting to understand the right to counsel, it is important to differentiate between the right to retain an attorney and the right to have an attorney appointed. Every person has the right to retain, or pay for, an attorney to represent that person in a criminal proceeding. This is true whether the person is charged with a misdemeanor punishable by fine only or a felony punishable by imprisonment. Not everyone, however, is required to have an attorney appointed by the court to represent that person. An appointed attorney is typically not paid by the person that the attorney is defending; rather, the attorney is provided by the State within parameters established by the law when the person cannot afford an attorney. The Texas Court of Criminal Appeals and the U.S. Supreme Court have both opined when a court appointed attorney is required. In short, the Supreme Court has said that "actual imprisonment [is] the line defining the constitutional right to the appointment of counsel." *Scott v. Illinois*, 440 U.S. 367 (1979). This has been interpreted by the courts to mean that the defendant is charged with a criminal offense that carries a sentence of imprisonment.

The criminal offenses over which municipal courts have jurisdiction can only result in the imposition of a fine, not a sentence resulting in imprisonment. Consequently, although a person has the right to retain an attorney in a municipal court, that person does not generally have the right to a court-appointed attorney in a municipal court.

Interest of Justice Exception

An important exception to this rule is found in the Code of Criminal Procedure. An indigent defendant is entitled to have a court appointed attorney in a criminal proceeding, including in a municipal court, if the court concludes that the interests of justice require representation. Art. 1.051(c), C.C.P. To date, the Texas Court of Criminal Appeals has not defined exactly what "interests of justice" means, specifically not in regard to municipal court appointments. This means that, without further guidance, it will be up to the judge to determine the circumstances that may warrant the appointment of counsel in a municipal court case.

D. Subpoena

The defense and prosecution are both entitled to subpoena witnesses necessary to the trial of their respective cases in court. Art. 1.05, C.C.P. A subpoena is a writ issued to a person or persons summoning them to appear as a witness in the trial of the case. Art. 24.01, C.C.P. Typically, the witness in a municipal court case will be the police officer that issued the citation. This person is usually called by the prosecutor as a witness. It is important to remember, however, that the defendant may also have witnesses so courts will need to have a process in place to subpoena these individuals.

E. Public Trial

Defendants in municipal courts have a right to a public trial. This right is guaranteed by the U.S. Constitution in the Sixth Amendment; in the Texas Constitution in Article I, Section 10; and by Articles 1.05 and 1.24 of the Code of Criminal Procedure. Article 1.24 of the Code of Criminal Procedure further provides that the "proceedings" in all criminal courts are public. This right intersects with the public's First Amendment right of access to the courts. Although the right does not carry with it a right to a private trial, closures of trials or proceedings may be justified under narrow circumstances articulated by case law.

F. Appeal

Defendants who are found guilty of any offense have the right to appeal their case. Art. 44.02, C.C.P. In municipal courts of non-record, the appeal is a trial *de novo*, meaning that the defendant gets a new trial as if the trial in the municipal court never occurred. In municipal courts of record, the appeal is based on the transcript of the trial and the appellate court determines whether any error occurred during the trial. The municipal court case is appealed to the county court.

True or False

1. Defendants have the right to a jury trial in a municipal court. ____
2. Municipal court defendants have a right to a copy of the complaint. ____
3. Defendants may represent themselves at trial. ____
4. Defendants must request a jury trial if they want one. ____
5. Defendants in municipal courts have a constitutional right to a speedy trial. ____

6. The right to a speedy trial is violated if a municipal court case is not set for trial within 90 days. ____
7. A trial court's delay in hearing a case because of a backlog of cases set for trial cannot be used to justify denying a defendant's right to a speedy trial. ____
8. An indigent defendant in a municipal court always has the right to have a court-appointed attorney. ____
9. An indigent defendant may be entitled to a court appointed attorney in a municipal court if the judge concludes it is in the interests of justice. ____
10. Defendants have the right to either a public or private trial. ____
11. Defendants convicted of a city ordinance violation do not have the right to an appeal. ____

PART 2
CLERK'S ROLE IN TRIAL PROCESS

The clerk's role in the trial process includes providing information to defendants about court procedures, managing administrative processes on the day of trial, scheduling trials, issuing subpoenas, and summonsing the jury. Since preparing for a trial includes many technical procedures, knowledge of the trial process will help clerks assist the judge.

A. Posting the Court Docket

The court must post, in a designated public place in the courthouse, notice of a criminal court docket setting. Article 17.085 of the Code of Criminal Procedure provides that the clerk shall post the docket "as soon as the court notifies the clerk of the setting." This posting is not required when the court provides online internet access to the court's criminal case records.

B. Information to Defendants

Many defendants in municipal courts represent themselves with little or no knowledge of criminal law or procedure. This lack of knowledge may present an issue with court access. A court clerk is not an attorney and does not represent any court participant, but the clerk can provide certain information in such a situation. Legal information may include things like court dockets, local court rules, and due dates. As always, the court clerk should not apply the facts to the law or provide advice on how to proceed.

A common practice is for court clerks to work with their presiding judge to develop written information for defendants requesting trials. The following information could be considered for inclusion:

- Pleas
- Pre-Trial Procedures
- Rights
- Continuances
- Bench or Jury Trial
- Motions for New Trial
- Fines and Court Costs

- Driving Safety Courses
- Deferred Disposition
- Appeals
- Juveniles

C. Preparation

Clerks should establish procedures for preparing for trials. These may include:

- When a citation is filed, prepare a sworn complaint unless the defendant and prosecutor agree in writing to go to trial on the citation and file the agreement with the court. Art. 27.14(d), C.C.P. Although the prosecutor is responsible for the legal accuracy of the wording on complaints, clerks generally prepare and process them.
- Review the complaint for clerical errors and check to be sure that the complaint is properly sworn to and the court seal is affixed.
- Provide a copy of the complaint to the defendant if the defendant does not waive his or her right to notice.
- Give the case file to the prosecutor.
- Ideally, at least two weeks before the trial date, prepare a trial docket and post it in the clerk's office and the police department; send a copy to the prosecutor and to each defendant or attorney.
- Issue subpoenas if they have not already been issued.
- Summon jurors at least three to four weeks before a trial.
- If it is a jury trial, make certain that the court has enough jury handbooks for the jurors to read before the trial.
- If interpreters are needed, make sure that they will be available.
- Review trial forms and make sure they are proper and available to the judge.

D. Management

Whether the trials are bench or jury, the clerk is responsible for coordinating the movement of the people in the court facility. The following is a list of suggestions to help clerks provide guidance to court participants.

- Provide signs throughout the court facility to enable participants to navigate.
- Provide signs or pamphlets about the rules of the court that should include information about proper dress, tobacco, cell phones, courtroom decorum, and the prohibition of carrying firearms and other weapons into the court facility (If the court is in a shared city building, talk to the city attorney about signage related to firearms).
- If possible, have a clerk act as information officer to direct people.
- Wear nametags so that the court participants know who to ask for assistance.
- Make sure that the court has made all required reasonable accommodations for those with mobility, visual, hearing, or other impairments.
- If the court does not have a pay telephone, the court may want to make a telephone available for court participants to use.

- Since some court participants might need a letter to present to a work supervisor, have forms available for either the judge or clerk to sign.

E. Trial Scheduling

Trial dockets are a listing of cases set for a particular date. These dockets usually include defendants' names, docket numbers, bonds posted with the court, attorneys' information, and any other items that courts find helpful to manage trials.

To establish trial dates, courts might want to address the following criteria:

- volume of cases scheduled for trial;
- number of defendants who want to plead guilty or no contest, but are requesting to see the judge before the fine is set;
- type of trial (jury trial or bench trial) or hearing requested (such as an indigence hearing);
- whether the defendant is an adult or juvenile;
- type of case (e.g., city ordinance violation, penal code offense, traffic violation);
- peace officers' work schedules (as most complaining witnesses are city police officers, clerks should consider their work schedules in setting trial dates);
- availability of judges and prosecutors; and
- age of victim (Unless extraordinary circumstances require otherwise, the trial of a criminal action in which the alleged victim is younger than 14 years of age shall be given preference over other matters before the court, whether civil or criminal. Art. 32A.01, C.C.P.).

1. Predetermined Scheduling

Predetermined scheduling provides a specific day and time for the defendant to appear. Courts using this method have docket call (calling the names of defendants scheduled for trial on that docket) at the beginning of the court session. Those pleading not guilty are rescheduled for a trial at a later date. Those pleading guilty or no contest might pay a fine, request to take a driving safety course, request that the judge grant deferred disposition, or appeal the conviction.

A problem with this type of scheduling is that the court never knows how many defendants will appear on their assigned date. Also, if all the defendants scheduled do appear, defendants may have to wait a long time for their case to be called. The advantage of this system is that a judge is available to see the defendants when they appear.

a. Peace Officer Citation

The citation provides an appearance date for the defendant to appear before the court. If a court uses predetermined scheduling, the citation provides a specific date and time for the defendant to appear. At this first appearance, sometimes referred to as an arraignment, the court identifies the defendant, explains the charge filed against the defendant, advises of certain rights under the law, and takes a plea.

b. Citizen Complaint

The case may be scheduled for an arraignment on a specific date and time following review of the complaint by the prosecutor. The judge issues a summons or a warrant to notify the defendant of

the charges. Sometimes, clerks send a courtesy notice to the defendant telling the person that charges have been filed and that a preliminary hearing is scheduled. When the defendant appears, he or she may plead guilty, nolo contendere, or not guilty. If the plea is not guilty, the court may schedule a pre-trial hearing or trial.

Clerks should work with the prosecutor, police department, and code enforcement to establish procedures for processing citizen complaints.

2. Assignment by Court Clerk

The scheduling method of assignment by court clerk places the responsibility on the defendant to obtain a court date. The written notice to appear (citation) just notifies the defendant to appear within a certain number of days or by a specific date without providing a specific time to appear. The defendant, then, is responsible for contacting the court to set up a specific appearance date or trial date. Courts usually have established schedules for pre-trials, bench trials, and jury trials. When the defendant contacts the court, whether by mail or personal appearance, the clerk should provide a procedures pamphlet to the defendant or explain court procedures.

When the court places the responsibility on the defendant to establish a court date, the volume of persons appearing at the court and the number of telephone calls increase. However, the court maintains better control over the trial dockets because the court talks with the defendants before scheduling a hearing or trial. Only those defendants who specifically request a trial are set on the trial docket. The number of defendants set on each docket is controlled by the court clerk.

F. Subpoenas

A subpoena is a writ issued to a person or persons giving an order to appear as a witness. Art. 24.01, C.C.P. Both the defense and prosecution are entitled to subpoena witnesses necessary to the presentation of their respective cases in court. Art. 1.05, C.C.P.

Judges, court clerks, and deputy court clerks have the authority to issue subpoenas, and defendants are entitled to request their issuance to compel the attendance of witnesses in court. Arts. 24.01(d) and 24.03(a), C.C.P. The clerk shall sign the subpoena and indicate on it the date that it was issued, but it need not be under court seal. Arts. 24.01(d) and 45.012(g)/45A.052(c), C.C.P.

Although applications for subpoenas in district courts must be in writing and sworn, the Code of Criminal Procedure is silent on whether the application for subpoenas issued out of municipal courts must be in writing. Art. 24.03, C.C.P.

Regardless of whether the municipal court asks for the request for subpoena to be in writing or presented orally, the following information is necessary before a subpoena can be issued:

- the name of each witness desired; and
- the location or address of each witness.

1. Types of Subpoenas

a. For Out-of-County Witnesses

The Code of Criminal Procedure has specific provisions regarding applications for subpoenas for out-of-county witnesses in felony and misdemeanor cases that include confinement as part of the punishment. The code is silent, however, regarding whether a defendant charged with a fine-only misdemeanor is entitled to a subpoena for an out-of-county witness or the enforcement of such a subpoena. Nevertheless, municipal court defendants are entitled to a type of compulsory process compelling the attendance of witnesses. Art. 1.05, C.C.P. Municipal courts are not prohibited from

issuing a subpoena for any witness regardless of where the witness resides, but the court may not be able to enforce the subpoena if the witness resides outside the county.

b. For Child Witnesses

When a witness is younger than 18 years of age, the court may issue a subpoena directing a person having custody, care, or control of the child to produce the child in court. Art. 24.011, C.C.P.

c. Subpoena Duces Tecum

A subpoena duces tecum is a subpoena that directs a witness to bring with him or her any instrument of writing or other tangible thing desired as evidence. Art. 24.02, C.C.P. In other jurisdictions this may be called a subpoena for the production of evidence. The subpoena should give a reasonably accurate description of the document or item desired, such as the date, title, substance, or subject. A typical example of an item requested by a subpoena duces tecum would be the actual drug paraphernalia used in the commission of an alleged Possession of Drug Paraphernalia offense. The police department will have care and custody of the evidence, so the prosecutor would need to request that the officer bring it on the day of trial.

Subpoena Duces Tecum

Latin term meaning "under penalty you will bring with you." A command from the court for a witness to appear and bring books, papers, or other tangible items as evidence.

2. Service of the Subpoena

A subpoena can be served by reading it to the witness, delivering a copy to the witness, electronically transmitting a copy of the subpoena with acknowledgment of receipt requested to the last known electronic address of the witness, or by mailing the subpoena certified with return receipt requested to the last known address of the witness. A subpoena may not be mailed if the applicant requests in writing that the subpoena not be served by certified mail, or the witness is set to appear within seven business days after the date the subpoena would be mailed. Art. 24.04(a), C.C.P.

The person serving the subpoena must be at least 18 years of age or a peace officer and may not be involved in the proceedings for which the appearance is sought. Art. 24.01(b), C.C.P.

A court can compel a peace officer to serve a subpoena. A court may not compel a person who is at least 18 and who is not a peace officer to serve the subpoena unless the person agrees in writing to accept that duty. If the person neglects or refuses to serve or return the subpoena, the court may fine him or her not less than $10 or more than $200 for contempt at the court's discretion. Arts. 2.16/2A.055 and 24.01(c), C.C.P.

The person serving the subpoena must show the time and manner of service, if served. If he or she fails to serve the subpoena, the person's return must state the reason for not serving it, the diligence used to find the witness, and any information regarding the whereabouts of the witness. Arts. 24.04 and 24.17, C.C.P.

3. Refusal to Obey Subpoena

If a witness refuses to obey a subpoena in a misdemeanor case, the court may fine the witness up to $100. Art. 24.05, C.C.P.

The defendant or State may request a writ of attachment, issued by a clerk of a court under seal, commanding a peace officer to bring the witness before the court immediately or on a day named in the order. The court can postpone a case for the writ to be served. Art. 24.11, C.C.P.

The procedures for assessing a fine include the following:

- After a fine is entered against a witness for failure to appear, the judgment is conditional. Art. 24.07, C.C.P.
- The witness is given an opportunity at a hearing to present a reason for disobeying the subpoena. If the judge is not satisfied with the excuse given by the witness, the court may collect the fine as other fines in misdemeanor cases or remit the fine altogether. Arts. 24.08 and 24.09, C.C.P.
- When a fine is entered against a witness and the witness appears and testifies, the judge has the discretion to reduce the fine or remit it altogether. The witness, however, is still required to pay all the costs accrued because of his or her failure to appear. Art. 24.10, C.C.P.

4. Bail for the Witness

The court may require a witness to post bail in an amount set by the judge. If the witness is unable to post bail, the court must release the witness without security. Art. 24.24, C.C.P.

12. What is the role of the clerk in the trial process? _____

_____

_____

True or False

13. A clerk may give legal advice to defendants who represent themselves. ____

14. List procedures that a clerk might want to consider when preparing for trials. _____

_____

_____

15. When may the court proceed to trial using the citation as the charging instrument? _____

_____

16. List criteria that you use to establish trial dates. _____

_____

17. List disadvantages of using a predetermined scheduling system. _____

_____

_____

18. List advantages of using a predetermined scheduling system. _____

_____

_____

19. Why should the police department or the code enforcement officer investigate a citizen's complaint? _____

_____

20. What is the clerk's role in handling citizen complaints? _____

_____

21. When a court uses the assignment by court clerk method of scheduling cases, who is responsible for obtaining a trial date? _____

22. List the main disadvantage of using the assignment by court clerk method for controlling the docket. _____

_____

23. List the main advantage of using the assignment by court clerk method for controlling the trial docket. _____

_____

24. What is a subpoena? _____

_____

25. Who is entitled to a subpoena? _____

26. Who has authority to issue a subpoena? _____

True or False

27. Courts are required to issue subpoenas when requested by either the State or the defense. ____

28. The request for a municipal court subpoena must be in writing. ____

29. A person requesting a subpoena may request in writing that the subpoena not be mailed. ____

30. A subpoena is not valid unless the municipal court seal is impressed on it. ____

31. To bring in a child witness, who would the court subpoena? _____

32. If a person is younger than 18 years of age, is the court required to subpoena the parent to bring him or her to court to testify? _____

33. What is a subpoena duces tecum? _____

_____

34. What type of description must the subpoena give of an item requested to be brought to trial?

_____

True or False

35. The clerk may serve a subpoena by sending it in the regular mail. ____

36. If a subpoena has been requested within seven business days of the trial, it may not be served by mail. ____

37. A peace officer may be compelled to serve a subpoena. ____

38. If a peace officer is unable to serve the subpoena, he or she must state the diligence used in attempting to locate the witness. ____

39. Only the defense may request a writ of attachment. ____

40. Witnesses who fail to appear after being served with a subpoena may be fined up to $100. ____

41. Judges do not have discretion to reduce the fine or remit the fine if the witness subpoenaed eventually appears and testifies. ____

42. When a witness is required to post bail, the clerk who issued the subpoena may set the bail. ____

PART 3
PRE-TRIAL

The term "pre-trial hearing" often confuses both pro se defendants and new court clerks. The term sounds as if it is a formal adversarial proceeding; however, the pre-trial hearing may typically result in an informal conference between the prosecutor and defendant or defense attorney. One of the parties may have formal pre-trial motions that need to be heard at a pre-trial hearing, but the law allows for several preliminary matters to be addressed at the pre-trial hearing. The court may set any criminal case for a pre-trial before it is set for trial and direct both parties to be present. Art. 28.01, Sec. 1, C.C.P. In practice, the pre-trial hearings allow the prosecutor and defense counsel or the pro se defendant to discuss the case, negotiate a plea agreement, or file motions. Pre-trial hearings also provide an effective means of caseflow management by potentially disposing of issues that do not relate to the merits of the case and assuring in advance that other times set for disposition of uncontested cases will not be taken up by other matters.

Pre-trial Hearing

A court setting to address preliminary matters, including plea discussions, prior to the trial of an offense. The court may set any criminal case for a pre-trial hearing under 28.01, C.C.P.

Important procedural considerations when establishing local rules covering pre-trials include:

- setting deadlines for notifying parties of the pre-trial hearing;
- handling motions, which may include date stamping the motion when it is filed and noting the cause number of the case on the motion; and
- filing the motion with the case.

A. Notice

Section 3 of Article 28.01 of the Code of Criminal Procedure provides that notice of a pre-trial hearing is sufficient if given:

- in open court in the presence of the defendant or his or her attorney;
- by personal service upon the defendant or his or her attorney;
- by mail to the defendant at least six days prior to the date set for hearing; or
- if the defendant has no attorney, by mail addressed to the defendant at the address shown on the bond; if the bond shows no address, sent to one of the sureties on the bond.

If the envelope containing the notice is properly addressed, stamped, and mailed, the State is not required to show that it was received.

B. Pre-Trial Issues

Recall that Article 28.01 of the Code of Criminal Procedure is not mandatory. The court may, but is not required to, set a criminal case for a pre-trial hearing. Accordingly, some courts require every case set for a jury trial to go to a pre-trial first; other courts require a pre-trial depending on the circumstances of the case; and others do not hold pre-trial hearings. Courts that use the pre-trial process do so to resolve issues relating to the case but not concerning the merits of the case. The pre-trial hearing is to address preliminary matters relevant to the trial of the case. The court should not use the pre-trial process as a tool to thwart a defendant's effort at obtaining a trial.

The Code of Criminal Procedure sets out general procedures for defendants accused of committing criminal offenses that are appearing in court for the first time. This process, sometimes called an "arraignment" in municipal courts, is meant to establish the identity of the defendant, explain certain rights to the defendant, and obtain a plea. If the defendant refuses to enter a plea, then the court must enter a plea of not guilty. Arts. 27.16 and 45.024/45A.152, C.C.P. A plea of not guilty means that the defendant is contesting the case. On this plea, the court may set the case for a pre-trial hearing or for an actual trial.

There is no formal mechanism for arraignment in municipal courts. A formal arraignment process is required elsewhere in the code under Article 26.01 for all felonies and for misdemeanors where the sentence involves possible incarceration, but Chapter 45/45A is silent on the matter for municipal courts. To this end, prior to a pre-trial hearing, the judge will need to provide some manner of arraignment for the defendant to advise him or her of important rights and determine the plea.

The pre-trial hearing can handle the following matters:

- exceptions to the form or substance of the indictment or information, which initiates proceedings in county and district court (defendants in municipal courts may file a motion that says there is a problem with the form or substance of the complaint);
- motions for continuance;
- motions to suppress evidence, or to keep evidence from being introduced;
- discovery (defendants are entitled to know before trial what certain evidence may be presented by the prosecutor);
- entrapment (when law enforcement officers induce a person to commit a crime not contemplated by the person solely to institute a criminal prosecution against the person);
- motion for appointment of an interpreter; and
- election of whether the jury or judge decides punishment on a finding of guilt in a jury trial.

Practice Note

A good practice is to consider *where* the prosecutor is sitting when he or she meets with the defendant during the plea discussion portion of a pre-trial setting, which should occur outside the presence of the judge prior to any hearing before the court. This is often an issue in smaller courts, where space may be limited in the location that serves as the courtroom. It is an important consideration. Plea discussions between the prosecutor and defendant often include statements and evidence that would not be admissible as evidence should the case proceed to trial.

C. Pre-Trial Motions

The court may, but does not have to, require all motions to be on file at least seven days prior to the date of the pre-trial hearing, provided that the defendant has sufficient notice of such hearing to allow him or her not less than 10 days in which to raise or file such preliminary matters. Art. 28.01, Sec. 2, C.C.P. A common pre-trial motion will be a motion for discovery. This is a motion filed by the defendant or defense attorney asking for certain material evidence in the case.

43. How can pre-trial hearings be an effective means of caseflow management? _____

_____

44. List methods of giving notice of a pre-trial hearing to a defendant's attorney. _____

_____

45. List ways in which the defendant is notified of a pre-trial hearing._____

_____

46. If a defendant refuses to plead, what must the court do? _____

_____

True or False

47. The law requires a pre-trial hearing to be set in every criminal case. ____

48. The court may require defendants to file all motions at least seven days before the pre-trial hearing date. ____

PART 4
CONTINUANCES

A continuance is a postponement of a hearing, trial, or other proceeding to a subsequent day or time. Although the court clerk may accept a written continuance and process the document, only judges may grant or deny continuances.

Article 29.03 of the Code of Criminal Procedure requires requests for continuances to be in writing but does not state a time during which the parties must submit their motions for continuance to the court. Motions must be sworn to by a person having personal knowledge of the facts relied on for the continuance. Art. 29.08, C.C.P. To help courts manage continuances, courts should establish a policy requiring a certain number of days before trial that a motion for continuance can be submitted to the court. Once the court establishes the policy, the clerk should provide a copy of

the policy to defendants, defense attorneys, and prosecutors. Look to Articles 29.04 to 29.07 for specific procedural rules on motions for continuance.

Upon receipt of a motion for continuance, the clerk should give it to the judge to make a decision. After the judge decides whether to grant the motion, the clerk notifies the prosecutor and the defendant of the decision.

If the judge grants a continuance, the court clerk should show the case as continued on the trial docket. The case is then reset, and a new notice is sent to the defendant and prosecutor. The clerk should also enter this information on the case file or jacket.

A. By Operation of Law

Article 29.01 of the Code of Criminal Procedure provides for continuances by operation of law, meaning the judge does not have the discretion to deny the motion. These are for the following reasons:

- a defendant has not been arrested;
- a corporation or association has not been served with the summons; or
- there is not sufficient time for trial at that term of court.

B. By Agreement in Open Court

The court may continue a criminal action by consent and agreement of both the defense and prosecutor in open court, only for as long as is necessary. Art. 29.02, C.C.P.

C. By Sufficient Cause Shown

The prosecutor or the defendant may request a continuance for cause. The request must be in writing, but it does not have to be in the form of a sworn affidavit. It must fully state the reason for the motion. The judge then determines if the motion contains sufficient cause to grant a continuance for as long as is necessary. Art. 29.03, C.C.P.

A continuance for cause is the most common type of continuance. Since the granting or denying of a continuance requires a decision, a judge may not delegate this duty to a clerk.

D. Religious Holy Days

A defendant, defense attorney, prosecutor, or juror may request a continuance for a religious holy day. Arts. 29.011 and 29.012, C.C.P. Religious holy day means a day on which the tenets of a religious organization prohibit its members from participating in secular activities, such as court proceedings. Religious organization is defined in Section 11.20 of the Tax Code.

A person seeking the continuance must file with the court an affidavit stating:

- the grounds for the continuance; and
- that the person holds religious beliefs that prohibit him or her from taking part in a court proceeding on the day for which the continuance is sought.

An affidavit filed under this law is proof of the facts stated and need not be corroborated. When a clerk receives this affidavit, the clerk presents it to the judge and notifies the other participants in the trial of the continuance.

E. Legislative Continuances

Legislative continuances apply to members and members-elect of the Texas Legislature. A legislative member or member-elect who is either a party or legal counsel for a party may delay

any case set for trial until 30 days after the date on which the Legislature adjourns. The legislator requesting a continuance should file an affidavit with the court stating the grounds for the continuance and his or her intent to participate actively in the preparation or presentation of the case. If the attorney for a party to any criminal case is a member or member-elect of the Legislature who was employed on or after the 15th day before the date on which the suit is set for trial, the continuance is discretionary with the court. Otherwise, the continuance is mandatory. Secs. 30.003(b) and (c-1), Civil Practice and Remedies Code.

49. List reasons why a court would continue a case without a motion._____

_____

50. Who may request a continuance in open court? _____

51. How long can a continuance last? _____

52. Who may request a continuance when the trial date falls on a religious holiday?_____

_____

53. In what form must a request for a continuance for a religious holiday be made? _____

_____

54. What information must be in the request for the continuance for a religious holiday? _____

_____

55. What is the role of the clerk when he or she receives a request for a continuance? _____

_____

True or False

56. A motion for continuance for cause may be requested by telephone. ____

57. A clerk may not grant a motion for a continuance. ____

58. If a defendant calls and wants to reset the case, the clerk has authority to reset the case. ____

PART 5
PROSPECTIVE JURORS AND JURY SELECTION

If a defendant pleads not guilty and does not waive a trial by jury, the judge is required to issue a writ commanding the proper officer (usually the court clerk) to summon a venire (a list of prospective jurors summoned to serve for a particular term of court). The court should develop a written policy that details the procedures for jury selection, preparing the jury candidate list, summoning the prospective jurors, etc.

A. Prospective Jurors

In municipal courts, six qualified persons from the venire are selected to serve as jurors. Art. 45.027/45A.156(a), C.C.P. In municipal courts of record, ordinances, rules, and procedures concerning a trial by a jury, including the summoning of jurors, must substantially conform to Chapter 45/45A of the Code of Criminal Procedure. Sec. 30.00013(a), G.C. The presiding judge, the municipal court clerk, or the court administrator, as determined by ordinance, shall supervise the selection of persons for jury service. Sec. 30.00013(b), G.C.

Article 45.027(a)/45A.156(a) of the Code of Criminal Procedure requires the judge to issue a writ of venire, sometimes called a *venire facias*, commanding the proper officer (in a municipal court, it is usually the court clerk) to summon a venire from which six qualified persons shall be selected to serve as jurors in the case. Typically, clerks summon prospective jurors approximately three to four weeks prior to the date of the trial. Jurors may be selected from tax rolls, utility rolls, voter registration rolls, or in any other nondiscriminatory manner. State law requires that a prospective juror live within the city. Sec. 62.501, G.C. A minimum of 30 persons is often summoned so that there is an adequate number of qualified persons after exemptions, excuses, and challenges. Courts are prohibited from summoning prospective jurors to appear for jury service on the date of the general election for state and county officers. Sec. 62.0125, G.C. All prospective jurors must remain in attendance until discharged by the court. Art. 45.027(b)/45A.156(b), C.C.P.

Venire

Latin term meaning "to come." The panel summoned by the court from among whom jurors in a particular case are chosen.

Courts usually notify prospective jurors by mail. The notice typically includes the date, time, and location at which prospective jurors are to report for jury duty. To help clerks better manage the jury selection process, the notice should state the qualifications and exemptions for jury duty. A juror questionnaire (or juror information sheet) should be included (either with the notice or separately). This is a request for certain personal information that will aid the defense and prosecution in selecting jurors. Prospective jurors can either mail in this information, or they can bring it in with them on the day of the trial.

1. Qualifications

a. Required

Sections 62.102-62.105, 62.501, and 62.1031 of the Government Code provide qualifications for prospective jurors. A potential juror must:

- be at least 18 years of age;
- be a resident of this state and the county in which the person is to serve as a juror (in municipal courts, they must also be a resident of the city);
- be a qualified voter in the state and applicable county, but does not have to be registered to vote;
- not have been convicted of misdemeanor theft or a felony;
- not be under indictment or other legal accusation for misdemeanor theft or a felony;
- be of sound mind and good moral character;
- not be a witness in the case;
- not have served on the grand jury that issued the indictment (for felonies);
- not have served on the jury in a former trial of the same case;
- not have a bias or prejudice, either in favor of or against the defendant or the State;
- not have already formed an opinion or conclusion as to the guilt or innocence of the defendant which would influence the finding of a verdict in the case;
- be able to read and write;

- not have served as a petit juror for six days during the preceding three months in the county court or the preceding six months in the district court;
- not be interested, directly or indirectly, in the subject matter of the case; and
- not be related by consanguinity or affinity within the third degree to a party in the case (Chapter 573, G.C.).

b. Deaf or Hard of Hearing Jurors

People who are deaf or hard of hearing are still qualified to be prospective jurors. Deaf or hard of hearing means having a hearing impairment, regardless of whether the individual also has a speech impairment that inhibits the individual's comprehension of an examination, or proceeding, or communication with others. Sec. 62.1041(f), G.C. Courts are required to make reasonable accommodations for a deaf or hard of hearing individual in accordance with the Americans with Disabilities Act. Sec. 62.1041(c). This may include a qualified interpreter for deaf or hearing-impaired jurors or an auxiliary aid or service for a municipal court proceeding. Sec. 62.1041(e).

c. Legal Blindness

Section 62.104 of the Government Code addresses the issue of whether a legally blind person is qualified to sit as a juror in a civil case. The statute defines legally blind as having not more than 20/200 of visual acuity in the better eye with correcting lenses; or visual acuity greater than 20/200, but with a limitation in the field of vision such that the widest diameter of the visual field subtends (to extend under or be opposite to) an angle no greater than 20 degrees. The statute does not disqualify a person who is legally blind to sit as a juror in a criminal case.

2. Exemptions

a. Legal Exemptions

Section 62.106 of the Government Code provides for juror exemptions. The potential juror may (but does not have to) claim an exemption if he or she:

- has legal custody of a child or children under the age of 12 years and the jury service would cause the child or children to be left without adequate supervision;
- is a student of a public or private secondary school;
- is enrolled in an institution of higher education;
- is an officer or employee of the Senate, the House of Representatives, or any department, commission, board, office, or other agency in the legislative branch of state government;
- is a primary caretaker of a person who is unable to care for himself/herself;
- is a member of the U.S. military forces serving on active duty and deployed to a location away from the person's home station and out of the person's county of residence;
- has served on a petit jury in the county in the last 24-month period preceding the currently scheduled day of service, unless the county uses a jury plan under Section 106.011 of the Government Code and the period authorized under Section 62.011(b)(6) of the Government Code exceeds two years (in a county with a population of at least 200,000); or
- has served as a petit juror (the ordinary jury for the trial of a civil or criminal action) in the county during the three-year period preceding the date the person is to appear for

jury service (note this only applies in a county with a population of at least 250,000 where the jury wheel has not been reconstituted after the date the person served as a petit juror. See, Sec. 62.001, G.C.).

b. Permanent Exemption

A person who is at least 75 years of age may file for permanent exemption from jury duty. The court clerk shall promptly have a copy of the exemption delivered to the voter registrar of the county. Secs. 62.107(c) and 62.108(a), (c) and (d), G.C. The voter registrar is required to maintain a current register of persons who claim and are entitled to a permanent exemption. The name of a person on the register may not be used in preparing the record of names from which a jury is selected.

c. Excuse of Juror for Religious Holy Day

If a prospective juror is required to appear at a court proceeding on a religious holy day observed by the prospective juror, the court or the court's designee shall release the prospective juror from jury service entirely or until another day of the term.

The prospective juror must file an affidavit stating the grounds for the release and that the juror holds religious beliefs that prohibit him or her from taking part in a court proceeding on the day for which the release from jury duty is sought.

"Religious organization" is defined in Section 11.20 of the Tax Code.

d. Providing False Information

If a person answering a jury summons knowingly provides false information in a request for an exemption or excuse from jury service, he or she is subject to a contempt action punishable by a fine of not less than $100 or more than $1,000. Sec. 62.0141. G.C.

e. Establishing a Postponement

Section 62.0142 of the Government Code lets prospective jurors request a postponement of the initial appearance for jury service by contacting the clerk of the court in person, in writing, or by telephone before the date on which the person is summoned to appear. The clerk is required to grant the postponement if:

- the person has not been granted a postponement in that county during the one-year period preceding the date on which the person is summoned to appear; and
- the person and the clerk determine a substitute date on which the person will appear for jury service that is not later than six months after the date on which the person was originally summoned to appear.

The clerk may approve a subsequent request for postponement only for an extreme emergency that could not have been anticipated, such as a death in the person's family, sudden serious illness suffered by the person, or a natural disaster or national emergency in which the person is personally involved.

f. Establishing an Exemption

A person may establish an exemption from jury service without appearing in person by filing a signed statement of his or her exemption with the clerk of the court before the date on which he or she is summoned to appear. Art. 35.04, C.C.P. and Sec. 62.107, G.C.

B. Nonresidents

A jury summons must include a notice that a person claiming a disqualification or exemption based on a lack of citizenship or residence in the county will no longer be eligible to vote if they fail to provide proof of citizenship. Sec. 62.0142, G.C.

Clerks must maintain a list of names and addresses of persons who are excused or disqualified from jury service because they reside outside the county. On the third business day of each month, the clerk must send to the voter registrar of the county a copy of the list of persons excused or disqualified in the previous month because the persons do not reside in the county. The voter registrar must add these persons to the county's suspended voter list. Sec. 62.114, G.C.

C. Personal Information of Prospective Jurors

Information collected by the court or by a prosecuting attorney during the jury selection process about a person who may serve or does serve as a juror is confidential. Because this information is confidential, it may not be disclosed by the court, the prosecuting attorney, the defense counsel, or any court personnel. A party in the trial or a bona fide member of the news media, however, may apply to the court and, on a showing of good cause, the court must permit disclosure of the information sought. Art. 35.29, C.C.P.

The personal information that courts might request from prospective jurors may include the following:

- home address;
- home telephone number;
- social security number;
- driver's license number;
- occupation;
- employer;
- length of employment;
- previous employer;
- former occupation, if retired;
- spouse's name and occupation;
- whether the juror has ever been involved in a lawsuit; and
- when and where the person has previously served as a juror.

D. Juror Compensation

Municipal courts are not required to pay jurors unless the municipality provides for reimbursement for expenses to the person in an amount determined by the municipality. Sec. 61.001(c), G.C. This is different in district courts, county courts, or justice courts. Section 61.001 of the Government Code provides that each grand juror or petit juror in a civil or criminal case in a district court, county court, county court at law, or justice court is entitled to receive reimbursement for travel and other expenses, not less than $6 for the first day or fraction of the first day, and $40 for each day or part of each day served as a juror thereafter.

The Government Code further directs those courts to provide a form letter that, when voluntarily signed by the prospective juror, directs the treasurer to donate or pay all of the prospective juror's

reimbursement for jury service to certain funds and programs. Because municipal courts are not required to pay jurors, no form exists for municipal courts to report juror donations and there is no means for municipal courts to do so.

E. Jury Selection

On the day of the trial, the prospective jurors summoned to appear arrive at the courtroom so that jury selection may begin.

When prospective jurors arrive for jury service, the clerk should provide a copy of the Texas Uniform Jury Handbook (a one-page, two-sided brochure) developed by the State Bar of Texas for courts to provide to jurors. The jurors should read the handbook before the trial begins, and then the court may collect them to hand out to other jury panels. Chapter 23, G.C. Courts that do not have the handbook can call the State Bar at 512.463.1463 for free copies or download a copy at TMCEC's website at www.tmcec.com/Resources/Pamphlets.

The clerk should have copies of the jury list and juror information sheets for the judge, prosecutor, and defendant. When jury selection is over, the clerk should collect the juror information sheets. The defendant and prosecutor should not be allowed to remove them from the courtroom because the information is confidential. Art. 35.29, C.C.P.

1. Challenge to the Array

The prosecution and the defense may challenge the array (membership) of the jury panel. A challenge may be that the officer summoning the jury willfully summoned prejudiced or biased persons. Art. 35.07, C.C.P. A party must make the challenge in writing, distinctly stating the grounds for such a challenge, supported by a sworn affidavit from the defendant or a credible person. A judge shall hear the evidence and decide, without delay, whether to sustain the challenge. The judge must hear the challenge to the array prior to questioning jurors regarding their qualifications. Art. 35.06, C.C.P.

If a challenge is made and sustained, the judge will order a new jury panel to be summoned by someone other than the person who summoned the original panel. Since court clerks are the ones who usually summon prospective jurors, they should develop a procedure for random selection. Art. 35.08, C.C.P.

2. Jury Shuffle

A jury shuffle is required when either the prosecution or defense objects to the order that jurors are seated and makes a request to change the order of the jurors' names. When a request is made, the judge will have the clerk shuffle the list of jurors. A computer can randomly change the order of the venire. If the court does not have a computer, the clerk should write the names of the jury panel on separate pieces of paper or cards and place them in a receptacle so that they may be mixed and drawn randomly. Regardless of how the names are shuffled, the names are recorded in the order that they are drawn or selected. The prospective jurors are then seated in the order selected. A copy of the new jury list is given to the prosecutor, the defendant, and the judge. Only one shuffle is allowed under the law. Art. 35.11, C.C.P.

3. Voir Dire

Voir Dire is the process in which the prosecution and defense question and select jurors to hear the case. The term in French means "to speak the truth." It is the screening phase of the jury trial where prospective jurors, the venire, are placed under oath and asked questions by both the

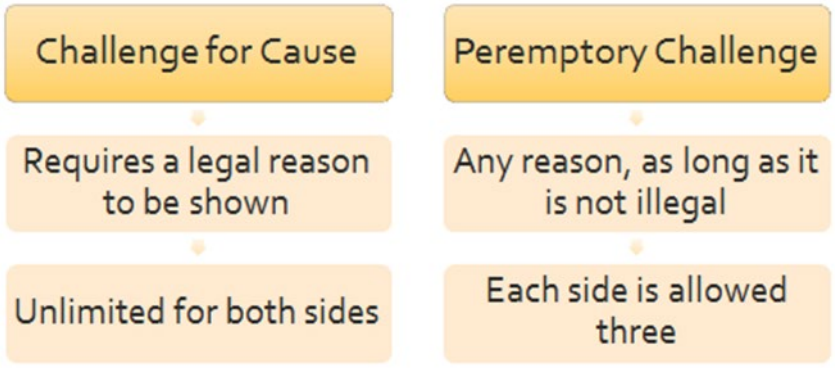
prosecution and defense. Arts. 35.02, C.C.P. The judge may direct this process. Art. 35.17, C.C.P. Typically, each side will have a set amount of time to conduct individual questioning. Although objections to certain questions are possible, the process otherwise permits each side the chance to ask questions without interruption from the other side.

A person is disqualified to serve as a petit juror in a particular case if he or she:

- is a witness in the case;
- is interested, directly or indirectly, in the subject matter of the case;
- is related by consanguinity or affinity within the third degree, as determined under Chapter 573 of the Government Code, to a party in the case;
- has a bias or prejudice in favor of or against a party in the case; or
- has served as a petit juror in a former trial of the same case or in another case involving the same questions of fact.

4. Challenges and Striking Jurors

After questioning the prospective jurors, both the prosecution and defense may request the removal of prospective jurors through a formal act called a challenge. A challenge seeks to question some aspect of a particular juror's qualifications or ability to serve on the jury. A successful challenge results in the juror being removed from the list of potential jurors. This process is called a strike. The law provides for two types of challenges, each with its own legal requirements: (1) a challenge for cause and (2) a peremptory challenge.



A challenge for cause is a challenge to a particular juror that requires a legal reason to be shown. The Code of Criminal Procedure outlines several reasons that would render a juror incapable or unfit to serve on the jury. Reasons could include that the juror has a bias or prejudice in favor of or against the defendant, that the juror previously served on a jury in the same case, or that the juror has already decided on the guilt or innocence of the defendant. The list of potential challenges for cause is found in Article 35.16 of the Code of Criminal Procedure. The prosecution and defense have unlimited challenges for cause.

A peremptory challenge may be made by either side for any lawful reason. Art. 35.14, C.C.P. An illegal reason would be that one side exercised the peremptory strike to exclude jurors of a certain race. Art. 35.261, C.C.P. In this case, the other side may make a *Batson* Challenge, objecting to the peremptory challenge as targeting a certain race. *Batson v. Kentucky*, 476 U.S. 79 (1986). The prosecution and defense are each allowed only three peremptory challenges in a municipal court trial proceeding. Art. 45.029/45A.159(a), C.C.P. Once those three are used, the only challenges possible are valid challenges for cause.

5. The Jury

After voir dire and all challenges are considered and ruled on, the prosecution and defense submit their lists of challenges to the court clerk, who compiles them and then writes or prints the names of the remaining jurors. The names are listed in the order in which they were seated. Then the clerk gives a copy of the list to the prosecution, the defense, and the judge and calls the first six names on the list that were not struck. Art. 35.26, C.C.P. These six persons form the municipal court jury.

6. Pick-Up Jury

If, after challenges, strikes, or legal exemptions, there are an insufficient number of jurors in attendance, the judge shall order the proper officer, usually a peace officer, to summon a sufficient number of qualified persons to form a new jury panel. Art. 45.028/45A.156(d), C.C.P. This is often called a pick-up jury or sometimes a special venire. It is possible that these so-called "bystander jurors" could simply be individuals gathered near the courthouse. This process is generally different in county or district courts, but municipal courts follow the specific rule permitting pick-up juries found in Chapter 45/45A of the Code of Criminal Procedure. *Cantu v. Samples*, 581 S.W.2d 195 (Tex. App.—San Antonio 1979, no writ); *cited with approval* in *Huynh v. State*, 901 S.W.2d 480, 482 (Tex. Crim. App. 1995).

Practice Note

To avoid a pick-up jury and to better manage the court and court participants' time, a suggested practice is that the clerk summon at least 30 persons for each jury trial. This number will vary depending on court volume, population, and how many trials are scheduled, but a minimum number is an important consideration. By the time some of the prospective jurors have claimed legal exemptions and others have been removed for cause or by peremptory strikes, the court should still have enough jurors to hear the case.

F. Failure to Appear for Jury Service

Any person summoned for jury duty who fails to attend may be fined not more than $100 for contempt. Art. 45.027/45A.156(c), C.C.P. Any person who is charged with this type of contempt is entitled to notice and a hearing before the court.

59. What is a venire? _____

60. How many jurors are selected to hear cases in municipal courts? _____

True or False

61. The judge is required to issue a writ of venire when a defendant does not waive his or her right to a jury trial. ____

62. Jurors may be selected only from city tax rolls. ____

63. When a person does not reside within a city, he or she may not serve as a juror in municipal court. ____

64. A person who is not registered to vote may not serve on a jury. ____

65. A person who is accused of or has been convicted of misdemeanor theft may not be a juror. ____

66. A person must be able to read and write to be a juror. ____
67. A juror must be unbiased. ____
68. A person who has legal custody of a child under the age of 12 is automatically exempt from jury duty. ____
69. A person who is a full-time student may claim an exemption from jury duty. ____
70. A person who is legally blind is prohibited by law from being a juror in a criminal case. ____
71. An employee of the Texas Legislature may be eligible for an exemption from jury duty. ____
72. A person who cares for a person who is unable to care for himself or herself is automatically exempt from jury duty. ____
73. The judge may reschedule a prospective juror's jury service for medical and hardship reasons. ____
74. Persons who are over 75 years of age may request a permanent exemption from jury duty. ____
75. The municipal court clerk is required to file a person's request for a permanent exemption with the voter registrar of the county. ____
76. A person who is over 75 years of age may not be summoned to sit as a juror even if he or she does not request a permanent exemption. ____
77. Municipal courts are not required to pay persons who serve as jurors in their courts. ____
78. List information that the court may want to require from jurors. _____
_____
79. How can a juror request an exemption? _____
80. When may a clerk grant a juror's request to postpone jury service? _____
_____
81. What is the penalty for providing false information in a request for an exemption or excuse from jury service?_____
82. What must a clerk do if a person claims an exemption from jury service based on lack of residence? _____
83. Since personal information about jurors is confidential, how should clerks handle paperwork containing this information? _____
84. Under what circumstances may personal information about jurors be released? _____
_____
85. What is the maximum penalty that may be assessed when a juror fails to appear in municipal court? _____
86. When a juror fails to appear, with what offense can he or she be charged? _____
_____
87. Who may challenge the membership of the jury? _____
88. Who may ask the court for a jury shuffle? _____
89. Describe how the prospective jurors may be shuffled. _____

_____

90. After the jury is shuffled, what should the clerk do with the new list of names? _____

_____

91. When a judge sustains the challenge to the array, what does the judge do? _____

_____

True or False

92. Voir dire is a process where jurors may be removed if they have preconceived opinions about a case. ____

93. Only the defense may ask the court to remove a juror because the juror has already decided that the defendant is guilty. ____

94. Removing a juror during voir dire is called removal for cause. ____

95. What happens when either the prosecution or defense strikes a juror? _____

_____

96. How many jurors may the prosecution and defense remove without cause? _____

97. How are the six persons selected for the jury? _____

_____

98. Why would a court have to order additional jurors to be summoned for a trial? _____

_____

99. Who usually summons a pick-up jury? _____

PART 6
TRIALS

Jurisdiction refers to a court's legal authority to hear certain actions. A municipal judge may try cases over which he or she has jurisdiction in accordance with the Code of Criminal Procedure and Rules of Evidence. Art. 4.15, C.C.P.

A. Defendant's Appearance

An adult defendant in a municipal court may appear by his or her attorney. With the consent of the prosecutor, the trial may proceed without the defendant being in court personally if his counsel is present. Art. 33.04, C.C.P. However, if a defendant is not represented by an attorney and fails to appear, the court may not try the case in the defendant's absence.

A plea of not guilty may be made orally by the defendant or by his or her counsel in open court. If the defendant refuses to plead, a plea of not guilty shall be entered for him or her by the court. Arts. 27.16(a) and 45.024/45A.152, C.C.P.

B. Right to Jury Trial

Defendants in municipal courts, like defendants in all other courts with criminal jurisdiction, have the right to a jury trial. However, defendants may waive that right and request that a judge hear and decide the case. Arts. 1.05, 1.14, and 45.025/45A.155, C.C.P.

C. "The Rule"

One of the cornerstones of the American criminal justice system is that court proceedings and trials are open to the public. This is reflected in the Code of Criminal Procedure. Art. 1.24, C.C.P. The exception to this is when Rule 614 of the Texas Rules of Evidence is invoked by the defense, prosecution, or the court. Rule 614 is commonly known as "The Rule" and is typically invoked as a preliminary matter at the start of trial. Essentially, The Rule requires that witnesses who are not parties be excluded from hearing other testimony. This is intended to prevent witness testimony from being materially affected if the witness hears other testimony in the same trial. Art. 36.03, C.C.P.

Rule 614, T.R.E.

At a party's request, the court must order witnesses excluded so that they cannot hear other witnesses' testimony. Or the court may do so on its own.

Witnesses should be required to wait outside the courtroom while other witnesses are testifying. The witnesses may not discuss the case among themselves; and when called by the bailiff, enter the courtroom to deliver their testimony. One important exception to this rule, however, allows the victim to remain in the courtroom if the court finds that the victim's testimony would not be materially affected by his or her presence. Art. 36.03, C.C.P.

D. Day of Trial

The overall process for jury trials and trials before the judge (bench trials) is similar, but local practices may differ from court to court. The biggest difference is that in a jury trial, the jury is the trier of the facts and makes the decision of whether a defendant is guilty or not guilty. The jury can also decide punishment if the defendant elects for the jury to do so before the trial begins. Arts. 45.036/45A.166 and 37.01, Sec. 2(b)(2), C.C.P. In a bench trial, the judge hears the evidence, makes a decision of guilty or not guilty, and if guilty, decides the punishment.

1. Opening Announcement

The bailiff or court clerk should enter the courtroom before the judge and request that all persons stand. When the judge enters the courtroom, all court participants should stand during the opening announcement.

The opening announcement may include the following:

- All present give attention — "All rise!"
- The exact name of the court and municipality — "The Municipal Court of the City of_____ is now in session."
- The name of the judge presiding — "The Honorable _____, Judge presiding."

After the judge sits, the bailiff or clerk should direct that all others be seated.

2. Explanation of Rights, Options, and Court Proceedings

After the announcement that court is in session, the judge typically explains the defendant's rights, options, and court procedures.

At this time, some defendants might decide not to proceed to trial. Some may request to change their plea and take a driving safety course or ask the judge to grant deferred disposition. After the introductory statement by the judge and the processing of defendants who change their mind about having a trial, the court may proceed with trials. This is where pre-trial hearings are effective to

keep a jury from being summoned when the defendant might change his or her plea upon talking to the judge.

3. Jury Selection in Jury Trials

Before a jury trial begins, the clerk should have already provided the defense, prosecutor, and judge with the personal information that the court requested from potential jurors. At the conclusion of voir dire or at the conclusion of the trial, the clerk should collect the juror information sheets and file them with the case.

After the announcement that court is in session, the judge may make an introductory statement to the jurors about court proceedings. The judge calls cases set for jury trials and asks both the defendant and the State if they are ready to proceed. Then the judge reviews qualifications and exemptions with the jurors. If any prospective juror wishes to claim an exemption or explain to the judge why he or she is not qualified, he or she may do so at this time.

4. The Trial

In both the jury trial and the trial before the judge, the judge calls the defendant to identify the defendant and ask for a plea. Next, the prosecutor reads the complaint.

- After opening statements from the prosecutor and the defense, the prosecutor presents the State's case by calling witnesses to testify against the defendant.
- After each prosecution witness finishes testifying, the defense is given the opportunity to cross-examine the witness. Cross-examining means that the defendant may ask the witness questions about his or her testimony or other facts relevant to the case. Cross-examination must be in the form of questions only, and the defendant is not allowed to argue with the witness.
- After the prosecution presents its case-in-chief (presenting its evidence to establish the elements of the offense and the defendant's guilt), the defendant may make an opening statement, if it was reserved until this point, and present his or her case by calling witnesses.
- The prosecutor may cross-examine the witnesses called by the defense.
- The defendant may testify on his or her own behalf, but he or she cannot be compelled to testify. If the defendant does not testify, the defendant's silence cannot be used against him or her. However, if the defendant testifies, the State may cross-examine the defendant.
- Both sides may put on rebuttal evidence. Rebuttal evidence is evidence that either side may present to dispute the other side's evidence.
- In a jury trial, the judge reads a charge to the jury before closing arguments, which is a statement about the law that applies to the case. Many judges prepare the charge in advance and give a copy of it to the prosecutor and defense to review. Other judges require the parties to prepare the court's charge for the court's review.
- Finally, the defense and prosecution can present a closing argument on behalf of their case. The closing arguments may be based only on the testimony presented during the trial. The State has the right to present the first and last argument.

For step-by-step checklists to conduct a jury trial, see the TMCEC *Bench Book*, available online at www.tmcec.com/resources/books or in hard copy.

E. Bench Trial

Usually, several cases are set on non-jury trial dockets. After an introductory statement by the judge, the judge may call or instruct the bailiff or clerk to call the names of defendants scheduled for trial on that docket. This process is commonly called a docket call. If a defendant does not answer, the judge may ask the clerk or bailiff to step outside the courtroom and call the name of the defendant. This procedure is required when a defendant has a bond filed with the court.

When a defendant fails to appear and a bond is filed with a case, after the clerk or bailiff completes the docket call, he or she should swear to an affidavit indicating that the name was called and file the affidavit with the case. This affidavit may be used later as probable cause for issuing a warrant for failure to appear or for bond forfeiture.

In a trial before the judge, the judge hears the evidence and decides whether the defendant is guilty or not guilty based solely upon the evidence presented at trial. If the defendant is guilty, the judge renders a judgment of guilty and assesses punishment according to the penalty allowed for the offense. In some instances, based on the circumstances of the case, the judge may exercise his or her discretion to place the defendant on deferred disposition. Art. 45.051(a)/45A.302(a), C.C.P. If the judge finds that the defendant is not guilty, the judge enters a judgment of not guilty, dismisses the case, and releases the defendant without any liability.

F. Jury Trial

The decision of the jury is called the verdict. When the case is submitted to the jury, the jury retires in the charge of the bailiff or a court officer to deliberate the case. Broadcasting, recording, or photographing a jury while the jury is deliberating is prohibited. Art. 36.215, C.C.P. If a court has security cameras in the room in which the jury is deliberating, the cameras will have to be turned off.

Municipal court jurors are kept together until they agree on a verdict, are discharged, or the court recesses. Art. 45.034/45A.164, C.C.P. The decision of the jury must only be based on evidence properly admitted during the trial, including the testimony of witnesses and physical evidence such as video recordings. No person is permitted to converse with a juror about the case except with permission of and in the presence of the court. Art. 36.22, C.C.P. If the jury has any questions, they must be addressed to the judge in writing. Then, in the presence of the attorneys, the judge may answer proper questions. The bailiff typically receives written messages from the jury and provides the message directly to the judge.

The jury returns to the courtroom to announce its verdict in open court. The common practice is for the judge to have the jury foreperson stand and read the verdict to the court. After a verdict is announced, the judge renders the judgment. Art. 45.036/45A.166, C.C.P. If the defendant elected that the jury make the decision of punishment, after a finding of guilt, the jury also assesses the punishment. Punishment may be a fine amount within the range established by law. Unlike the judge, a jury cannot order deferred disposition as a possible punishment. If the jury finds the defendant guilty and the defendant did not elect that the jury decide the punishment, the judge decides punishment. If the jury finds the defendant not guilty, the judge enters a finding of not guilty, dismisses the case, and releases the defendant from all liability.

If a jury fails to agree to a verdict after being kept together for a reasonable amount of time, then a mistrial occurs. The case may be tried again as soon as practicable. Art. 45.035/45A.165, C.C.P.

Practice Note

A suggested practice is for the court to have policies and procedures in place regarding the possession and use of cell phones, tablets, or other wireless devices in the courtroom and in the jury deliberation room. The widespread use of technology has created many legal and ethical issues in court. Chief among these: jurors researching cases online or discussing deliberations on social media.

G. Judgment

The judgment is the written decision of the court, signed by the judge, showing the conviction or acquittal of the defendant. Without a written judgment, convictions and later collateral consequences resulting from the trial and conviction are simply unenforceable. There are two statutes that govern judgments in municipal courts. The general statute is found in Article 42.01 of the Code of Criminal Procedure. This statute applies to criminal cases at all levels of courts, so there may be some requirements that do not directly pertain to municipal courts. The second statute, specific for municipal and justice courts, is found in Article 45.041/45A.251-45A.253 of the Code of Criminal Procedure (Note: Effective January 1, 2025, Article 45.041 becomes three different statutes in new Chapter 45A). It is important for courts to apply the requirements of both the general and specific statutes in a judgment.

***Ex parte Barstow*, 331 S.W.2d 937 (Tex. Crim. App. 1960)**

The capias was void and the defendant was discharged from custody when the only judgment in the case was a docket entry.

1. Not Guilty

If a defendant is found not guilty by either the jury or the judge, the court discharges the defendant without any liability. The defendant does not have to pay any costs. Upon acquittal of a defendant, the trial court is required to advise the defendant of the right to have all records of the case expunged. Art. 55.02, Sec.1/55A.201(b), C.C.P.

2. Guilty

When a defendant is found guilty in either a jury trial or a trial before the judge, the defendant will be ordered to pay the fine and costs. Art. 45.041(a)/45A.251(a), C.C.P. If the defendant is unable to pay the fine and costs as determined by the judge, then the judge is required to allow the defendant to pay in intervals. Art. 45.041(b-2)/45A.253(a), C.C.P. There are other alternatives to payment as well, which are explored in detail in the next chapter. The defendant has the right to appeal the judgment of the court or the verdict of the jury or file a motion for a new trial.

Verdict

The final decision on the trial of a criminal case: either guilty or not guilty.

The judge must also consider any time that the defendant may have served in jail. The judge must credit the defendant for any time served in jail on that charge from the time the defendant was arrested until conviction. Arts. 42.03 and 45.041(c)/45A.251(d), C.C.P. The pre-conviction jail-time credit is not less than $150 for each period of time served as specified by the court in the

judgment of the case. "Period of time" is defined as not less than eight hours or more than 24 hours. Art. 45.048/45A.262, C.C.P. (The credit amount of $150 per period served applies to a defendant who is placed in jail for failure to pay.) In addition to pre-conviction jail-time credit, the judge must credit the defendant $150 each day for any time the defendant was confined in jail or prison while serving a sentence for another offense if the confinement occurred after the commission of the misdemeanor for which the defendant is now being sentenced. Art. 45.041(c-1)/45A.251(e), C.C.P. Note that this credit is required for time served as part of a sentence. Jail credit is not required for time spent in jail for a Class C misdemeanor because a defendant can never be sentenced to jail for a Class C misdemeanor. It is important that courts review judgment forms to be certain that the forms accurately reflect what was ordered by the judge. In this case, the judgment must contain the required information regarding the "period of time" to be specified for jail credit.

a. Affirmative Findings

A finding is a legal determination based on certain facts in the case. The court is required to enter an affirmative finding in the judgment if the court makes this determination. In municipal courts, common affirmative findings involve a Finding of Family Violence in Title 5 offenses under Section 42.013 of the Code of Criminal Procedure and a Finding of Motor Fuel Theft under Section 42.019 of the Code of Criminal Procedure.

Finding of Family Violence

If the court determines that the offense involved family violence, the court shall make an affirmative finding and enter it in the judgment.

If the court makes an affirmative finding, it is important that it is documented in the judgment. There may be serious legal consequences for the defendant, and it is important to document the finding correctly. An affirmative finding of family violence in an assault case, for example, could prevent the defendant from ever possessing firearms. In addition, the judgment could be used by prosecutors to enhance later offenses to higher criminal charges.

b. Reporting Certain Convictions

If the offense for which the defendant is convicted is a traffic violation, an Alcoholic Beverage Code violation under Chapter 106, the Penal Code violation of theft of gasoline, or disposition of an assault involving family violence, the clerk is required to send a report to the Department of Public Safety. Secs. 543.201-543.206, T.C., Art. 42.019, C.C.P., Art. 66.252(g), C.C.P.

Practice Note

The TMCEC website is a good resource for municipal court forms. To avoid "re-inventing the wheel," courts can use or alter forms created by TMCEC attorneys. These include various judgment forms. Forms are available in Word and PDF format in the online *Forms Book* at http://tmcec.com/resources/books/forms_book/.

c. Appearance Required

The court cannot enter a guilty verdict or any judgment at trial if the defendant does not ever appear. The person must be afforded the opportunity to enter a plea in person, by mail, or through an attorney. As the Court of Criminal Appeals has observed, "no one, unless properly authorized,

has a right to deny one charged with an offense his day in court by entering a plea of guilty for him." *Cramer v. State*, 109 S.W.3d 1054 (Tex. Crim. App. 1937). As mentioned above, a person's attorney may appear on that person's behalf and would be considered a "properly authorized" representative.

If the defendant enters a plea of guilty or no contest, or the defendant has appeared and been found guilty at trial, then the judgment and sentence may be rendered in the defendant's absence. Art. 42.14(a), C.C.P.

H. Defendant's Failure to Appear

The term "failure to appear" has become a term of art within municipal courts, and it is commonly associated with the criminal offense Bail Jumping and Failure to Appear, found in Section 38.10 of the Penal Code. Defendants who have been in custody and fail to appear for trial, regardless of whether it is a jury trial or a trial before the judge, can be charged with the offense, which is a Class C misdemeanor. It is a completely new criminal case, and only the prosecutor can make the decision to charge the offense. After the prosecutor makes the decision, clerks process this charge by preparing the complaint. Like other complaints, any credible person acquainted with the facts (including the clerk) may be the affiant.

If a defendant has a bond filed with the court and fails to appear, the prosecutor can request that the court forfeit the bond. The forfeiture process is initiated by a judgment nisi (a temporary order that will become final unless the defendant or surety shows good cause why the judgment should be set aside). If a cash bond is filed with the court and the defendant has also signed a conditional plea of nolo contendere, the court can forfeit the bond for the fine and costs.

If the defendant did not waive a jury trial and fails to appear for the trial, the judge may order a defendant to pay a reimbursement fee for the costs incurred for impaneling the jury; however, the court may release the defendant from the obligation for good cause. The court should conduct some type of show cause hearing before releasing a particular party from these expenses. The court may enforce an order to pay by contempt as provided in Section 21.002(c) of the Government Code. Art. 45.026/45A.157(c), C.C.P. Clerks perform an analysis of the costs of summoning a jury. Items to include in the analysis are:

- the clerk's time to select jurors and prepare and mail jury summonses;
- the costs of jury summonses and envelopes;
- the costs of postage or a peace officer's costs if a peace officer summoned the jury; and
- any other applicable costs.

100. In what ways may a defendant appear and enter a plea? _____

True or False

101. Defendants who fail to appear may still be tried and found guilty in their absence. ____

102. If a defendant refuses to plead, the court must enter a not guilty plea for him or her. ____

103. Trials in municipal courts are not open to the public. ____

104. Municipal courts may exclude city council members from attending trials. ____

105. Municipal courts may not exclude the news media from attending trials. ____

106. Witnesses may be excluded from trial only when "The Rule" is invoked. ____

107. Victims must always be excluded when "The Rule" is invoked. ____

108. What should clerks do with the juror information sheets? _____

_____

True or False

109. If the defendant fails to appear for a jury trial, the judge may order him or her to pay a reimbursement fee for the costs of impaneling the jury. ____

110. At trial, the prosecution presents its evidence first. ____

111. The defense does not have a right to cross-examine the prosecution's witnesses. ____

112. The defendant cannot be compelled to testify. ____

113. The charge to the jury is given after both the defense and prosecution have concluded their evidence. ____

114. A jury charge is a statement of the law that applies in the case being tried. ____

115. If a trial is before the judge, the judge makes the finding as to whether the defendant is guilty or not guilty. ____

116. Clerks may influence a judge's decision about a particular case if the defendant was difficult to handle. ____

117. What is a judgment? _____

_____

118. Which two statutes contain the requirements of a valid judgment? _____

_____

True or False

119. During deliberation, if a juror has a question, the defense or prosecution may answer the question. ____

120. When can a mistrial be declared in a jury trial? _____

_____

121. After a mistrial has been declared, when can the court conduct another trial? _____

_____

122. What is a verdict? _____

_____

True or False

123. When a defendant is found not guilty, he or she must still pay court costs. ____

124. When a defendant is found guilty, he or she may request a new trial or appeal the case. ____

125. List three offense types in which the clerk must report convictions to the Department of Public Safety: _____

_____

True or False

126. The judge is required to enter in the judgment the period of time for jail credit. ____

127. Municipal courts must grant jail-time credit in the amount of at least $150 for each day that a defendant has spent in jail before conviction. ____

PART 7
NEW TRIAL

A. Non-Record Municipal Court

Art. 45.037/45A.201, C.C.P. New Trial

In a non-record court, a motion for new trial must be made within five days after the rendition of judgment and sentence, and not afterward.

A new trial means that the case will be tried again in the convicting court. The new trial can only be granted if the judge decides that good cause has been shown that justice was not done in the first trial. Art. 45.038(a)/45A.201(b), C.C.P. If the new trial is granted, then a new trial will be held in the same municipal court that conducted the first trial. It is important to note that a new trial follows a different procedure from an appeal, and the two legal mechanisms should not be confused. Appeals are discussed in Chapter 7 of this study guide.

A motion for a new trial in a non-record court must be made within five days after the rendition of judgment and sentence and not afterward. Art. 45.037/45A.201, C.C.P. Regardless of the outcome in the first trial or the new trial, the State is not entitled to a new trial of its own. Art. 45.040/45A.201(f), C.C.P. Additionally, not more than one new trial may be granted to the defendant in the same case. Art. 45.039/45A.201(e), C.C.P. If the motion for new trial is denied, the defendant has the right to an appeal instead.

When a clerk of a non-record municipal court receives a motion for new trial, the clerk should notify the judge immediately. The judge must decide whether to grant or deny the motion not later than the 10th day after the date the judgment was entered. If a motion for new trial is not granted before the 11th day after the date that the judgment was entered, the motion is considered denied. Art. 45.038/45A.201(c), C.C.P. As soon as the judge decides, the clerk should immediately notify the defendant of the decision.

According to the mailbox rule, a document is timely filed with the clerk of a court if the document is deposited with the U.S. Postal Service in a first class postage prepaid envelope properly addressed to the clerk on or before the date the document is required to be filed with the clerk and the clerk receives the document not later than the 10th working day after the date the document is required to be filed with the clerk. Art. 45.013/45A.054, C.C.P. If a motion is mailed to the court and received according to the time limits in the mailbox rule, the document is timely filed.

B. Municipal Court of Record

> **30.00014(c), G.C.**
>
> In a court of record, a written motion for new trial must be filed not later than the 10th day after the date on which judgment is rendered.

Municipal courts of record are governed by different, more specific statutes than their non-record counterparts. In a court of record, the motion for new trial not only has additional requirements, but also additional steps to process the motion. These requirements are generally found in the Government Code. A written motion for new trial, with legal briefs attached, must be filed with the municipal court clerk not later than the 10th day after the date on which judgment was rendered. The motion must set forth the points of error in the first trial of which the appellant complains. Sec. 30.00014(c), G.C. The defense may amend the motion for new trial by leave of the court at any time before action on the motion is taken, but not later than the 20th day after the date on which the original or amended motion is filed. The court may, for good cause, extend the time for filing or amending, but the extension may not exceed 90 days from the original filing deadline. If the court does not act on the motion before the expiration of 30 days allowed for determination of the motion, the original or amended motion is overruled by operation of law.

In a court of record, the judge decides, from the briefs submitted with the written motion for new trial, whether to grant a new trial. The court may grant a new trial any time before the record of the case is filed with the appellate court for an appeal. Sec. 30.00022, G.C.

Like the timelines in a court of non-record, the mailbox rule will also apply. The document is timely filed with the clerk of a court if the document is deposited with the U.S. Postal Service in a first-class postage prepaid envelope properly addressed to the clerk on or before the date the document is required to be filed with the clerk; and the clerk receives the document not later than the 10th working day after the date the document is required to be filed with the clerk. Art. 45.013/45A.054, C.C.P.

True or False

128. Defendants in non-record municipal courts have two days from the date of judgment to request a new trial. ____

129. When is the State entitled to a new trial? _____

_____

130. How does the mailbox rule affect how a motion for new trial is filed?_____

_____

131. What is the last day that a judge may rule on a motion for new trial?_____

_____

132. What happens if a court does not receive a motion for new trial by the deadline for the judge to rule on the motion?_____

PART 8
COURT INTERPRETERS

The rules governing court interpreters can be found in Chapter 38 of the Code of Criminal Procedure, Chapter 57 of the Government Code, and Chapter 157 of the Government Code. This section will provide an overview of these rules. As always, clerks should consult with their city attorney when specific questions arise.

A. Appointment of an Interpreter

Article 38.30 of the Code of Criminal Procedure authorizes an interpreter to be sworn in to interpret for a defendant or witness who does not understand the English language. If a defendant or witness is hard of hearing or deaf, the court must appoint a qualified interpreter. Art. 38.31, C.C.P. Courts must reasonably accommodate jurors who are hard of hearing or deaf. Sec. 62.1041, G.C. All interpreters must be sworn before performing interpretation. Tex. R. Evid. 604.

Chapter 57 of the Government Code provides for a certification program for court interpreters for the deaf and hard of hearing. Chapter 157 of the Government Code provides for a licensing program for court interpreters for individuals who can hear, but do not comprehend or communicate in English.

Certified court interpreter means "an individual who is a qualified interpreter as defined in Article 38.31 of the Code of Criminal Procedure or Section 21.003 of the Civil Practice and Remedies Code or is qualified in accordance with the communication access realtime translation services eligibility requirements established by the Office of Deaf and Hard of Hearing Services of the Health and Human Services Commission to interpret court proceedings for a hearing-impaired individual." Sec. 57.001(1), G.C.

Licensed court interpreter means an individual licensed under Chapter 157 of the Government Code by the Judicial Branch Certification Commission to interpret court proceedings for an individual who can hear but who does not comprehend English or communicate in English. Sec. 157.001(2), G.C.

Generally, a court must appoint an interpreter that holds a license that includes the appropriate designation and indicates that the interpreter is permitted to interpret in that court. Sec. 57.002(b-1), G.C. Interpreters appointed for a person who is hard of hearing or deaf must be certified regardless of the population of a county. There are exceptions for spoken language interpreters, however, depending on the size of the county. In a county with less than 50,000, a court may appoint a spoken language interpreter who is not licensed, provided that the required qualifications (see below) are met. Sec. 57.002(c), G.C. In a county with more than 50,000, a court may appoint a spoken language interpreter who is not certified or licensed if the required qualifications below are met, and:

(1) the language necessary in the proceeding is a language other than Spanish; and

(2) the court makes a finding that there is no licensed court interpreter within 75 miles who can interpret in the language that is necessary in a proceeding.

1. Required Qualifications

All interpreters, in addition to being licensed or certified, must meet the following qualifications:

- must be qualified by the court as an expert under the Texas Rules of Evidence;

- must be at least 18 years of age; and
- may not be a party to the proceeding.

2. Court Proceedings

Under Section 57.001(7) of the Government Code, court proceedings include an arraignment, deposition, mediation, court-ordered arbitration, or other form of alternative dispute resolution. This is not an exhaustive list.

Attorney General John Cornyn, in Tex. Atty. Gen. Op. JC-0584 (2002), addressed whether a clerk receiving a plea from a non-English speaking defendant in the clerk's office constitutes a court proceeding meriting a licensed court interpreter. The opinion states that a criminal proceeding includes all possible steps in an action from its commencement to its execution. The commencement of the action includes a clerk receiving (processing) a plea from a defendant. A court clerk who assists a defendant in filing a plea by conversing in a language other than English does not necessarily violate the law. If, however, the clerk does not speak the language of the defendant and must have another clerk interpret, the interpreter must be licensed.

B. Telephone Interpreters

A qualified telephone interpreter may be sworn to interpret for the person in any criminal proceeding before a judge or magistrate if:

- an interpreter is not available to appear in person at the proceeding; or
- the only available interpreter is not considered to possess adequate interpreting skills for the particular situation or is unfamiliar with the use of slang.

"Qualified telephone interpreter" is defined as a telephone service that employs:

- licensed court interpreters as defined by Section 157.001 of the Government Code; or
- federally certified court interpreters.

C. Violation of Interpreter Rules

1. For Deaf or Hard of Hearing Individuals

A person may not interpret for a deaf or hard of hearing individual at a court proceeding or advertise or represent that the person is a certified court interpreter unless the person holds an appropriate certificate. Sec. 57.026, G.C. A person commits a Class A misdemeanor if the person violates that rule and is also subject to administrative penalties. Sec. 57.027, G.C.

2. For Individuals Who Do Not Comprehend or Communicate in English

A person may not advertise, represent to be, or act as a licensed court interpreter unless the person holds an appropriate license. Sec. 157.106, G.C. A person commits a Class A misdemeanor if the person violates that rule and is also subject to administrative penalties as provided by Chapter 153. Sec. 157.107, G.C.

Practice Note

The Judicial Branch Certification Commission (JBCC) maintains a website and provides comprehensive information at www.txcourts.gov/jbcc.aspx. The Office of Court Administration (OCA) also maintains a website with important online interpreter resources at www.txcourts.gov/programs-services/interpretation-

translation/. For questions regarding deaf and hard of hearing individuals, the Texas Health and Human Services maintains a website with resources at hhs.texas.gov/services/disability/deaf-hard-hearing.

True or False

133. Defendants who do not speak English are required to bring an interpreter with them to translate court proceedings. ____

134. A family member or friend can be a language interpreter as long as he or she knows both English and Spanish. ____

135. Courts are required to appoint interpreters for witnesses who do not speak English. ____

136. An interpreter for a defendant who is hard of hearing must be a certified interpreter. ____

137. A court that is in a city under 50,000 in population does not have to appoint licensed or certified interpreters if certain requirements are met. ____

138. When is a municipal court located in a county with a population of at least 50,000 not required to appoint a licensed court interpreter for a non-English speaking defendant? ____

_____

139. When may a court use a qualified telephone interpreter? _____

_____

140. What are courts required to do if a juror is deaf or hard of hearing? _____

_____

141. Who is responsible for paying the costs of services for a deaf or hard of hearing juror?____

_____

142. What is the penalty for interpreting without being licensed by the State? _____

_____

PART 9
COURT REPORTERS

Only courts of record are required to provide court reporters to preserve a record of cases tried before the court. The court reporter must meet the qualifications provided by law for official court reporters. Sec. 30.00010(a), G.C. An official court reporter must take the oath of office required of other elected or appointed officers of this state. In addition to the official oath, each official court reporter must sign an oath administered by the district clerk. Sec. 52.045, G.C.

The court reporter may use written notes, transcribing equipment, video or audio recording equipment, or a combination of these methods to record the proceedings in the court. The reporter shall keep the record for the 20-day period beginning after the last day of the proceeding, trial, denial of motion for new trial, or until any appeal is final, whichever occurs last. Sec. 30.00010(b), G.C. The court reporter is not required to record testimony unless the judge or one of the parties requests a record. Sec. 30.00010(c), G.C.

Instead of providing a court reporter, the governing body may provide for the proceedings to be recorded by a good quality electronic recording device. If the governing body authorizes the

electronic recording, the court reporter is not required to be present to certify the statement of facts. The recording shall be kept for the 20-day period beginning the day after the last day of the court proceeding, trial, or denial of motion for new trial, whichever occurs last. If a case is appealed, the proceedings shall be transcribed from the recording by an official court reporter. Sec. 30.00010(d), G.C.

Section 52.047(a) of the Government Code requires official court reporters to furnish a transcript to a person requesting a transcript not later than the 120th day after:

- the application for the transcript is received by the court reporter; and
- the transcript fee is paid or the person establishes indigence.

True or False

143. Official court reporters are required to take an oath of office just like an elected or appointed official. ____

144. Court reporters must keep their records of a trial for a 20-day period beginning the last day of the trial or motion for new trial is denied or until an appeal is final. ____

145. Courts of record must have a court reporter instead of a recording device. ____

PART 10
CONTEMPT

Municipal judges have the power to hold people in contempt of court. Sec. 21.002, G.C. The contempt power is vested in courts so that the proceedings will be conducted with dignity and in an expeditious manner to see that justice is done. There is no statutory definition of contempt, but common law establishes it as conduct that tends to impede the judicial process by disrespectful or uncooperative behavior in open court or through the unexcused failure to comply with clear court orders.

A. Direct and Indirect Contempt

Contempt is either direct or indirect. Direct contempt is an act that occurs in the judge's presence and under circumstances that require the judge to act immediately to quell a disruption, violence, disrespect, or physical abuse. Indirect contempt occurs outside the court's presence and includes such acts as failure to comply with a valid court order, failure to appear in court, attorneys appearing late for trial, or filing offensive papers in the court. If a person is charged with indirect contempt, the person has a right to notice of the charge and a trial or hearing in open court, as well as the right to counsel.

B. Civil and Criminal Contempt

Contempt may be civil or criminal. Civil contempt includes willfully disobeying a court order or decree. Criminal contempt includes acts that disrupt court proceedings, obstruct justice, are directed against the dignity of the court, or bring the court into disrepute.

C. Penalties

1. General Penalty

Contempt in municipal courts is punishable by up to three days confinement in jail and a monetary sanction of up to $100. Sec. 21.002(c), G.C. Due to the possibility of incarceration, and the potential deprivation of a person's liberty, contempt should not be invoked lightly. As the Supreme Court of Texas has pointed out, the "proceedings in contempt cases should conform as nearly as practicable to those in criminal cases in order that due process rights are protected." *Ex parte Sanchez*, 703 S.W.2d 955, 957 (Tex. 1986).

2. Failure to Execute Summons, Subpoena, or Attachment

The failure of a sheriff or an officer to execute a summons, subpoena, or attachment may constitute contempt with a sanction of $10-200. Art. 2.16/2A.055, C.C.P.

3. Failure to Appear for Jury Duty

A potential juror's failure to appear for jury duty in a municipal court can constitute contempt with a maximum sanction of $100. Art. 45.027(c)/45A.156(c), C.C.P.

4. Failure to Appear Pursuant to a Witness Subpoena

A witness who fails to respond or appear pursuant to a subpoena can be held in contempt with a maximum sanction of $100. Art. 24.05, C.C.P.

146. What is the purpose of contempt power? _____

_____

147. Name the kinds of contempt and define them. _____

_____

_____

_____

_____

148. What is the general penalty for contempt in municipal courts? _____

_____

149. What is the penalty for contempt by an officer's failure to execute process? _____

_____

150. What is the penalty for failure to appear for jury duty in municipal court? _____

_____

151. What is the penalty for a witness's failure to appear pursuant to a subpoena? _____

_____

ANSWERS TO QUESTIONS

PART 1

1. True.
2. True.
3. True.
4. False (Defendants have the right to a jury trial, meaning they automatically get a jury trial and must waive that right if they do not want one).
5. True.
6. False (The law does not provide a specific number of days or months. It is up to the judge to decide, based on the individual case).
7. True.
8. False.
9. True.
10. False.
11. False.

PART 2

12. The clerk's role in the trial process includes providing information to defendants, managing administrative processes, scheduling cases for trial, issuing subpoenas, and summonsing the jury.
13. False.
14. Preparatory procedures may include:
    - Complaint prepared;
    - Complaint reviewed for typing errors, dates, properly sworn, and court seal affixed;
    - Copy provided to defendant;
    - Prosecutor has file or copy of file to prepare case for trial;
    - Trial docket typed and posted;
    - Subpoenas issued;
    - Jury summonsed;
    - Juror handbooks available;
    - Interpreters notified to be available, if needed; and
    - All trial forms reviewed and made available to the judge.
15. The court may go to trial on a citation when the defense and prosecution agree in writing to go to trial on the citation and file the agreement with the court.
16. Each clerk will have a different answer for this question, but it may include such issues as peace officer's days and times off and on duty, availability of judge and prosecutor, type of case, type of trial (bench or jury), whether the individual is a juvenile or adult, etc.
17. The disadvantages of a predetermined scheduling system are: (1) it is difficult for the court to manage the trial docket because the court never knows how many defendants will actually

appear at that particular date and time; and (2) defendants may have to wait a long time for their cases to be called.

18. The advantages of a predetermined scheduling system are: (1) it provides a definite date and time for defendants to appear when they are issued a citation; and (2) a judge will be available when the defendant appears.
19. To determine if an offense has occurred.
20. The clerk's role is to establish procedures to coordinate the processing of citizen complaints with the police department, prosecutor, code enforcement, etc.
21. The defendant.
22. The disadvantage of using the assignment by court clerk method is that it causes the clerk's office to handle more telephone calls and foot traffic.
23. The assignment by the court clerk method helps clerks to have better management control over the dockets because the court talks with the defendants before scheduling a hearing or trial. Only defendants who specifically request a trial are set on the trial docket. The number of defendants set on each docket is controlled by the court clerk.
24. It is a writ issued to a person or persons giving an order to appear as a witness.
25. Both the defense and the prosecution.
26. The judge, the court clerk, and the deputy clerk.
27. True.
28. False (the Code of Criminal Procedure contains no such requirement for fine-only misdemeanor cases).
29. True.
30. False.
31. The court may subpoena a person having custody, care, or control of the child to produce the child in court.
32. No.
33. It is a subpoena that directs a witness to bring with him or her any instrument of writing or other tangible thing desired as evidence.
34. The subpoena should give a reasonably accurate description of the document or item desired as evidence.
35. False (a clerk may not serve a subpoena and a mailed subpoena must be sent certified mail return receipt requested).
36. True.
37. True.
38. True.
39. False (the State can also request a writ of attachment).
40. True.
41. False.
42. False (the judge sets bail).

PART 3

43. Pre-trials help courts in caseflow management by:
    (1) handling the defendant's challenges to the charges filed;
    (2) disposing of issues that do not relate to the merits of the case; or
    (3) assuring in advance that other times set for disposition of uncontested cases will not be taken up by other matters.

Clerks may be able to list other ways that conducting pre-trials help manage their trial dockets.

44. A defendant's attorney may be notified of a pre-trial hearing in one of the following ways:
    (1) in open court;
    (2) by personal service on the attorney; or
    (3) by mail at least six days prior to the date set for the hearing.
45. Defendants may be notified of a pre-trial hearing in one of the following ways:
    (1) in open court;
    (2) by personal service on the defendant;
    (3) by mail at least six days prior to the date set for hearing; or
    (4) if the defendant has no attorney, by mail addressed to the defendant at the address shown on the bond; if the bond shows no address, it should be sent to one of the sureties on the bond.
46. The court must enter a plea of not guilty.
47. False.
48. True.

PART 4

49. The reasons that a court would continue a case without a motion are:
    (1) the defendant has not been arrested;
    (2) a corporation or association has not been served with the summons; and
    (3) there is not sufficient time for trial at that term of court.
50. The defense and the prosecution may by agreement request a continuance in open court.
51. A continuance may be only for as long as is necessary.
52. A defendant, defense attorney, prosecutor, or juror.
53. The request must be made by an affidavit.
54. The request must state the grounds for the continuance and that the party holds religious beliefs that prohibit him or her from taking part in a court proceeding on the day for which the continuance is sought.
55. When a clerk receives a request for a continuance, the clerk should present it to the judge and notify the prosecutor or the defense, whichever the case may be, of the continuance.
56. False (motions must be in writing and sworn).
57. True.
58. False.

PART 5

59. A list of prospective jurors to be summoned to serve for a particular term of the court.
60. Six.
61. True.
62. False.
63. True.
64. False.
65. True.
66. True.
67. True.
68. False (it is an exception but must be claimed first).
69. True.
70. False (the statutes only contemplate a civil case).
71. True.
72. False (it is an exception but must be claimed first).
73. True.
74. True.
75. True.
76. False (it must be requested).
77. True.
78. The court may want to require the following information from jurors:
    - home address;
    - home telephone number;
    - social security number;
    - driver's license number;
    - occupation;
    - employer;
    - length of employment;
    - previous employer;
    - former occupation, if retired;
    - spouse's name and occupation;
    - whether the juror has ever been involved in a lawsuit; and
    - when and where the person has previously served as juror.
79. A prospective juror may establish an exemption without appearing in person by filing a signed statement of the grounds for the exemption with the clerk of the court at any time before the date of trial.
80. The clerk is required to grant the postponement of jury service if:

- the person has not been granted a postponement in that county during the one-year period preceding the date on which the person is summoned to appear; and
- the person and the clerk determine a substitute date on which the person will appear for jury service that is not later than six months after the date on which the person was originally summoned to appear.

81. If a person answering a jury summons knowingly provides false information in a request for an exemption or excuse from jury service, he or she is subject to a contempt action punishable by a fine of not less than $100 nor more than $1,000.

82. Clerks must maintain a list of names and addresses of persons who are excused or disqualified from jury service because of nonresidence in the county. On the third business day of each month, the clerk must send to the voter registrar of the county a copy of the list of persons excused or disqualified in the previous month because the persons do not reside in the county. The voter registrar must add these persons to the county's suspended voter list.

83. Clerks should make sure that this information is not available to the public. It may not be disclosed by the court, the prosecuting attorney, the defense counsel, or any court personnel, except on application by a party in the trial or on application by a bona fide member of the news media acting in such capacity to the court in which the person is serving or did serve as a juror.

84. On a showing of good cause, the court shall permit disclosure of the information sought on application by a party in the trial or on application by a bona fide member of the news media acting in such capacity to the court in which the person is serving or did serve as a juror.

85. $100.

86. Contempt.

87. The prosecutor, the defendant, or the defendant's attorney may challenge the membership of the jury.

88. Either the prosecutor or the defendant or defendant's attorney may demand a jury shuffle.

89. If the court is computerized, the court may have the computer shuffle and randomly select the names. If the court does not have a computer, the clerk should place the names of the jury panel in a receptacle, which should be shaken to mix up the names.

90. Regardless of how the names are shuffled, the names are recorded in the order that they are drawn or selected by the computer. The prospective jurors are then seated in the order selected. A copy of this new list is then given to the prosecution, defense, and judge.

91. The judge orders a new jury panel to be summoned. The judge must order someone other than the person who summoned the original panel to summon the new panel.

92. True.

93. False.

94. True.

95. The juror is removed. The prosecutor or defendant does not have to state a reason for asking the court to remove the juror.

96. Each side may remove three jurors without assigning a reason to the request for removal. A juror may be removed for any reason, except for an illegal one, such as race. This is called a peremptory strike.

97. After voir dire and peremptory challenges, both the prosecutor and defendant give their lists to the court clerk who writes or prints the first names on the lists that have not been struck by either party. Then the clerk gives a copy of the list to the prosecutor, defendant, and judge.
98. If the court does not have enough jurors to hear the case, the court would order a pick-up jury.
99. Usually, a peace officer is ordered to summons a pick-up jury.

PART 6

100. A defendant may enter a plea in person, by mail, or through an attorney.
101. False.
102. True.
103. False.
104. False.
105. True.
106. True.
107. False.
108. The clerk should give a copy of the juror information sheets to the prosecutor, defendant, and judge. At the conclusion of the trial, the clerk should collect them and file them with the case.
109. True.
110. True.
111. False.
112. True.
113. True.
114. True.
115. True.
116. False.
117. The judgment is the decision of the judge.
118. Chapter 42.01 is the general statute and the specific statute is 45.041/45A.251-45A.253. (Note: Effective January 1, 2025, Article 45.041 becomes three different statutes in new Chapter 45A).
119. False.
120. If a jury fails to agree on a verdict after being kept together for a reasonable amount of time.
121. Another trial may be conducted as soon as practicable.
122. A verdict is the final decision on the trial of a criminal case: either guilty or not guilty.
123. False.
124. True.
125. Three offense types: traffic violations, an Alcoholic Beverage Code violation under Chapter 106, or the Penal Code violation of theft of gasoline.
126. True.
127. False (the court must credit not less than $150 for a period of time that is specified in the judgment−the "period of time" can be from eight hours to 24 hours).

PART 7

128. False (the law provides for five days).
129. The State is never entitled to a new trial in municipal court.
130. Under the mailbox rule, a document is timely filed with the clerk of a court if the document is deposited with the U.S. Postal Service in a first class postage prepaid envelope properly addressed to the clerk on or before the date the document is required to be filed with the clerk and the clerk receives the document not later than the 10th day after the date the document is required to be filed with the clerk.
131. The judge must rule on a motion for new trial not later than the 10th day after the date that the judgment was entered.
132. The motion is overruled by operation of law.

PART 8

133. False (the court is required to provide a licensed interpreter).
134. False (if the court is in a county with a population of more than 50,000, the court must appoint a licensed interpreter; if the city is located in a county of less than 50,000, the court must qualify the interpreter under the Rules of Evidence).
135. True.
136. True.
137. False (only a city located in a *county* that has a population of less than 50,000 may appoint an interpreter that is not licensed, and the interpreter must be qualified under the Texas Rules of Evidence).
138. A court in a county with population of at least 50,000 may appoint a spoken language interpreter who is not certified or licensed if:
    - the language necessary in the proceeding is a language other than Spanish; and
    - the court makes a finding that there is no licensed court interpreter within 75 miles who can interpret in the language that is necessary in a proceeding.
139. A qualified telephone interpreter may be sworn to interpret for the person in any criminal proceeding before a judge or magistrate if:
    - an interpreter is not available to appear in person before the court; or
    - the only available interpreter is not considered to possess adequate interpreting skills for the particular situation or is unfamiliar with the use of slang.

    "Qualified telephone interpreter" is defined as a telephone service that employs:
    - licensed court interpreters as defined by Section 157.001 of the Government Code; or
    - federally certified court interpreters.
140. Provide an interpreter or some type of auxiliary aid.
141. The court.
142. Class A misdemeanor.

PART 9

143. True.

144. True.

145. False.

PART 10

146. Contempt power is given to the courts so that the proceedings will be conducted with dignity and in an expeditious manner so that justice may be done.

147. Direct contempt means an act that occurs in the judge's presence and under circumstances that require the judge to act immediately to quell disruption, violence, disrespect, or physical abuse. Indirect contempt is an act that occurs outside the court's presence and includes such acts as failure to comply with a valid court order, failure to appear in court, attorney being late for trial, or filing offensive papers with the court. If a person is charged with indirect contempt, the person has a right to notice of the charge, a right to a trial or hearing in open court, and the right to counsel. Civil contempt includes willfully disobeying a court order or decree. Criminal contempt includes acts that disrupt court proceedings, obstruct justice, are directed against the dignity of the court, or bring the court into disrepute.

148. A fine not to exceed $100 and/or three days in jail.

149. A fine of $10 to $200.

150. A fine of not more than $100.

151. A fine not to exceed $100.

6
Post-Trial Procedure

Table of Contents

INTRODUCTION

The previous chapter examined formal charging, trial, and the consequences of failing to appear for the trial of an offense. The case is not over, however, at conviction or upon a plea of guilty or no contest. Following the verdict or plea, the court must render judgment, assess punishment, and determine the sentence. After that, the defendant must satisfy their obligations according to the terms of the judgment or court order. There are several methods by which the defendant may meet these obligations, and depending on the facts of the case, additional hearings may be required by law. Chapter 6, Post-Trial Procedure, will explore these issues and discuss not only issues that the judge must consider following trial, but also how the defendant shall satisfy the judgment and sentence according to the law.

PART 1
SENTENCING

A. Judgment and Sentence

Upon a finding of guilt, the judge must render the judgment and sentence. The Code of Criminal Procedure provides some guidelines for this process. The first step is that the court must create a written, signed judgment. Art. 42.01, C.C.P. Without this written judgment signed by the judge, nothing that comes after will have a legal basis. There are two statutes that govern the judgment in municipal court. The general statute, Article 42.01 of the Code of Criminal Procedure, referenced above, includes the requirement that all judgments be written and signed by the judge. There are also several other general requirements in this statute that apply to any criminal offense, including both felonies and misdemeanors. The other specific statute is Article 45.041/45A.251 of the Code of Criminal Procedure. Article 45.041/45A.251 outlines important procedural steps specifically for municipal and justice courts that the judge must follow in rendering judgment and imposing the sentence. It is important that courts follow the requirements outlined, as appropriate for the level of offense, in both statutes.

Art. 42.01, C.C.P.

A judgment is the written declaration of the court signed by the trial judge and entered of record showing the conviction or acquittal of the defendant.

The provisions of Article 45.041/45A.251 primarily outline the determinations that a judge must make when imposing the sentence and the manner in which a defendant may satisfy the judgment. The judge may direct any defendant, regardless of ability to pay, to pay fine and costs at some later date, or to pay a specified portion of the fine and costs at designated intervals. Art. 45.041(b)/45A.253(a), C.C.P.

The court may also direct the defendant to pay restitution, if applicable, to the victim of the offense (for the offense of issuance of bad check, restitution is limited to $5,000); and to satisfy any other sanction authorized by law.

Art. 45.041(a-1)/45A.252, C.C.P.

When a defendant enters a plea in open court, the judge shall inquire whether the defendant has sufficient resources or income to immediately pay the fine or costs.

Finally, for every plea made in open court, the judge is required to inquire during, or immediately after imposing the sentence, whether the defendant has sufficient resources or income to immediately pay all or part of the fine or costs. Art. 45.041(a-1)/45A.252(a), C.C.P. If the judge determines that the defendant does not have sufficient resources or income to immediately pay all or part of the fine and costs, then the judge must determine alternatives to immediate payment.

The determination of which alternatives to immediate payment to order is entirely within the judge's discretion, based on the facts presented. This is not a duty delegable to the court clerk. Likewise, it is important to note that this is not the sentence in the case. A defendant will have been sentenced prior to this determination, based on either the defendant's plea or the verdict following trial. The alternatives to immediate payment are simply alternative means to discharging the previously ordered judgment and sentence. The law provides that these alternatives include payment at some later date, or in specified intervals, discharge by performing community service under Article 45.049/45A.254, waiver in full or in part under Article 45.0491/45A.257, or any combination of the above methods. These methods are explored in more depth in the sections that follow.

Practice Note

It was a common practice prior to the enactment of Article 45.041(a-1)/45A.252 for municipal judges to ask whether a defendant could pay the amount ordered after imposing the sentence. There is less clarity, though, on exactly what information a judge should rely on to make an ability to pay determination under this statute. One practice is for the judge to create a list of items that the defendant may bring to court to aid the judge's determination. This may include information on paycheck stubs, housing costs, medical expenses, or anything else that the judge thinks would be relevant to his or her determination of ability to pay.

The terms judgment and sentence are often used together and referred to as one event. The Court of Criminal Appeals has not provided a lot of guidance on distinctions between the two terms; but for purposes of understanding criminal procedure in municipal court, they are separated here as in Article 42.01: (1) judgment is the formal written, signed determination of guilt or innocence, and (2) sentence is the punishment resulting from that determination.

The sentence in a municipal court case is generally the amount of the fine and costs ordered to be paid to the State. Art. 45.041(a)/45A.251, C.C.P. This is important as the jurisdiction of municipal and justice courts extends only to the imposition of a fine and other sanctions as specifically authorized by law. Other sanctions may include statutory authorized requirements such as an alcohol awareness class on conviction for an offense committed by a minor under the Texas Alcoholic Beverage Code. In addition, a fine-only conviction may carry serious legal consequences that are not required to be included in the judgment and sentence. Art. 4.14(d), C.C.P. Such sanctions or penalties are referred to as collateral consequences. This means a penalty that is in addition to the sentence. This type of penalty is often assessed on conviction, typically by another entity, or state agency, according to the law. An example of this type of collateral consequence would be license suspension by the Department of Public Safety. The municipal court

does not suspend the license in the judgment, but it does report the conviction to the Department of Public Safety that may ultimately result in the suspension. Sometimes, however, a collateral consequence may not affect a defendant until much later. For example, someone convicted of a crime of moral turpitude may later face an inability to obtain a professional license, thereby barring them from working in a specific field of employment.

1. State Law Offenses

Municipal courts have concurrent jurisdiction with justice of the peace courts in all criminal cases arising under state law that are punishable by fine and such sanctions not consisting of confinement in jail or imprisonment. Convictions of certain offenses may also have as a consequence the imposition of a penalty or sanction by an agency or entity other than the court, such as a denial, suspension, or revocation of a privilege. Art. 4.14, C.C.P. and Sec. 29.003, G.C.

A common misconception among the general public is that the maximum fine that can be imposed in municipal court is relatively small. It would not be surprising if a majority of those unfamiliar with municipal court assumed that the maximum fine was a number somewhere between $200 and $500. The reality is that there is large range of fine amounts possible, and courts should carefully read the related statute to ascertain the correct fine range. There may be some criminal offenses that carry a specific fine, while others fall under a general penalty that pertains to an entire group of offenses. Nonetheless, it is important not to fall into the one-size-fits-all trap. It is no more true that the maximum fine in municipal court is $500 than it is that municipal courts only hear traffic cases.

Sec. 7.187(a)(1)(b), W.C.

The general penalty for Water Code offenses involving injection wells is one of the highest, carrying a fine range of $1,000 - $50,000 for each day of the offense.

2. Class C Misdemeanors

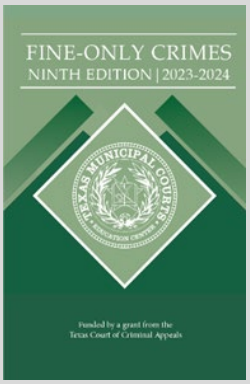
"Class C misdemeanor" is defined in Section 12.23 of the Penal Code. This section provides that an individual found guilty of a Class C misdemeanor shall be punished by a fine not to exceed $500. This definition, however, only governs offenses in the Penal Code. This means that a criminal offense defined in the Penal Code will carry the maximum fine of $500 unless otherwise specified. In other codes, Section 12.41 of the Penal Code instructs that any fine-only offense conviction is classified as a Class C misdemeanor, but those offenses are not bound by the $500 maximum penalty. An offense under the Water Code, for example, may have a fine range of $1,000 to $50,000. This, in turn, could be doubled depending on whether the defendant has any prior convictions. Consequently, it is possible to see a fine set at $100,000. This is not just applicable to arcane offenses that may be seldom seen in most municipal courts. A more familiar example may be the offense of Passing a School Bus found in Section 545.066 of the Transportation Code. This offense would be defined as a Class C misdemeanor; however, because it is a criminal offense located outside the Penal Code, the fine range for a first offense well exceeds $500 and is set at $500 to $1,250.

If an offense outside of the Penal Code is defined as a Class C misdemeanor, but the code in which the offense is located does not assign a penalty, the court uses the Penal Code definition of Class C misdemeanor and the $500 maximum penalty. In some instances, statutes may also merely state

that a particular act is "an offense." In these cases, if the general penalty clause governing that statute provides for a fine-only penalty, the municipal court has jurisdiction.

In addition, for some Class C misdemeanors, the penalty is different depending on the age of the defendant. Defendants under the age of 21 charged with the offense of public intoxication are subject to different penalties than those 21 or older. A person 21 or older faces a penalty of a fine up to $500, while a person under the age of 21 is punished in the same manner as a minor charged with an Alcoholic Beverage Code offense. Sec. 49.02(e), P.C. The penalties for those offenses are found in Section 106.071 of the Alcoholic Beverage Code and include a fine of up to $500, community service, potential driver's license suspension, and an alcohol awareness course. Sec. 106.071, A.B.C.

Finally, some fine-only offenses can be enhanced because of prior convictions and remain Class C misdemeanors. For example, a person who has been previously convicted of the offense of failure to maintain financial responsibility and is convicted a second or subsequent time faces an increased penalty from a maximum of $350 to $1,000 and impoundment of the vehicle. For the court to assess the enhanced penalty, the complaint must allege the prior conviction or convictions.



Practice Note

Fine-Only Crimes is a good resource for quick reference on the more than 1,300 fine-only criminal offenses defined by state law. Now in its ninth edition, the book is published by TMCEC every two years. Referred to as "The Green Book" by clerks, it includes information on fine ranges, statutory authority, and court costs. Editor's notes highlight important points of law for both processing and charging offenses.

3. City Ordinances and Joint Airport Board Resolutions, Rules, and Orders

In Texas, cities have some measure of self-government and may pass ordinances. Ordinances are essentially laws passed by the city. These often include criminal offenses that are distinct from state law offenses. Article 4.14 of the Code of Criminal Procedure and Section 29.003 of the Government Code establish limits on the maximum penalties that municipal governments may set for city ordinance offenses and that joint airport boards may set for violations of resolutions, rules, and orders. Although the city government or joint airport board establishes penalty ranges under state guidelines, it is within the sole discretion of the judge to set fines within the penalty range.

The penalty limits that can be adopted by the city or joint airport board are:

- a fine not to exceed $2,000 for offenses involving fire safety, zoning, public health, and sanitation offenses (including dumping of refuse); and
- $500 on all other city ordinance violations or violations of the rules, resolutions, or orders of a joint board.

Since each city and joint board may decide to establish different penalty ranges within the guidelines established by statute, courts should examine the penalty clauses of ordinances and resolutions, rules, and orders within their own city before setting fines.

4. Setting the Fine

Window Fine

This is the fine amount approved by the judge, allowing fines to be processed at the window. Sometimes called a fine schedule, there is no specific statute governing the practice.

In any case before the municipal court, it is solely the authority of the judge to set the fine amount within the statutory range. Some judges determine the fine on a case-by-case basis, while other judges establish a suggested fine schedule that may be posted on the court's website or provided to defendants wishing to pay a fine at the window. This schedule is for defendants who do not want to contest the charges filed against them in court. This is commonly referred to as the "window fine." It is worth noting that no specific statutory authority defines the fine schedule or outlines its parameters, other than the judge's power to set fines within the statutory range. While window fines may be efficient for defendants who do not wish to contest the case, clerks should be cautious not to imply that the window fine is the only option. The window fine is an efficiency tool approved by the judge in uncontested cases, but a defendant's potential options always include speaking to the judge about the fine or even meeting with the prosecutor regarding the fine amount.

In contested cases, the judge bases his or her decision on the facts of the case and relevant evidence admitted at trial. Higher courts typically will have a bifurcated trial, separating the guilt and innocence phase from the punishment phase. There are no provisions for this practice in municipal court, however, and the judge will need to consider a process to determine any relevant considerations regarding punishment. In addition, the judge will look to the penalty clause of the ordinance, statute, resolution, rule, or order, and set the fine at an amount within the limits prescribed by the penalty clause.

Practice Note

Chapter 132 of the Local Government Code authorizes cities to collect fines and costs through payment by credit card or other electronic means, but within certain parameters. The processing fee that the city may collect cannot be greater than five percent of the amount paid. Sec. 132.003(b), L.G.C. Also, if the credit card is declined, the additional service charge would be the same amount as the fee charged for a bounced check. Sec. 132.004, L.G.C.

B. Restitution

The law provides that restitution may be collected under certain circumstances in municipal court. Prosecutors and judges will want to proceed with caution, however, as there is often a separate civil case pending in a different court that may also result in restitution or a civil judgment. There is the possibility that ordering restitution in a criminal Class C misdemeanor case may result in double recovery for a party. That said, Article 45.041(b)(2)/45A.251(b)(2) of the Code of Criminal

Procedure allows a municipal court to require a defendant to pay restitution to any victim of an offense. Restitution is the act of compensating the victim for his or her actual monetary loss. The amount of restitution that a municipal court may order is unlimited except in one instance, the offense of issuance of bad check. For that offense, restitution is limited to $5,000.

Section 32.41 of the Penal Code also provides that a judge can require a defendant to make restitution upon conviction for the offense of issuing a bad check, which is a Class C misdemeanor. The statute provides that the defendant shall submit restitution through the prosecutor's office if collection and processing were initiated through that office. In other cases, restitution may, with the approval of the court in which the offense is filed, be handled through the court. When the court requires restitution, the court clerk should keep records of the restitution transactions and coordinate the payment to the victim.

C. Payment of Fine and Costs

1. Installment Payments

Installment payments are an important alternative means to the full payment of fine or costs. If the judge determines that the defendant is unable to immediately pay the fine and costs assessed, then the judge is required to allow the defendant to pay in specified portions at designated intervals. Art. 45.041(b-2)/45A.253(a), C.C.P. The portions and intervals are up to the judge based on the individual circumstances. When a judge orders the defendant to pay any part of the fine and costs through installments or at some later date, clerks should make sure that any orders are documented. Many courts also document this using a payment plan application.

2. Discharged by Community Service

Although a defendant may not be sentenced to community service, it is an important alternative method to discharging fines or costs for those that are unable to pay post-judgment. In addition, community service may directly benefit the community in which the criminal offense occurred. The law provides that the court may require defendants who failed to pay previously assessed fines or costs, or who are determined by the court to have insufficient resources or income to pay a fine or costs, to discharge all or part of the fine or costs by performing community service. Art. 45.049/45A.254, C.C.P. The definition of "community service" is very broad in the statute. The judge may order the defendant to attend any of several programs, including a work skills program, a high school equivalency class, an alcohol or drug program, a rehabilitation program, a counseling program, or a mentoring program. The judge may also order a defendant to perform community service for a governmental entity, a nonprofit or other organization that provides services to the general public that enhance social welfare and the general well-being of the community, or an educational institution. Art. 45.049(c)/45A.254(c), C.C.P. This means that there are no strict parameters regarding the organization type. The entity could include a religious organization or even a for-profit, provided that the other qualifications are met. It is entirely within the judge's discretion to decide which entities qualify.

Art. 45.049(e)/45A.254, C.C.P.

A defendant is considered to have discharged no less than $100 of fines or costs for each eight hours of commmunity service performed.

The judge is required to specify the number of hours in the community service order that the defendant is required to work. A judge may not order more than 16 hours per week of community service unless the judge determines that requiring the defendant to work additional hours does not create a hardship on the defendant or the defendant's dependents. A defendant is considered to have discharged not less than $100 of fine or costs for each eight hours of community service performed. Judges are not limited in the amount of credit given if it is at least $100 for every eight hours of community service performed.

Finally, it should also be noted that there are several paths to community service in the law. Under Article 45.0492/45A.459-45A.460 of the Code of Criminal Procedure, a judge may allow a defendant younger than 17 years of age to discharge any fine and costs through community service, or tutoring in some instances, without having to first determine that the defendant has failed to pay the fine and costs. Community service may also be ordered as a reasonable condition of deferred disposition under Art. 45.051/45A.302, C.C.P., or as a requirement for minors charged with certain offenses under Chapter 106 of the Texas Alcoholic Beverage Code.

Practice Note

Unlike county and district courts, there is no probation department in municipal court that keeps track of community service hours. The court clerk is generally given responsibility for developing methods to track and record community service hours, creating forms to document completion of hours, and properly recording hours. One practice is to make certain that defendants receive a community service log and list of providers approved by the judge in court when they are ordered to perform community service.

3. Jail Time Credit

The judge must credit a defendant for time the defendant served in jail on that charge. Arts. 42.03, Sec. 2, and 45.041/45A.251(d), C.C.P. This includes time served in jail from the time of arrest to conviction and time served after conviction. Art. 45.041(c)/45A.251, C.C.P.

The rate of credit is not less than $150 for a period of time specified in the judgment. "Period of time" is defined as not less than eight hours or more than 24 hours. Arts. 45.041/45A.251 and 45.048/45A.262, C.C.P. When a judge enters judgment, he or she must specify the amount of time that the defendant must serve to receive jail credit.

Additionally, defendants may now be entitled to jail credit for time in jail on unrelated, higher offenses. In 2021, subsection (c-1) was added to Article 45.041, requiring a judge to credit a defendant for any time the defendant was confined in jail or prison while serving a sentence for another offense, if the time was served after the fine-only misdemeanor was committed. This same requirement also exists in Article 45A.251(e). This new mandatory jail credit must be credited at the time of judgment when imposing a fine and costs.

As custodian of the records, court clerks should properly record jail-time credit. In some instances, the defendant may have enough jail-time credit to satisfy the total fine and court costs; in other instances, it may be just part of the amount owed. If a defendant does not pay any money to the court because he or she had sufficient jail credit for both fine and court costs, the Comptroller does not require the court to remit court costs that were not collected in money.

4. Waiver of Fine and Costs

Separate from the discussion about alternative means to discharge the fine or costs or jail credit is the concept of waiver. As authorized by Article 45.0491/45A.257 of the Code of Criminal Procedure, waiver means that the judge would essentially erase the financial obligation to pay the fines or costs. To legally do this, prior law required that the defendant "default" prior to the waiver. There was no definition of "default" in the law, and it was often unclear across the state what timelines would be involved from the point of "default" to the waiver. Another requirement was that the judge find the person indigent before waiver if that person was not a child. If those requirements were not met, then the judge could not proceed with waiver of the fines or costs.

The 85th Texas Legislatures substantially altered the judge's waiver power in 2017. This was followed by further tweaks to waiver provisions in 2019. Legislators completely removed "default" from the statute and broadened those who qualify. Current law now allows the judge to waive all or part of a fine imposed on a defendant if the judge determines that (1) the defendant is indigent or does not have sufficient resources to pay, or was a child at the time the offense was committed, and (2) discharging the fine through community service would impose an undue hardship on the defendant. A judge may waive payment of all or part of the costs imposed on a defendant if the court determines that the defendant is indigent or does not have sufficient resources or income to pay, or was a child at the time the offense was committed. Art. 45.0491/45A.257, C.C.P. From a practical standpoint, this means that a judge no longer needs to determine whether or if the person "defaulted" on that person's obligation or what definition of indigence to apply. If the judge determines that the person does not have sufficient resources and that community service would be an undue hardship, the judge may now waive all or part of the fine. Waiver of all or part of the costs can occur with only a determination of indigence or inability to pay (or for a child); no finding of hardship is required.

True or False

1. When a judge enters a judgment, the penalty is the fine and costs and, in some cases, other sanctions. ____
2. Municipal courts may not require restitution. ____
3. Statutes do not establish limits on the amount of maximum possible penalties that municipalities may create in their ordinances. ____
4. If a judge believes that the maximum fine is not high enough, the judge may assess a higher fine. ____
5. Fine penalties for violations of state law offenses vary. ____
6. The maximum possible fine for a Class C Penal Code offense is $500. ____

7. Offenses outside of the Penal Code that are fine-only, regardless of the amount of the fine, are Class C misdemeanors. ____
8. When a municipal court orders restitution upon convictions, it may be in an amount up to the amount of the fine assessed, except for the offense of issuance of bad check. ____
9. The maximum restitution that municipal courts may require for the issuance of a bad check is $5,000. ____
10. Clerks should keep records of restitution payments and coordinate payments to victims. ____
11. Judges who know that a defendant has had a prior conviction can impose a higher fine regardless of how the offense was charged by the officer or prosecutor. ____
12. What are judges required to do when a defendant is arrested, placed in jail, and later convicted? _____

_____
13. What constitutes a "period of time" for determining jail credit? _____

_____
14. What is the clerk's responsibility regarding records of defendants who have been in jail and later convicted? _____
15. What amount may the processing fee not exceed? _____

_____
16. If a service charge is assessed, at what amount may it be set? _____

True or False

17. When a defendant fails to pay a previously assessed fine, the court may require a defendant to perform community service to discharge the fine. ____
18. Judges must specify in a community service order the amount of hours to be worked. ____
19. Community service may only be performed for a governmental entity or a non-religious organization. ____
20. If a judge determines that working more than 16 hours a week will not be a hardship, the court may order more time. ____
21. A judge is not liable for damages arising from an act or failure to act in connection with manual labor if the failure to act was performed under a court order and not intentional, willfully, or wantonly negligent. ____
22. When a judge determines that the defendant does not have sufficient resources to pay, and community service is an undue hardship, the court may waive payment of the fine and court costs. ____
23. The time payment fee is required to be paid by a defendant who pays any part of a fine, costs, or restitution on or after the 31st day after a judgment is rendered. ____

PART 2
REPORT OF CONVICTION

Courts are required to report to the DPS all traffic convictions and forfeitures of bail in cases involving a law regulating the operation of a vehicle on a highway. The report is to be submitted by the magistrate, judge, or clerk of the court. Sec. 543.203, T.C. As this statute requires reporting if the offense was a law regulating the operation of a motor vehicle, courts are also required to report final convictions or forfeitures of bail on all city ordinance traffic offenses. The court clerk typically prepares this report and submits it to DPS. Failure of a judge or clerk to properly and timely report final convictions of traffic offenses may constitute misconduct in office and be grounds for removal. Sec. 543.206, T.C. Courts may not submit a record of a traffic offense when the court defers disposition of the case under Article 45.051/45A.302 of the Code of Criminal Procedure if the defendant completes the terms of the deferral and the case is dismissed. Sec. 543.204, T.C.

543.206, T.C.

The failure to properly and timely report convictions to the DPS may constitute misconduct in office and may be grounds for removal

The report must be submitted not later than the seventh day after the date of conviction or forfeiture of bail. Sec. 543.203, T.C. This is because the DPS has just 10 days to submit certain convictions pertaining to commercial driver's license holders to the federal government.

Courts are also required to report convictions in certain cases to entities such as the Texas Commission on Alcohol and Drug Abuse (TCADA) and the Texas Parks and Wildlife Department (PWD). A discussion of those offenses that are required to be reported is included in the *State and City Reports* chapter of this Study Guide.

True or False

24. Courts are required to report to the DPS all convictions for violations of laws regulating the operation of a vehicle on a highway. ____
25. When a defendant posts a bond and fails to appear for traffic offenses, the court must report the bond forfeiture to the DPS when there is a final judgment on the forfeiture. ____
26. If a court fails to properly report traffic convictions to the DPS, the judge or clerk may be removed for misconduct in office. ____
27. Courts are required to report to the DPS within 30 days of the date of conviction. ____

PART 3
JUDGMENT ENFORCEMENT

A. Failure to Satisfy Judgment

1. Issuing a Capias Pro Fine Writ

Writ

A written order from the court directing a person to either act in some way or to refrain from an act.

Following the judgment and sentence, every court will eventually encounter a case where the defendant has failed to satisfy the judgment ordered in the case. This typically means that the defendant has neglected to pay the fine and costs ordered in the case. A common practice is for the municipal court to send a courtesy notice or make a telephone call, although these practices vary greatly depending on the court. But what happens when all other methods fail to bring the defendant back into court to address the failure to satisfy the judgment? The law provides a way, separate from the arrest warrant, that an officer may detain and transport that person to the municipal court. That method is through a type of writ called the capias pro fine.

A capias pro fine is a writ issued after a hearing for defendant's failure to satisfy the judgment and sentence. The writ, Latin for "that you take for the fine," directs any peace officer to arrest the person and bring him or her immediately before the court. Art. 43.015, C.C.P. This is generally different from an arrest warrant in that the person has already been convicted of the offense and has been ordered to pay fine and costs to the State.

Capias Pro Fine

A writ issued after a hearing for failure to satisfy the judgment and sentence. The writ directs a peace officer to bring the person before the court immediately.

The capias pro fine has a number of requirements that must be met prior to its issuance. The first is that the case has a written, signed judgment and sentence. Without the judgment, there is no evidence that the defendant owes anything whatsoever to the state. Second, the writ is required to state the amount of the judgment and sentence and command a peace officer to bring the defendant before the court. If it is not possible for the officer to bring the defendant before the court immediately, then the officer may place the defendant in jail until the business day following the date of the defendant's arrest. Art. 45.045/45A.259, C.C.P. This is an important consideration for courts, particularly small courts that do not have a staffed court or a judge on the bench throughout the day. If a judge decides to issue the capias pro fine, then that judge should be prepared to be available to see the defendant upon arrest. The law requires that the officer may only take the defendant before a municipal judge in the same municipality that issued the capias pro fine. Art. 45.045(a-1)(2)/45A.259(c)(2), C.C.P. Procedures should be in place to avoid the possibility that the defendant could sit in jail without seeing any judge. The county magistrate is not authorized to dispose of the municipal capias pro fine case.

Finally, before the judge can issue a capias pro fine, the law requires that the court set a show cause hearing on the matter. Art. 45.045(a-2)/45A.259(d), C.C.P. This hearing should not be confused with the "show cause" hearing required under the Driving Safety or Deferred Disposition statutes. At the hearing on the capias pro fine, the defendant would have an opportunity to present evidence

as to why the capias pro fine should not be issued. The conviction will have already been entered, so it is not an opportunity to litigate the facts of the case. If the defendant fails to appear for the hearing, then the court may issue the capias pro fine. Art. 45.045(a-2)(2)(b)45A.259(d), C.C.P.

Practice Note

It is important to regularly maintain the integrity of the case file and document any changes in the case status. Every case file that is post-conviction should have at a minimum a written, signed judgment. In addition, the clerk should document any changes in the case. This may include events such as contact with the defendant, payment plan details, amounts paid in the case, and docket settings. Prior to issuing a capias pro fine or ultimately committing a person, the court will need to verify that every step required by the law has been both documented and completed.

2 Indigency Considerations

An important consideration during the enforcement process is whether or not the defendant has the ability to pay the judgment as ordered. In certain instances, judges are required to determine whether a defendant is able to pay the fine and costs assessed in a case. In Class C misdemeanor cases, this determination is required (1) in open court during or immediately after imposing judgment and (2) before commitment to jail.

Whether or not a particular defendant is able to pay the fine and costs is a complex determination involving numerous factors that widely vary depending on where a defendant lives, especially in a state as large and diverse as Texas. The U.S. Supreme Court has made no attempt to define indigence, leaving that duty to state legislatures. Texas statutes like Articles 45.041/45A.252, 45.046/45A.261, and 45.049/45A.254 of the Code of Criminal Procedure provide judicial discretion in determining whether a defendant is indigent without specifically defining indigence.

Williams v. Illinois, 399 U.S. 235 (1970)

The Equal Protection Clause requires that the ceiling based on imprisonment for any offense be the same for all defendants irrespective of their economic status.

The 78th Legislature did, however, define "indigent" to mean "an individual who earns not more than 125 percent of the income standard established by applicable federal poverty guidelines" under Section 133.002 of the Local Government Code for purposes of fees listed in that chapter. The TMCEC application form for time payment, extensions, or community service asks that the defendant note any federal programs that he or she is eligible for and is receiving assistance from. The court should consider this information in combination with all relevant facts regarding the defendant's ability to pay a fine and costs.

3. Commitment

a. The Case of Preston Tate

One of the most important cases regarding the equal treatment of court users and imprisonment in jail for fine-only offenses began in Texas and involved a man named Preston Tate. Preston Tate managed to amass fines totaling $425 from nine traffic convictions in the Houston Municipal Court. He earned only between $25 to $60 a week while supporting a wife and two children; and, in Texas at the time, those who were unable to pay were sent to the prison farm to work off the

amounts owed. When Preston Tate told the court that he could not pay, he was ordered imprisoned for 85 days.

The case ultimately ended up at the U.S. Supreme Court, where the majority ruled that imprisonment solely because of inability to pay was unconstitutional and violated the Equal Protection Clause of the 14th Amendment. The court respected the fact that the state has an interest in enforcing its judgments; however, it reasoned that automatically converting a fine to a prison term for those unable to pay violated the law. Quoting from another case decided just the year before, the court opined that because Texas had decided that traffic offenses would be fine-only, there should be a ceiling on the punishment for traffic offenses for all defendants. In this case, that ceiling was that, absent any alternative means to pay the amount, punishment could not include incarceration for only one group of people.

The court further explained that "There are, however, other alternatives to which the State may constitutionally resort to serve its concededly valid interest in enforcing payment of fines." *Tate v. Short*, 401 U.S. 395, 400 (1971). What are the alternative means through which the state could enforce the judgment? Today, Texas law allows installment payments and community service. All three of these, in addition to waiver, could be avenues that a court would consider prior to the actual commitment proceedings for a defendant.

b. Commitment Requirements

This should not be taken to mean that defendants may never be committed to jail stemming from a fine-only offense. The court in *Tate* pointed out that it was "not precluding imprisonment as an enforcement method when alternative means are unsuccessful." *Tate v. Short*, 401 U.S. 395, 401 (1971).

Texas law provides for a commitment process in Article 45.046/45A.261 of the Code of Criminal Procedure. Following a default by the defendant in satisfying the judgment and sentence according to its terms, the court must hold a commitment hearing. Unlike the show cause hearing prior to the issuance of a capias pro fine, there is no provision for the court to proceed without the defendant present. In fact, if the defendant cannot be physically present at the hearing, the law permits the defendant to appear before the court by means of an electronic broadcast system. Art. 45.046(c)/45A.261(c), C.C.P.

At the commitment hearing, the judge must make specific written findings before being able to sign a commitment order committing the defendant to jail to satisfy judgment in lieu of payment of the fine and costs. The judge must make a written determination that:

(1) the defendant is not indigent and has failed to make a good faith effort to discharge the fine and costs; or

(2) the defendant is indigent, has failed to make a good faith effort to discharge the fine and costs through community service, *and* could have discharged the fine and costs through community service without experiencing any undue hardship.

Once the judge has made the above written determinations and documented them in the case file, then the judge can commit the defendant to jail to earn jail credit to satisfy the judgment. A certified copy of the judgment, sentence, and order is sufficient to authorize such confinement. Art. 45.046/45A.261(b), C.C.P.

Practice Note

The court in *Tate v. Short* observed, "The State is not powerless to enforce judgments against those financially unable to pay a fine; indeed, a different result would amount to inverse discrimination since it would enable an indigent to avoid both the fine and imprisonment for nonpayment whereas other defendants must always suffer one or the other conviction." With increasing court costs and the advent of mechanisms such as "day fines" in some jurisdictions, this remains a topical issue even today.

B. Other Enforcement Mechanisms

1. OmniBase

There are several enforcement mechanisms available to municipal courts once a defendant fails to satisfy the judgment. One of the more common means is through a private company called OmniBase. The company is a vendor that administers the DPS Failure to Appear Program. This program, authorized in Chapter 706 of the Transportation Code, involves a city contracting with the DPS. Generally referred to simply as Omni, the company acts as a go-between for the municipal court and the Department of Public Safety under the contract. A city may then send identifying information to the DPS to deny renewal of a person's driver's license if he or she fails to appear for the prosecution of any fine-only offense or fails to pay or satisfy a judgment ordering the payment of a fine or costs.

Numerous rights and responsibilities are outlined in the contract with DPS, which generally mirror those found in Chapter 706. When a city contracts with DPS, a peace officer issuing a citation for a violation of a traffic law must provide a written warning that tells the person that if he or she fails to appear for the prosecution of the offense or fails to pay or satisfy a judgment ordering the payment of a fine and costs in the manner ordered by the court, he or she may be denied renewal of his or her driver's license. The law provides that the warning is in addition to any other warning required by law and may be printed on the citation. In practical terms, most municipalities include the "*Omni Warning"* on the actual citation alongside other statutory warnings.

How it Works

Pursuant to the written contract that is typically sent to courts by the DPS, if the defendant fails to appear as required or fails to pay or satisfy a judgment of the court, the court sends notice to Omni. Omni, in turn, then notifies DPS to flag the defendant's driver's license, prohibiting the defendant from renewing his or her license until the defendant either pays a reimbursement fee or one of several things happens to the case.

For the DPS to lift the hold on the defendant's license, the court must send what is called a clearance notice to Omni. This tells Omni that one of the statutory conditions to lift the hold has been met, and Omni then transmits the information to DPS. There are two categories of events that

will result in clearance notice: (1) paying the $10 reimbursement fee; (2) not paying the $10 reimbursement fee. The qualifying events in each category are outlined in Sections 706.005 and 706.006 of the Transportation Code. Due to the wording of the statute, even the most experienced court personnel can be confused as to what event qualifies with payment and what event does not require payment. For that reason, the two statutes, as well as a provision for indigency found in Section 706.006(d) of the Transportation Code, are summarized in the graphic on the previous page.

Practice Note

This chapter discusses the procedure when assessing the Omni reimbursement fee. The allocation of that fee, and issues regarding the amount collected or reported, are further discussed in the section of this Guide covering city contracts for enforcement. That section is found in Part 9 of Chapter 7, *State and City Reports*.

2. Scofflaw

A city may contract with the county assessor-collector or the Department of Motor Vehicles to deny motor vehicle registration to an owner who has an outstanding warrant for failure to appear or failure to pay a fine involving a traffic offense that has a possible maximum fine of $200. Ch. 702, T.C. This program is referred to as "Scofflaw." Prior to 2011, only home-rule cities could enter into these agreements, but that year the authority was extended to general-law cities as well. The denial of the vehicle registration is permissive, meaning the county tax-assessor must agree to participate. Cities may collect a $20 reimbursement fee from defendants who are referred to the Scofflaw program, but the fee can only be used to reimburse the county for its services.

Omni Clearance Notice

With Payment of $10 Fee	Without Payment of $10 Fee
(1)On perfection of appeal (2)Dismissal of the charge for any reason other than lack of evidence (3)On posting of bond (4)Payment of fine and costs (5)On suitable arrangements to pay	(1)On acquittal at trial (2)Dismissal with prejudice for lack of evidence (3)Report was sent in error (4)Case has been destroyed under the records retention policy (5)Defendant was found to be indigent by the court

3. Collections Vendors

Article 103.0031 of the Code of Criminal Procedure provides cities the authority to contract with private attorneys or public or private vendors for third party collection services. The city may contract for the collection of the following when they are 60 days past due:

- debts and accounts receivable such as fines, fees, restitution, and other debts or costs;
- forfeited bonds (however, bonds filed by commercial bail bondsmen may not be included in a contract for collection services; only personal bonds and surety bonds not filed by a commercial bail bondsman may be included);
- fines and fees assessed by a hearings officer for administrative parking citations; and

- amounts in cases where the accused failed to appear in compliance with a lawful summons; a lawful order of the court; or as specified in a citation, summons, or other notice for administrative parking. In these cases, the amounts must remain unpaid on the 61st day after the defendant failed to appear.

Vendors and attorneys sending a communication to an accused person regarding the amount of payment that is acceptable to the court under the court's standard policy for resolution of a case, must include a notice of the person's right to enter a plea or go to trial on any offense charged. Article 103.0031(b) provides that a city that contracts with a private attorney or vendor may authorize the addition of a collection fee in the amount of 30 percent on each item that has been referred for collection. Article 103.0031(i) allows cities to contract to collect a debt incurred on an offense that was committed before June 18, 2003, but no collection fee may be added to those amounts.

4. Civil Collection of Fines

Article 45.047/45A.263 of the Code of Criminal Procedure provides authority for municipal courts to collect fines and costs by civil process. One means is by execution, which is a civil process where a defendant's property may be seized and sold to pay the fine and costs. Section 6.002 of the Civil Practice and Remedies Code provides that a municipality may initiate and prosecute suits without giving security for costs and may appeal from a judgment without giving a supersedeas or cost bond. A supersedeas bond is a bond that is required to set aside a judgment or execution and from which the other party in the lawsuit may be made whole if the action is unsuccessful. A cost bond is a bond that is given by a party to an action to secure eventual payment of such costs as may be required of an appealing party in a civil case. The purpose of the bond is to cover the appellee's (the party in a cause against whom an appeal is taken) costs if the judgment is affirmed, or confirmed, by the court.

The rules governing execution of property are complicated, and clerks should discuss the process with the city attorney. The prosecutor must be involved in most of these processes.

28. What is a capias pro fine? _____

29. What should every case file have, at a minimum, post-conviction? _____

_____

30. Who has the authority to issue a capias pro fine? _____

_____

31. If a defendant is indigent, what must the court do? _____

_____

32. What is the process called that may be used to sell a defendant's property to satisfy a fine?

_____

33. A contract with DPS for denial of driver's license renewal applies to what offenses?

_____

34. When a city contracts with DPS, when is the $10 reimbursement fee required? _____

_____

35. What kind of city may contract with the county and the Department of Motor Vehicles for the denial of vehicle registration_____

36. Vehicle registration may be denied for what offenses? _____

_____

37. What authority does the city have to contract with a vendor for collection of fines? _____

_____

38. When a city contracts with a private or public vendor, how old must the debt or failure to appear before the court can require the defendant to pay 30 percent of the debt owed?

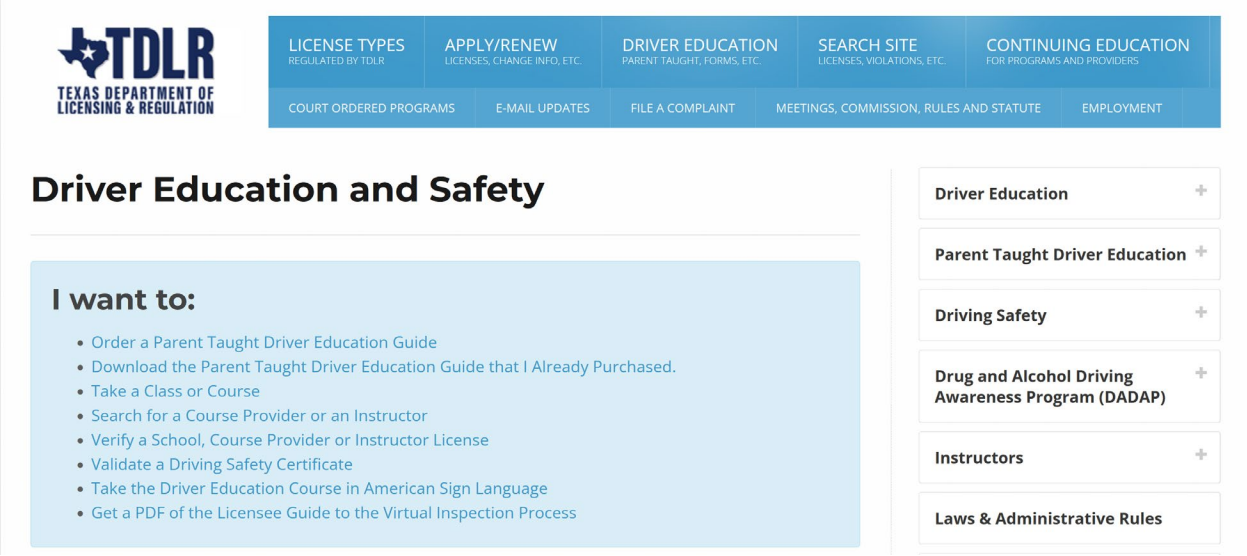
_____

PART 4
PROBATION

Black's Law Dictionary defines probation as "a court imposed criminal sentence that, subject to certain conditions, releases a convicted person into the community instead of sending the criminal to jail or prison." By that definition, nothing in municipal court would qualify as probation. The Code of Criminal Procedure provides, however, for legal mechanisms in municipal court that would essentially place a person on something similar to probation. These may defer a finding of guilt, subject to certain conditions, and release the person into the community to complete these conditions instead of convicting that person. There is not a collective name for these mechanisms spelled out in the code, but with the understanding that confinement is not a sentencing option in municipal court, "probation" is likely the best collective term for Driving Safety Courses and Deferred Disposition. These are further explored below.

A. Driving Safety Courses (DSC) / Motorcycle Operator Courses (MOC)

Defendants charged with traffic offenses, with some exceptions, may request to take a driving safety course or motorcycle operator training course to have the charge dismissed. Art. 45.0511/45A.352(a)(4), C.C.P. This is a specific course, sometimes referred to by the general public as "Defensive Driving." The certification and administration of the program is regulated by the Texas Department of Licensing and Regulation (TDLR). The section of the TDLR website providing information on driving safety courses is shown below.



1. Offenses to Which DSC/MOC Applies

Article 45.0511 of the Code of Criminal Procedure is entitled "Driving Safety Course (DSC) or Motorcycle Operator Course (MOC) Dismissal Procedures." The provisions, effective January 1, 2025, become Subchapter H of Chapter 45A entitled "Driving Safety or Motorcycle Operator Course Dismissal." These remedial courses are available to dismiss offenses that are in the jurisdiction of the justice or municipal court and involve the operation of a motor vehicle defined by Section 472.022, Subtitle C of Title 7, or Section 729.001(a)(3) of the Transportation Code. For defendants younger than 25 years of age, the article applies to any alleged offense that is within the jurisdiction of the justice or municipal court, involves the operation of a motor vehicle, and is classified as a moving violation. Art. 45.0511(a-1)/45A.351(b), C.C.P.

Practice Note

Offenses defined under the Rules of the Road are generally eligible offenses for drivers to take a driving safety course. There are certain exclusions to this rule listed in the Code of Criminal Procedure, including offenses committed in a construction zone and the offense of passing a school bus. These are also listed below; but for quick reference in court or at the front counter, have the Green Book nearby. The Editor's Notes under the Rules of the Road tab include a quick summary of eligible offenses.

2. Exceptions

Defendants eligible for driving safety or motorcycle operator courses have the right to take one course in each 12-month period to dismiss certain types of traffic offenses. The following offenses, though, are not permitted for dismissal:

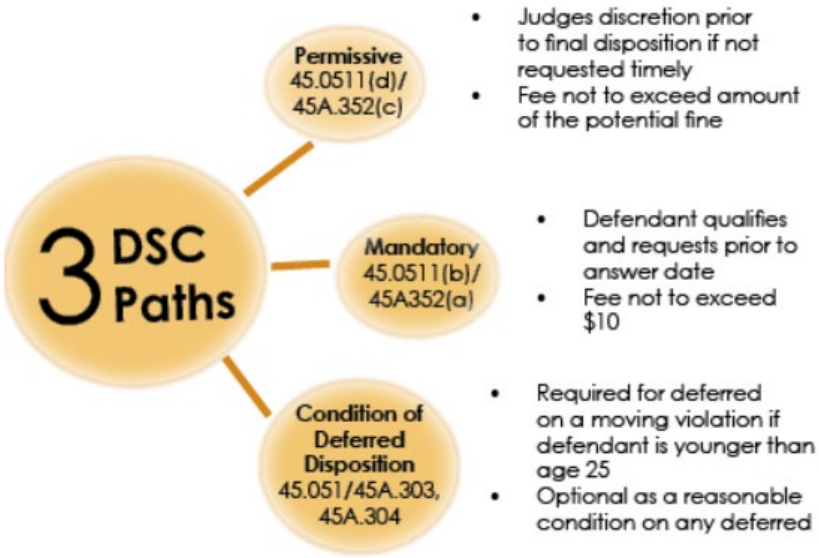
- speeding 25 mph or more over the speed limit;
- driving 95 miles per hour or more;
- offense committed in a construction or maintenance zone when workers are present;
- passing a school bus loading or unloading children;

- leaving the scene of a collision after causing damage to a vehicle that is driven or attended;
- leaving the scene of a collision and failing to give information and/or render aid;
- serious traffic violation; and
- offense committed by a person who held a commercial driver's license at the time of the offense or holds a CDL at the time of the request for DSC, including when the person is driving his or her own personal vehicle.

3. Eligibility and Requirements

To be eligible for a DSC or a MOC, the defendant:

- May not have completed an approved driving safety course or motorcycle operator course, as appropriate, within the 12 months preceding the date of the offense (see exception below for specialized safety belt course);
- Must enter a plea of guilty or nolo contendere on or before the answer date on the citation and present the request to take the course to the court in person, by counsel, or by certified mail (postmarked on or before due date);
- Must present to the court a valid Texas driver's license or permit or proof of active military duty status or be the spouse or dependent child of a person on active military duty; and must provide the court evidence of financial responsibility.



Defendants who are otherwise ineligible because they do not enter a plea of guilty or nolo contendere on or before their answer date, or because they have taken a course within the 12 months preceding the request, may still request to take the course. In some courts, this type of course may result from a plea agreement with the prosecutor. It may also result from a defendant's untimely request for a course when appearing in open court after the answer date.

Courts will need to consider processes for addressing these requests to make certain that the case file is properly documented. As the figure above indicates, there are different potential fees depending on the type of driving safety course that is ordered.

No matter the path, however, a permissive driving safety course is in the judge's discretion to grant. Defendants must still meet the other eligibility requirements outlined above. The process after the court order will then also be the same as the mandatory course.

Practice Note

It is important for the court clerk to carefully document which type of driving safety course is ordered by the judge. In some courts, there may be defendants appearing in court prior to their answer date and others appearing in court after the answer date. If the judge grants mandatory driving safety, then the maximum reimbursement fee allowed by law is only $10. The permissive driving safety course, however, carries a potential amount set as high as the fine amount for the offense. To prevent collection of amounts outside those legally authorized, the clerk will need to pay close attention to the proceedings and inquire with the judge as to the order if it is unclear.

4. Costs

a. Required Court Costs

Court cost statutes require the defendant to pay all applicable court costs when the court grants the request for a driving safety course. Sec. 133.101, L.G.C.

b. Administrative Fees

The court may require a $10 reimbursement fee if the request is made on or before the answer date on the citation. Art. 45.0511(f)/45A.358, C.C.P. If someone has taken a DSC or MOC in the last 12 months or fails to timely submit their request for a DSC/MOC, and the judge nonetheless grants the course, the judge may require a fine (formerly called a fee as well) in an amount not to exceed the maximum amount of the fine that could be imposed for the offense.

c. Optional Driving Record Fee

The court may also require the defendant to pay a $17 reimbursement fee for obtaining a copy of the defendant's driving record from DPS. Secs. 521.047, T.C. and 521.048, T.C. The court must keep a record of the fees, which must be remitted to the State Comptroller quarterly. The Comptroller then credits the fees to DPS. Art. 45.0511(c-1)/45A.359(f), C.C.P.

5. When Course Granted

After the defendant enters a plea and makes the request for the course, the court enters judgment on the plea at the time the plea is made, defers imposition of the judgment, and allows the defendant 90 days to successfully complete an approved course and present required evidence of course completion to the court.

6. Course Requirements

a. DSC

If the offense was committed in a passenger car or a pickup truck, the judge must require the defendant to complete a driving safety course approved by the Texas Education Agency.

b. MOC

If the offense was committed on a motorcycle, the judge may require a motorcycle operator course under the motorcycle operator training and safety program approved by the Department of Public Safety.

Riding Dirty

A term used by bikers for operating a motorcycle without a driver's license or without a Class M endorsement on the license.

7. Requirements for Dismissal

For dismissal of the case, the defendant must present to the court on or before the 90th day after permission was granted to take the DSC or MOC:

- a certificate of completion of the DSC or MOC;
- the defendant's driving record as maintained by the Department of Public Safety showing that the defendant had not completed an approved driving safety course or motorcycle operator training course, as applicable, within the 12 months preceding the date of the offense; or
- an affidavit stating that the defendant was not taking a driving safety course or motorcycle operator training course at the time of the request nor has the defendant taken a course in the preceding 12 months from the date of the offense (members of active military duty must swear that they have not taken a course in another state in the preceding 12 months from the date of the offense).

8. Satisfactory Completion

When the defendant presents all the evidence required, the court shall remove the judgment and dismiss the charge.

9. Failure to Submit Required Evidence

If a person fails to present the court with the required evidence of course completion, the copy of the driving record as maintained by the DPS, and the affidavit, the court shall set a show cause hearing and notify the defendant by mail of the hearing. If the defendant fails to appear for the show cause hearing, the court shall enter judgment and impose the fine. If the person appears and can show good cause for the failure to furnish evidence to the court, the court may allow an extension of time during which the defendant may present the evidence of course completion and other required evidence.

10. Appeal

If a defendant fails to complete the course or fails to submit all the required evidence and the judge subsequently adjudicates the defendant's guilt, the defendant may appeal the conviction.

11. Payment of Fine

If the person does not complete the course or present the other required evidence and the fine is imposed, the person is not entitled to a refund of the administrative reimbursement fee or fine under the mandatory or permissive provisions. Defendants who do not complete the driving safety course and do not appeal must pay the fine. The judge, after a show cause hearing, enters judgment, which may be appealed or paid. When the defendant decides not to appeal, the payment becomes due, and the defendant must satisfy the judgment by either paying or through an alternative mean described elsewhere in this chapter.

12. Report to the Texas Department of Public Safety

If the defendant completes the DSC or MOC and presents satisfactory evidence of the other requirements and the charge is dismissed, the court reports the date of successful completion to the Department of Public Safety. Art. 45.0511/45A.356, C.C.P. If the defendant fails to complete the course and does not appeal, though, the court reports the conviction to the Department of Public Safety.

B. Deferred Disposition

When a court grants deferred disposition, the court is deferring further proceedings in the case without entering an adjudication of guilt. Art. 45.051/45A.302, C.C.P. Although a prosecutor may routinely offer deferred disposition as part of a plea agreement, only judges have the authority to actually grant deferred disposition. Typically, the clerk's role is to accurately process the deferred disposition paperwork and maintain court records of the probation through its completion.

Art. 45.051(a)/45A.302, C.C.P.

A judge may order deferred disposition on a finding of guilt. This means that the judge may also order it if the defendant elects for the judge to decide punishment after trial.

Deferred disposition applies to misdemeanor offenses punishable by fine only, with a few exceptions. The following offenses are not eligible for deferred disposition.

- Offenses committed in a construction work zone when workers are present. Sec. 542.404, T.C.
- A minor charged with the offense of consuming an alcoholic beverage if the minor has been previously convicted twice or more of this offense. Sec. 106.04, A.B.C.
- A minor charged with the offense of driving under the influence of an alcoholic beverage if the minor has been previously convicted twice or more of this offense. Sec. 106.041, A.B.C.
- A minor who is at least 17 and has previously been convicted two or more times of an offense to which Section 106.071 of the Alcoholic Beverage Code applies (purchase of alcohol by a minor, attempt to purchase alcohol by a minor, consumption of alcohol by a minor, possession of alcohol by a minor, and misrepresentation of age by a minor). Sec. 106.071(i), A.B.C.
- A defendant charged with an offense relating to motor vehicle control who holds or held a commercial driver's license.

1. Deferral of Proceedings for Fine-Only Offenses

A defendant must enter a plea of guilty or nolo contendere, or there must be a finding of guilt before deferred disposition may be granted. Art. 45.051(a)/45A.302, C.C.P. This means the judge could grant a deferred disposition prior to trial or even after trial if the defendant elects the judge to decide punishment at trial. A jury, however, has no authority to require deferred disposition.

After a plea or finding of guilt, the judge may require the defendant to pay court costs before deferring proceedings. Art. 45.051(a)/45.302(a), C.C.P. As an alternative, the judge may allow a defendant to enter into an agreement for payment of court costs in installments during the defendant's period of probation, require the defendant to discharge the payment of the court costs by performing community service, or through a combination of both. Art. 45.051(a-1)/45A.303(a), C.C.P. Pursuant to the definition of "conviction" for most court costs, courts are required to collect costs on cases that are deferred. Sec. 133.101, L.G.C. The judge also sets the fine but does not enter judgment. The judgment, or case disposition, is *deferred*, pending successful completion of any requirements of the probation. Art. 45.051(a)/45A.302(a), C.C.P. The period of the deferral, however, cannot exceed 180 days. Art. 45.051(a)/45A.302(a), C.C.P.

a. Discretionary Conditions

The judge may require the defendant to complete a number of conditions during the probation. These conditions are optional in that they are completely at the discretion of the judge to order when sentencing the defendant. The discretionary conditions are found in Article 45.051(b)/45A.303(b) of the Code of Criminal Procedure, and include requiring the defendant to:

- post a bond in the amount of the fine assessed to secure payment of the fine;
- pay restitution to the victim of the offense in an amount not to exceed the fine assessed;
- submit to professional counseling;
- submit to diagnostic testing for alcohol or a controlled substance or drug;
- submit to a psychosocial assessment;
- successfully complete an alcohol or drug abuse treatment or education program;
- pay the costs of any testing, assessment, or program participation as reimbursement fees either directly or through the court as court costs;
- complete a driving safety course approved by the Texas Education Agency;
- present to the court satisfactory evidence that the defendant has complied with each requirement imposed by the judge under this article; and
- comply with any other reasonable condition.

b. Required Conditions

- The judge must order certain terms as conditions of deferred disposition if the defendant falls within specific statutory requirements. These conditions are required when probation is ordered and, unlike the discretionary conditions above, are *not* at the discretion of the judge. If defendant is under the age of 25 and charged with a moving traffic violation, the court shall require a driving safety course as a term of deferred disposition. Art. 45.051(b-1)/45A.304, C.C.P.

- If defendant has a provisional driver's license and is charged with a moving violation, the court shall require as a term of deferred disposition that the defendant be examined by DPS as required by Section 521.161(b)(2) of the Transportation Code. This section requires DPS to test a person's ability to exercise ordinary and reasonable control in the operation of a motor vehicle of the type that the person will be licensed to operate. The person must pay DPS a $10 examination fee. Art. 45.051(b-1)/45A.304, C.C.P.
- If the offense is an Alcoholic Beverage Code offense or the Penal Code offense of public intoxication and the defendant is younger than 21 years of age, as a term of the deferral, the court must require the defendant to take an alcohol awareness course or a substance misuse education program. Sec. 106.115, A.B.C. Additionally, the court must report to the DPS the deferred disposition when it is granted.
- The court must require community service as a term of probation when granting deferred if the offense is purchase of alcohol by a minor, attempt to purchase alcohol by a minor, consumption of alcohol by a minor, possession of alcohol by a minor, misrepresentation of age by a minor, or public intoxication. For a first offense, the court must require not less than eight or more than 12 hours community service. For a subsequent offense, the court must require not less than 20 or more than 40 hours of community service. Sec. 106.071(d)(1), A.B.C.

Practice Note

Alcohol awareness or substance misuse education programs, for offenses under Chapter 106 of the Texas Alcoholic Beverage Code on both an order of deferred disposition and on an actual conviction. It is not uncommon, however, to see these requirements routinely forgotten in plea agreements negotiated by prosecutors or orders issued by judges. These courses are not only required by law, but also useful rehabilitative tools to prevent future alcohol or drug abuse by minors. The graphic below illustrates the TABC requirements for minors charged with alcohol offenses.

c. Deferred Fine (Formerly the Special Expense Fee)

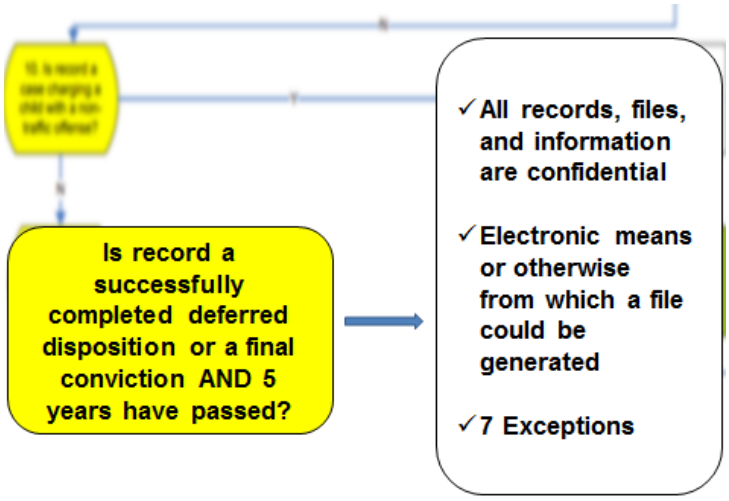
Deferred Disposition Fine

An amount that may be set by the judge in an order of deferred disposition. The amount may not exceed the maximum of the potential fine in the case.

The judge may impose a deferred fine to be paid by the defendant when placed on deferred disposition. Art. 45.051(a)/45A.302(b), C.C.P. The deferred fine, which must be paid during the term of probation, is set according to the potential fine amount. This means that the deferred fine may be any amount up to and including the maximum fine amount provided by law for the underlying criminal offense. The deferred fine can be paid at any time prior to the end of the probationary period; and, if the defendant is ultimately convicted, the deferred fine will be credited toward payment of the full fine if it is different than the deferred fine. Prior to January 1, 2020, this amount was called a special expense fee. The 86th Legislature opted to rename the fee as a fine, creating some amount of confusion between the deferred fine and the potential fine that could be assessed if the defendant is unsuccessful with the probation.

d. Completion of Probation

At the conclusion of the deferral period, if the defendant presents satisfactory evidence that he or she has complied with the requirements imposed in the deferred disposition order, the judge shall dismiss the complaint; and clearly note on the docket that the complaint is dismissed and that there is not a final conviction. Art. 45.051(c)/45A.305(a),(c), C.C.P. When the complaint is dismissed and there is not a final conviction, the complaint may not be used against the person for any purpose. Art. 45.051(e)/45A.305(b), C.C.P.



In addition, records of cases in which the defendant successfully completes deferred disposition for an offense other than traffic generally become confidential for adult defendants after five years. Art. 45.0218/45A.055, C.C.P. The law provides that there are only seven exceptions to this confidentiality, which are specifically named in Article 45.0218/45A.055: only by (1) judges/court staff, (2) a criminal justice agency for a criminal justice purpose, (3) the Department of Public Safety, (4) the attorney representing the state, (5) the defendant or defense counsel, (6) insurance companies authorized to write motor vehicle liability insurance in this state (if a traffic offense), or (7) if disclosure is required by federal law). For children placed on deferred disposition, the records are similarly confidential, but without a waiting period following successful completion and dismissal. Art. 45.0217/45A.462, C.C.P.

e. Unsuccessful Probation

When a defendant fails to present satisfactory evidence of compliance of the terms of the deferred disposition within the deferral period, the court shall notify the defendant in writing mailed to the address on file with the court to appear to show cause why the court should not revoke the defendant's probation. Art. 45.051(c-1)/45A.306, C.C.P. The appearance is commonly called a "show cause hearing." Article 45.051(d)/45A.307(a) provides that on a showing of good cause for the failure to present satisfactory evidence of compliance with the requirements, the court may allow an additional period during which the defendant may present evidence of the defendant's compliance with the requirements. If at the conclusion of this period the defendant does not present satisfactory evidence that the defendant complied with the requirements imposed, the judge may impose the fine assessed or impose a lesser fine, which results in a final conviction of the defendant. Subsection (d) does not apply to a defendant under age 25 required to complete a driving safety course or retake the driving test. If the defendant does not complete the driving safety course or the driving test, on the date of the show cause hearing, the judge shall impose the fine. The imposition of the fine constitutes a final conviction of the defendant.

If a defendant under the age of 17 fails to comply, the court may set the defendant for a contempt hearing under Article 45.050/45A.461 of the Code of Criminal Procedure. The court may then issue a non-secure custody order for the juvenile defendant to compel his or her appearance.

f. Docket Entries

Many courts rely on case management software to prompt for information in a case, but a suggested practice when processing probation cases is the collection and documentation of certain information outlined below. When the judge grants deferred disposition, the clerk should note the following information in the docket:

- the date the judge granted the deferred disposition;
- the deferral period;
- the court costs paid and the amount of the deferred fine imposed;
- the potential fine assessed; and
- whether there was a plea of guilty or nolo contendere, or a finding of guilt after a trial.

At the end of the deferral period, the clerk should also note the information below in the docket. This is particularly important when a defendant is unsuccessful. As discussed, the law requires that the court afford the defendant an opportunity to appear in court prior to final conviction following probation. It is important that this show cause hearing is documented. Docket entries include:

- the final judgment, whether the case was dismissed or there was a conviction;
- any deferred fine paid, method of payment, and receipt number of payment;
- show cause hearing date;
- fine imposed, method of payment, and receipt number, if any; and
- appeal made.

Practice Note

There are important reporting requirements when processing deferred disposition cases. In some cases, reports must be made upon the probation being ordered; while in others, nothing is reported unless the defendant is unsuccessful. Reporting to the DPS is further discussed in Chapter 7, *State and City Reports*, but with regard to probation, it is important to be aware of the differences, as below:

Traffic offenses: If a defendant charged with a traffic offense is granted deferred disposition, the court may not report to the Department of Public Safety that the defendant has been placed on deferred disposition. However, if the defendant fails to complete the terms of deferred disposition and the judge enters a finding of guilt and imposes the fine on the traffic offense, the court is required to notify the Department of Public Safety of the conviction. Sec. 543.204, T.C. The court must submit the report not later than the seventh day after the date on which the judge adjudicates guilt. Sec. 543.203, T.C.

Alcoholic Beverage Code offenses: Courts must report to the Department of Public Safety the order of deferred disposition for all minors charged with offenses under the Alcoholic Beverage Code. The report is made at the time the deferred disposition is granted. Sec. 106.117, A.B.C.

2. Deferral of Proceedings on Completion of Teen Court Program

A court may also defer proceedings for up to 180 days as part of a teen court program for a defendant who is under age 18 or enrolled in a secondary school. Art. 45.052/45A.401, C.C.P. Although sometimes confused with a separate court, teen court functions similar to other forms of probation within the municipal court's jurisdiction. Teen court programs also tend to vary widely within individual municipal courts.

The law provides, though, that the defendant cannot have completed a teen court program in the year before the current offense. Upon successful completion, the court shall dismiss the case, which may not be part of the defendant's record for any purpose. Art. 45.052(d)/45A.401(f), C.C.P. Completion of teen court for a traffic offense is still required to be reported to the Department of Public Safety. Art. 45.052(d)/45A.401(f), C.C.P. For additional discussion of Teen Court, see Chapter 5 of the Level II Study Guide.

3. Deferral of Proceedings for Chemically Dependent Persons

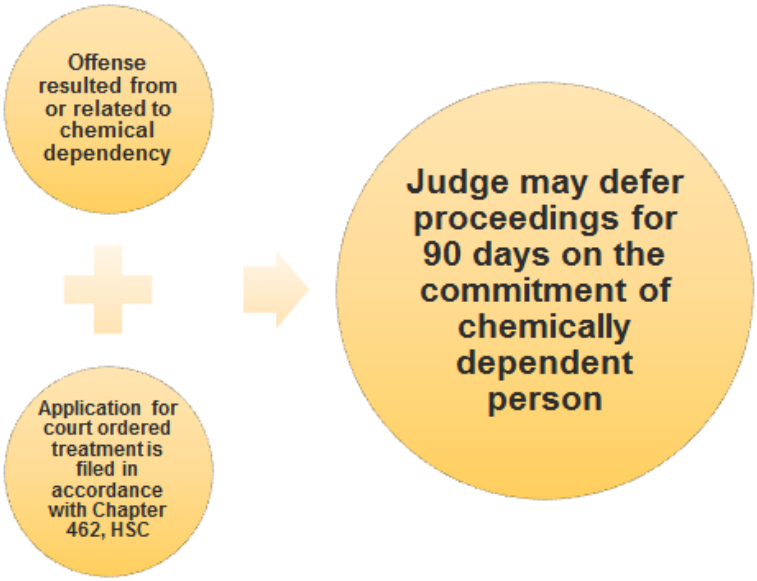
Deferral of proceedings for a chemically dependent person is similar to deferred disposition. The judge may grant a person, charged with an offense that may be related to chemical dependency, deferred disposition under Article 45.053/45A.402 of the Code of Criminal Procedure. The following information outlines the steps involved with deferred disposition for a chemically dependent person.

a. Time Period

Unlike the regular deferred disposition statute, the court may only defer proceedings for 90 days upon commitment of a chemically dependent person. Art. 45.053(a)/45A.402(a), C.C.P.

b. Application

The court must determine if an application for court-ordered treatment of the defendant is filed in accordance with Chapter 462 of the Health and Safety Code. Art. 45.053(a)(2)/45A.402(a)(2), C.C.P.



c. Successful Completion

Satisfactory evidence of completion would show that a defendant was committed for and completed a court-ordered treatment in accordance with Chapter 462 of the Health and Safety Code. Art. 45.053(b)/45A.402(b), C.C.P. If satisfactory evidence is presented at the end of the deferral period, the judge shall dismiss the case. The statute, unlike deferred disposition under Article 45.051/45A.302 does not provide for a deferred fine.

d. Failure to Complete

If evidence is not presented that the defendant was committed and completed the court ordered treatment, the court may impose the potential fine assessed or impose a lesser fine. The imposition of the fine constitutes a final conviction of the defendant. Art. 45.053(c)/45A.402©, C.C.P.

39. What offenses are not eligible to be dismissed by completing a driving safety course?

_____

_____

_____

40. When must a defendant enter a plea to be eligible to take a driving safety course?

_____

_____

True or False

41. The defendant must be allowed to take a driving safety course if he or she requests one after being found guilty at trial. _____

42. A defendant who took a driving safety course four months earlier cannot take a driving safety course for ticket dismissal. _____

43. A defendant must provide a valid Texas driver's license (or be military) and proof of financial responsibility to be eligible for a DSC. _____

44. Defendants completing a driving safety course do not have to pay court costs. _____

45. A defendant who is not entitled to take a driving safety course must pay an administrative fee equal to the amount of the fine that could have been imposed. _____

46. How long does a defendant have to take a driving safety course and present evidence of course completion to the court? _____

47. What evidence must a defendant present to the court before a court can dismiss a charge for which a driving safety course was granted? _____

_____

48. Who has authority to grant deferred disposition? _____

49. List offenses for which a judge has no authority to grant deferred disposition. _____

_____

_____

_____

50. How may a court require a defendant to pay court costs when granting a defendant deferred disposition? _____

_____

51. What is the maximum amount of time that a judge may place a defendant on probation under deferred disposition? _____

True or False

52. The judge may require a defendant who successfully completes his or her deferred to pay the potential fine assessed in the case. _____

53. A judge may order a deferred fine when granting deferred. _____

54. When the judge grants deferred disposition for a defendant charged with an Alcoholic Beverage Code offense, the judge must require attendance at an alcohol awareness program. _____

55. When a defendant under the age of 25 charged with a moving violation is granted deferred, the judge must make the defendant take a driving safety course as a term of the deferred disposition. _____

56. When a defendant with a provisional driver's license charged with a moving violation is granted deferred, the only mandatory requirement is to take a driving safety course. _____

57. List the information a clerk should document in the docket when a judge grants a defendant deferred disposition. _____

_____

58. When a defendant complies with all the terms of deferred disposition, what is the judge required to do? _____

_____

59. What information should be entered in the docket when a defendant completes the terms of deferred disposition? _____

60. When deferred disposition is granted, when may the court impose the deferred fine (formerly called special expense fee)? _____

61. What is the amount of the deferred fine (formerly called the special expense fee)? _____

62. What must a judge do if a defendant fails to present evidence of completion of the terms of deferred disposition? _____

63. When is a judge required to submit to the Department of Public Safety a report of a conviction in a traffic case if deferred disposition has been granted? _____

64. For what offenses is the court required to report an order of deferred disposition?

_____

65. When a defendant is placed on deferred disposition for an alcohol-related offense by a minor under Chapter 106 of the Texas Alcoholic Beverage Code, how many hours of community service are required for a first offense? _____

66. Up to how many days may a judge defer proceedings when a defendant is ordered to attend a teen court program? _____

67. What is required in order for a judge to defer proceedings against a committed chemically dependent person for 90 days?_____

PART 5
APPEALS

A. Right to Appeal

Appeal can mean several things, depending on the type of court and its jurisdiction. Appeal could mean the process of having a higher court conduct a new trial, or having a higher court review the facts and law, or even having a higher court review just questions of law from a proceeding held in the lower court. In certain pre-trial matters, it is even possible for the State to appeal. Art. 44.01, C.C.P. What is clear, however, is that a defendant in any criminal case has the right to appeal. Art. 44.02, C.C.P. This section will explore that right as it pertains to municipal courts.

B. Appeals from Municipal Courts

Appeals from a municipal court, including appeals from final judgments in bond forfeiture proceedings, shall be heard by the county court. If the municipal court sits in more than one county,

the county court in the county where the municipal court is located has appellate jurisdiction to hear the case. *Abouk v. Fuller*, 738 S.W.2d 297 (Tex. App. – Dallas 1987).

Abouk v. Fuller, 738 S.W.2d 297 (Tex. App – Dallas 1987)

If a city sits in more than one county, the county court at law in the county where the municipal court is located has appellate jurisdiction.

When an appeal bond is not timely filed, the appellate court does not have jurisdiction over the case and shall remand, or send back, the case to the justice or municipal court for execution of the sentence. Art. 45.0426(b)/45A.203(b), C.C.P. When a defendant fails to file an appeal bond within the required time, the court must still send the case to the county court so that the appellate court may determine jurisdiction. If the case is refused by the county court, it is sent back to the municipal court for entry of final judgment. A writ of procedendo may be submitted by the prosecutor, allowing the county court to declare its lack of jurisdiction and return jurisdiction back to the municipal court to proceed to collect the judgment.

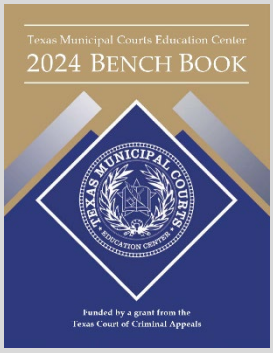
C. Appeals from Non-Record Municipal Courts

If an appeal is from a non-record court, the trial in the appellate court shall be de novo, the same as if the prosecution had originally commenced in that court. Art. 45.042(b)/45A.202(b), C.C.P. A trial de novo is actually a completely new trial. This means that the entire case, questions of law, questions of fact, admission of evidence and testimony, is tried again as if there had been no first trial.

D. Appeals from Municipal Courts of Record

An appeal to the county court from a municipal court of record may be based only on errors reflected in the record. Art. 45.042(b)/45A.202(b), C.C.P. Refer to Chapter 30 of the Government Code for specific provisions regarding appeals from municipal courts of record.

Practice Note



Appeals from municipal court, much like the motions for new trial discussed earlier, require the court clerk to be familiar with very specific timelines and procedures. An error documenting one of the steps or relaying incorrect information could have serious legal consequences. A good resource in court is the TMCEC *Bench Book*. The *Bench Book* includes simple checklists for both appeals and motions for new trial.

E. Appeal Bonds

1. Types of Appeal Bonds

Defendants may post either a cash bond or a surety bond with the court. A surety is a person that bonds and obligates himself or herself to guarantee the appearance of the defendant in court at times ordered to answer the charges. Should the defendant fail to appear, the surety is liable on the

bond. The court may not require cash, but the defendant may post a cash bond in lieu of sureties. A judge may also permit the defendant to post a personal appeal bond.

2. Amount of Appeal Bond

The amount of a bail bond may not be less than two times the amount of fine and costs adjudged against the defendant and may not in any case be for less than $50. The bond must be made payable to the State of Texas. Art. 45.0425/45A.203, C.C.P.

F. Appearance Not Required to Post Appeal Bond

Article 45.0425(b)/45A.203(d) of the Code of Criminal Procedure provides that without requiring a court appearance by the defendant, the court shall approve an appeal bond in the amount that the court, under Article 27.14(b), notified the defendant would be approved if it otherwise meets the requirements of the Code of Criminal Procedure.

G. Time to Present Court with Bond

If the defendant appeared in open court, the defendant must give the appeal bond not later than the 10 days after the court rendered judgment. When the appeal bond is filed with the court that tried the case, the appeal is perfected. Art. 45.0426/45A.203, C.C.P.

Perfect

To take all legal steps needed to complete or secure.

1. Computing Time

The standard formula for calculating time is to exclude the first day and include the last day. If the last day falls on a Saturday, Sunday, or legal holiday, the period is extended to include the next day which is not a Saturday, Sunday, or legal holiday. Sec. 311.014, G.C.

2. Mailbox Rule

A bond is considered timely filed if it is mailed in a first-class postage prepaid envelope and is properly addressed to the clerk on or before the date that it is required to be filed and the clerk receives it not later than the 10th day after the date that it is required to be filed. Art. 45.013(a)/45A/054(a), C.C.P. The legible postmark affixed by the U.S. Postal Service is prima facie evidence of the date the document is deposited with the U.S. Postal Service. Art. 45.013(b)/45A.054(b), C.C.P. Clerks should file stamp the envelope and send it with the transcript on the appeal. Under the mailbox rule, a "day" does not include Saturday, Sunday, or a legal holiday. Art. 45.013(c)/45A.054(c), C.C.P.

H. Effect of Appeal

When a defendant files the appeal bond required by law with the judge, all further proceedings in the case in the municipal court shall cease. Art. 45.043/45A.204, C.C.P. This means that jurisdiction is now in the county court, which will hear all motions, pleadings, and hearings in the case.

I. Sending the Case to Appellate Court

"The courts typically characterize the powers and duties of the district clerks as ministerial functions." Tex. Atty. Gen. Op. JM-694 (1987). The Texas Court of Criminal Appeals has also

characterized the role of the court clerk in the appellate process. The forwarding of appeals is a mandatory ministerial duty and not discretionary for the clerk or the judge for that matter. *Whitsitt v. Ramsay*, 719 S.W.2d 333 (Tex. Crim. App. 1986). See *Appendix A* for a Checklist for handling appeals−for both non-record courts and record courts.

Practice Note

When a clerk receives an appeal bond from a defendant, he or she should immediately date stamp it with the date it was filed in the court, and then give it to the judge who will decide whether to approve the bond. Even if the judge does not approve the bond, the clerk has a mandatory ministerial duty to send the case to the appellate court. The appellate court will make the decision whether it has jurisdiction of the case.

In appeals from justice and municipal courts, all the original papers in the case, any appeal bond, and the certified transcript of all the proceedings had before the court shall be delivered without delay to the clerk of the court to which the appeal is taken, who shall file the same and docket the same. Art. 44.18, C.C.P. When a clerk certifies a transcript, the clerk authenticates it by attesting that the information contained in the transcript is true. An appeal by the defendant or the State may not be dismissed on account of any defect in the transcript. Art. 45.0426(c)/45A.202(c), C.C.P.

J. Conviction or Affirmance of Judgment on Appeal

In a trial de novo on appeal, when there is a conviction, the fine stays with the county. There is no requirement for the county to return the fine money to the municipal court. When an appeal is taken from a municipal court of record and the judgment is affirmed on appeal, the fine imposed on appeal and the costs imposed on appeal shall be collected from the defendant and paid into the municipal treasury. Art. 44.281, C.C.P.

K. Withdrawal of Appeal

In non-record courts there is no way to withdraw or dismiss an appeal. In record courts, a defendant or his or her attorney is required to file a motion to withdraw the appeal.

68. Does someone charged with a city ordinance violation have the right to appeal his or her conviction? _____

69. Does someone who fails to appear and is later arrested and convicted have a right to appeal his or her conviction? _____

70. Which court typically has jurisdiction over municipal court appeals? _____

71. When a defendant fails to file his or her bond with the municipal court timely, what happens to the appeal? _____

72. What happens when an appellate court determines that it does not have jurisdiction to hear a case? _____

73. What happens to a case appealed from a non-record court? _____

74. What is the appeal based upon from a record municipal court? _____

_____

75. List types of appeal bonds. _____

76. What must the amount of an appeal bond be? _____

True or False

77. In a municipal court, a defendant can mail to the court a plea of guilty or nolo contendere and appeal his or her conviction without making a personal appearance in court. _____

78. When a defendant appears in open court, how long does he or she have to file the appeal bond with the court? _____

79. When calculating when a defendant is to file an appeal bond, does the court count the day judgment was entered? _____

80. When calculating time to present the court with an appeal bond, does the court count the 10th day? _____

81. When calculating time to present the court with an appeal bond, does the court count the 10th day if it falls on a Saturday? _____

82. Explain the mailbox rule._____

83. When is a defendant's appeal completed? _____

_____

84. What is the role of a clerk in the appellate process? _____

_____

_____

85. If a clerk makes a mistake on the transcript, does this cause the appeal to be dismissed?

_____

86. When a case is appealed, what does a non-record municipal court send to the appellate court? _____

87. What happens to municipal court proceedings when an appeal bond is filed with the court?

_____

88. What happens to the fine assessed in the county court against a municipal court defendant who has appealed his or her case from a non-record municipal court?

_____

89. May a defendant withdraw an appeal and pay the fine in a non-record municipal court?

_____

90. If an appeal is from a court of record, can a defendant withdraw an appeal? _____

APPENDIX A: CHECKLIST FOR HANDLING APPEALS

APPEALS CHECKLIST
FOR NON-RECORD MUNICIPAL COURTS

- ❒ All defendants have a right to appeal their convictions. Art. 44.02, C.C.P.
- ❒ Defendant is not required to go to trial in order to appeal.
- ❒ Judgment is entered (conviction). Art. 45.041/45A.251, C.C.P.
  - ❑ Defendant can plead guilty or nolo contendere and appeal.
  - ❑ If defendant does not complete a driving safety course or the terms of deferred disposition, after the court enters final judgment, the defendant may still appeal.
- ❒ Defendant gives notice of appeal (but is not required to do so). Art. 45.0426(c)/45A.202(c), C.C.P.
- ❒ Defendant appeared at trial or in open court – 10 days from date of judgment to file appeal bond. Arts. 44.16 and 45.0426(a)/45A.203(a), C.C.P.
  - ❑ Mailbox Rule – If defendant mails the bond on or before the due date and the court receives it within 10 working days from the due date, the bond is properly filed. (Keep envelope) Art. 45.013/45A.054, C.C.P.
  - ❑ If the appeal bond is not timely, the municipal court must still send it to the appellate court.
- ❒ Defendant appears by mail or in person at the clerk's window – court must either personally deliver notice of the amount of fine and appeal bond or notify the defendant by mail. Defendant has up to 31 days from the date of receiving the notice to file an appeal bond. Art. 27.14(b), C.C.P.
  - ❑ If appeal bond is not timely filed, the municipal court must still send it to the appellate court.
- ❒ Appeal appearance bond must be at least two times the amount of the fine and court costs, but in no case less than $50. Art. 45.0425(a)/45A.203(c), C.C.P.
- ❒ Bond may be cash or surety (court cannot require cash); judge may grant a personal appeal bond. Arts 17.38, 44.20, C.C.P.
  - ❑ Conditions of the appeal bond – Must recite that the defendant has been convicted and appealed and will make a personal appearance before the court to which the appeal is taken immediately, if the court is in session, or, if the court is not in session, at its next regular term, stating the time and place of that session, and there remain from day to day and term to term, and answer in the appealed case before the appellate court. Art. 45.0425(b)/45A.203(e), C.C.P.
- ❒ When court receives bond, clerk should date stamp day received.
  - ❑ Bond filed with court perfects appeal. Art. 45.0426(a)/45A.203(a), C.C.P.

- ❒ Give bond to judge to make a determination if the surety is sufficient. Art. 44.04(e), C.C.P. If appeal bond otherwise meets the requirements of the Code of Criminal Procedure, the court must approve the bond. Art. 45.0425/45A.203(d), C.C.P.
- ❒ Clerk makes copies of all original papers in the case file.
- ❒ Clerk sends the case with all original papers and the bond with a certified transcript to the appellate court (usually county court). Art. 44.18, C.C.P.
- ❒ Case is tried de novo (new trial) in county court. Arts. 44.17 and 45.042(b)/45A.202(b), C.C.P.
- ❒ If defendant is convicted in appellate court, appellate court collects fine and deposits it in the county treasury.
- ❒ Withdrawal of appeal
  - ❑ Defendant may not withdraw appeal from a non-record municipal court.
- ❒ If bond filed after deadline, the appellate court shall remand the case to the municipal court to collect judgment. (If the court receives the case back, the court should notify the defendant that the fine and costs are due in the municipal court. If the defendant fails to pay the fine and costs, the municipal court can issue a capias pro fine for collection of the judgment.)
- ❒ If the bond is defective in form or substance, the appellate court may allow the defendant to file a new bond. Art. 44.15, C.C.P.

CHECKLIST FOR APPEALS
FROM MUNICIPAL COURT OF RECORD

- ❒ All defendants have a right to appeal their convictions. Art. 44.02, C.C.P.
- ❒ Defendant is required to go to trial and a record of the trial must be made.
- ❒ Judgment is entered (conviction). Art. 45.041/45A.251, C.C.P.
- ❒ Defendant makes a written motion for a new trial not later than 10th day after date on which judgment is rendered. Sec. 30.00014(c), G.C.
  - ❑ The motion may be amended with permission of the court not later than the 20th day after the date on which the original motion is filed.
  - ❑ The court may extend the time for filing or amending not to exceed 90 days from the original filing deadline.
  - ❑ If the court does not act on the motion before the expiration of the 30 days allowed for determination of the motion, the original or amended motion is overruled by operation of law.
- ❒ If the motion for new trial is denied, the defendant must give notice of the appeal not later than the 10th day after the date on which the motion for new trial was overruled. Section 30.00014(d), G.C.
  - ❑ The notice of appeal may be given orally in open court if the defendant requested a hearing on the motion for new trial.
  - ❑ If there is no hearing on the motion for new trial, the notice of appeal must be in writing and must be filed with the court not later than the 10th day after the motion for new trial is overruled. The court may extend the time period not to exceed 90 days from the original filing deadline for good cause.
- ❒ The appeal bond must be approved by the court and must be filed not later than the 10th day after the date on which the motion for new trial is overruled. Sec. 30.00015(a), G.C.
- ❒ The appeal bond must be in the amount of $100 or double the amount of the fines and costs adjudged against the defendant, whichever is greater. Sec. 30.00015(b), G.C.
  - ❑ Conditions of appeal bond – Must state that the defendant was convicted in the case and has appealed; and be conditioned on the defendant's immediate and daily personal appearance in the court to which the appeal is taken. Sec. 30.00015(c), G.C.
- ❒ Defendant must pay a fee for an actual transcription of the proceedings. Sec. 30.00014(g), G.C.
- ❒ Defendant must pay for a reporter's record. Sec. 30.00019(b), G.C.
- ❒ Record on appeal – must conform to the Texas Rules of Appellate Procedure and the Code of Criminal Procedure. Sec. 30.00016, G.C.
  - ❑ The clerk's record must conform to the provision in the Texas Rules of Appellate Procedure and the Code of Criminal Procedure. Sec. 30.00017, G.C.

- ❑ The bills of exception must conform to the Texas Rules of Appellate Procedure and the Code of Criminal Procedure. (Sec. 30.00018, G.C.) (A formal statement in writing of the objections or exceptions taken by a party during the trial of a cause to the decisions, rulings, or instruction of the trial judge, stating the objection, with the facts and circumstances on which it is founded, and, in order to attest its accuracy, signed by the judge.)
- ❑ The reporter's record must conform to the Texas Rules of Appellate Procedure and the Code of Criminal Procedure. Sec. 30.00019, G.C.

❒ Transfer of the record – Not later than the 60th day after the date on which the notice of appeal is given or filed, the parties must file the reporter's record, a written description of material to be included in the clerk's record in addition to the required material, and any material to be included in the clerk's record that is not in the custody of the clerk. Sec. 30.00020(a), G.C.

- ❑ On completion of the record, the municipal judge shall approve the record in the manner provided for record completion, approval, and notification in the court of appeals. Sec. 30.00020(b), G.C.
- ❑ After the judge approves the record, the clerk shall promptly send the record to the appellate court clerk for filing. Sec. 30.00020 (c), G.C. The appellate court clerk notifies the defendant and prosecutor that the record has been filed.
- ❑ The appellate court determines appeals from the municipal court of record on the basis of errors that are set forth in the appellant's motion for new trial and presented in the transcript and statement of facts. Sec. 30.00014(b), G.C.

❒ Brief on appeal

- ❑ Appellant must file a brief with the appellate court clerk not later than the 15th day after the date on which the clerk's record and reporter's record are filed with the appellate court clerk.
- ❑ The appellee must file the appellee's brief with appellate court clerk not later than the 15th day after the date on which the appellant's brief is filed.
- ❑ Each party, on filing the party's brief with appellate court clerk, shall deliver a copy of the brief to the opposing party and to the municipal judge. Sec. 30.0021, G.C.

❒ Withdrawal of appeal

- ❑ Defendant may submit a written motion to withdraw appeal.

❒ If bond is defective in form or substance, the appellate court may allow the defendant to file a new bond. Art. 44.15, C.C.P.

❒ The appellate court clerk shall mail copies of the decision to the parties and to the municipal judge as soon as the decision is rendered.

❒ Disposition on appeal – Appellate court may:

- ❒ Affirm the judgment of the municipal court of record;
- ❒ Reverse and remand for a new trial;

- ❒ Reverse and dismiss the case; or
- ❒ Reform and correct the judgment.

- ❑ If appellate court grants a new trial, it is as if the municipal court of record granted the new trial. The new trial is conducted by the municipal court of record. Sec. 30.00026, G.C.
- ❑ If the judgment is affirmed, the fine imposed on appeal and the costs imposed on appeal shall be collected from the defendant, and the fine of the municipal court when collected shall be paid into the municipal treasury. Art. 44.281, C.C.P.

ANSWERS TO QUESTIONS

PART 1

1. True.
2. False.
3. False.
4. False.
5. True.
6. True.
7. True.
8. False (there is no cap on restitution, except on the offense of issuance of bad check, when ordered as part of the sentence upon conviction; when ordered as a condition of deferred, restitution can be in an amount up to the fine that could have been assessed).
9. True.
10. True.
11. False.
12. The court is required to give the defendant credit on his or her sentence for the time that the defendant spent in jail from the time of his or her arrest and confinement until his or her sentence by the trial court.
13. "Period of time" is defined as not less than eight hours or more than 24 hours as specified in the judgment of a case.
14. As custodian of the records, clerks should properly record jail-time credit on a defendant's case file and in the docket.
15. The processing fee may not exceed five percent of the amount of the fee, fine, court costs, or other charge being paid.
16. The amount of the service charge is the same as the fee charged for the collection of a bounced check (a check drawn on an account with insufficient funds).
17. True.
18. True.
19. False. The definition of community service is now broad. It may be a governmental entity, a nonprofit, or another organization that provides services to the general public that enhance social welfare and the well-being of the community. What qualifies is up to the judge.
20. True.
21. True.
22. True.
23. True.

PART 2

24. True.
25. True.
26. True.
27. False (must be reported not later than the seventh day).

PART 3

28. A capias pro fine is a writ issued after a hearing for failure to satisfy the judgment and sentence. The writ directs a peace officer to bring the person before the court immediately. See Article 43.015(2) and Article 45.045/45A.259 of the Code of Criminal Procedure.
29. At a minimum, every case file should have a written, signed judgment post-conviction. Without this, the court cannot proceed to any of the enforcement mechanisms available under the law.
30. Only the judge.
31. The court has a duty to inquire into the defendant's ability to pay. There are alternative means through which the defendant can discharge the judgment; the judge may also determine that fine and costs should be completely waived.
32. Execution.
33. Any fine-only offense.
34. When a defendant perfects an appeal of the case for which the warrant of arrest was issued or judgment arose; when a defendant posts bond or gives other security to reinstate the charge for which the warrant was issued; when the defendant pays the fine and costs owed on the outstanding judgment or makes suitable arrangement to pay the fine and costs within the court's discretion; when the case is dismissed.
35. Current law allows any city type to contract.
36. Vehicle registration may be denied for certain traffic offenses that have a maximum possible penalty of $200.
37. Article 103.0031 of the Code of Criminal Procedure provides authority for a city to contract with a private attorney or vendor to collect fines, fees, restitution, and other debts or costs.
38. The debt or failure to appear must be owed on the 61st day after the defendant was ordered to pay or failed to appear.

PART 4

39. The following offenses cannot be dismissed through a driving safety course:
    - Speeding 25 mph or more over the speed limit;
    - Driving 95 mph or more;
    - Offense committed in a construction or maintenance zone when workers are present;
    - Passing a school bus loading or unloading children;
    - Leaving the scene of a collision after causing damage to a vehicle that is driven or attended;
    - Leaving the scene of a collision and failing to give information and/or render aid;
    - Serious traffic violation; and
    - Offense committed by a person who held a commercial driver's license at the time of the offense or holds a CDL at the time of the request for DSC, including when the person is driving his or her own vehicle
40. On or before the answer date on the citation.
41. False (the defendant must enter a plea on or before his or her appearance date; after trial, it is within the judge's discretion to grant).

42. False (the judge can grant a DSC in his or her discretion).
43. True.
44. False.
45. False (defendants entitled to take a DSC may be required to pay an administrative fee of up to $10; those granted a DSC under the court's discretionary power may be required to pay an administrative fee up to the amount of the fine that could have been imposed).
46. Violation of the child safety seat offense under Section 545.412 or failure to secure a child in a safety belt under Section 545.413 of the Transportation Code.
47. 90 days.
48. Evidence of completing the course (uniform certificate); a certified copy of his or her driving record as maintained by the Department of Public Safety; and an affidavit. (Note: If the defendant is on active military duty, the court most likely will not have the defendant's driving record from DPS.)
49. Only the judge.
50. The following offenses are not eligible for deferred disposition:
    - Offenses committed in a construction work zone when workers are present.
    - A minor charged with the offense of consuming an alcoholic beverage if the minor has been previously convicted twice or more of this offense.
    - A minor charged with the offense of driving under the influence of an alcoholic beverage if the minor has been previously convicted twice or more of this offense.
    - A minor who is not a child (under age 17) and who has been previously convicted at least twice of an offense to which Section 106.071 of the Alcoholic Beverage Code applies.
    - A defendant charged with a traffic offense that has a commercial driver's license or had one at the time the traffic offense was committed.
51. The judge can require the defendant to pay court costs before granting deferred disposition, or allow the defendant to pay in installments; by performing community service; or by both installments and community service during the probation.
52. 180 days.
53. False, generally fines as punishment for the offense are only imposed upon conviction. It is worth noting here, however, that defendant could have been ordered to pay a deferred fine (formerly called a special expense fee) as a condition of the probation. If the defendant is unsuccessful, then the potential fine possible in the case, as provided for in the fine range for the specific offense and set by the judge, could be assessed. Any money paid for the deferred fine would be applied to that amount.
54. True.
55. True.
56. True.
57. False (the defendant must be examined by the Department of Public Safety).
58. The following information should be entered in the docket when a judge grants deferred disposition: (1) the date the judge ordered the sentence to be suspended and the disposition deferred; (2) the deferral period; (3) the court costs paid; (4) the fine assessed; (5) whether

there was a plea of guilty or nolo contendere, or whether there was a finding of guilt after a trial.

59. Dismiss the case.
60. The clerk should note in the docket that the complaint is dismissed (after the judge signs the dismissal judgment).
61. The court may assess a special expense fee to be paid before the end of the deferral period.
62. The special expense fee may not exceed the amount of the fine that could be imposed.
63. When a defendant fails to present satisfactory evidence of compliance of the terms of the deferral within the deferral period, the court shall notify the defendant in writing mailed to the address on file with the court to appear to show cause why the order of deferral should not be revoked.
64. The court does not submit to DPS a record of a traffic case where deferred disposition has been granted unless the defendant fails to complete the terms of deferred disposition and the judge enters a final judgment of guilty. Then the judge reports a conviction to DPS.
65. The court is required to report an order of deferred disposition for all minor Alcoholic Beverage Code offenses.
66. For a first offense, the court must require not less than eight or more than 12 hours community service.
67. A court may defer proceedings for up to 180 days as part of a teen court program for a defendant who is under age 18 or enrolled in a secondary school.
68. Proceedings against a committed chemically dependent person may be deferred for up to 90 days if the court finds (1) the offense resulted from or was related to defendant's chemical dependency; and (2) an application for court ordered treatment of the defendant is filed in accordance with Chapter 462 of the Health and Safety Code.

PART 5

69. Yes.
70. Yes.
71. The county court.
72. If the defendant fails to file an appeal bond within the required time limit, the municipal court sends the appeal to the county court. The county court has to make the decision whether or not to take jurisdiction of the case. If the county court decides that it does not have jurisdiction, it sends the case back to municipal court.
73. The appellate court sends the case back to municipal court, which can then collect its judgment.
74. The trial in the appellate court is de novo, a new trial as if the case had originally commenced in that court.
75. The appeal is based upon errors reflected in the record of the trial.
76. The types of appeal bonds are: cash appeal bond, surety appeal bond, and personal appeal bond.
77. An appeal bond may not be less than two times the amount of the fine and court costs, but it may be more. In no case can it be less than $50.
78. True.

79. If the defendant appears in open court, the defendant has 10 days after the judgment is entered to present the court with an appeal bond.
80. No (the court counts the following day as day one).
81. Yes.
82. No.
83. The mailbox rule provides that a document may be filed with the court by mailing it in a first class postage prepaid envelope, properly addressed to the clerk, on or before the date the document is required to be filed. It is considered timely filed if the clerk receives it not later than the 10th day after the date that it is required to be filed. Hence, an appeal bond is timely filed if it is received timely under the mailbox rule.
84. A defendant's appeal is completed when the defendant presents the court with an appeal bond in the required time period.
85. The clerk's role is characterized as ministerial. When a clerk receives an appeal bond from a defendant, he or she should immediately date stamp it with the date it was filed with the court and then give it to the judge. The clerk has a mandatory ministerial duty to send the appeal to the appellate court.
86. No.
87. Along with the transcript, the court is required to send all the original documents in the case. The court keeps copies for its file.
88. All proceedings in municipal court cease.
89. If there is a conviction in the county court, the county keeps the fine money and reports the court costs to the State.
90. No, not without a writ of procedendo.
91. Yes.

7

State Reporting and Court Costs

Table of Contents

INTRODUCTION

State laws require municipal courts to file reports with certain state agencies and to remit court costs and some fines to the State. This reporting is among the most important responsibilities that a municipal court is tasked with by the State. Proper reporting has a direct impact on the daily lives of defendants, including driving privileges, the right to certain remedies, the level of future criminal punishments, and even the efficiency and standards of their court experience.

There are generally three large state agencies that require reporting. They are the Department of Public Safety (DPS), the Office of Court Administration (OCA), and the State Comptroller of Public Accounts (CPA). These agencies have their own administration rules or regulations, and they typically provide specific guidelines and forms for reporting. It is important to be familiar with both the reporting requirement and the agency guidelines. The judge is ultimately responsible for what happens in the court; however, state reporting is generally delegated to the court clerk. This means that the clerk will be directly responsible for a report that could affect the daily life, property, or even liberty of an individual. In addition, state legislators may be reviewing data compiled in these reports when considering new laws. Thus, the court clerk's actions, or inaction, may have a tremendous effect on the state and criminal justice system well beyond the walls of the courthouse.

This chapter will provide an overview of state reporting in order to help court clerks gain a broad understanding of the process and an appreciation for the value of reporting. As mentioned, each agency will have specific guidelines for its report. Clerks should refer to that specific agency for questions on the clerk's actual report.

PART 1
REPORTS TO THE DEPARTMENT OF PUBLIC SAFETY

A. Transportation Code

Each magistrate or judge of a non-record court and clerk of a court of record is required to keep a record of each case in which a person is charged with a violation of law regulating the operation of vehicles on highways. Sec. 543.201, T.C. Courts are required to then report traffic convictions and bond forfeitures to DPS. Section 543.202 of the Transportation Code requires courts to report the following information:

- the name, address, physical description including race or ethnicity, date of birth, and driver's license number of the person charged;
- the registration number of the vehicle involved;
- whether the vehicle was a commercial motor vehicle as defined by Chapter 522 or was involved in transporting hazardous materials;
- the person's social security number, if the person was operating a commercial motor vehicle or was the holder of a commercial driver's license or commercial driver's learner's permit;
- the date and nature of the offense, including whether the offense was a serious traffic violation as defined by Chapter 522;
- whether a search of the vehicle was conducted and whether consent for the search was obtained;

- the plea, the judgment, whether the person completed a driving safety course; and whether bail was forfeited;
- the date of the conviction; and
- the amount of the fine or forfeiture.

1. Reporting Driving Safety and Motorcycle Operator Course Dismissals

As discussed in the last chapter, defendants may elect to take a driving safety course (DSC) or a motorcycle operator training course (MOC), whichever is applicable, to have certain traffic violations dismissed. Art. 45.0511/45A.351, C.C.P. When the defendant completes the course and timely submits proof to the court, the court must dismiss the case and report to DPS the date of completion of the course. Art. 45.0511(l)/45A.356(c), C.C.P.

Practice Note

Why report a Driving Safety Course if it is successfully completed? Remember that to be eligible for a mandatory driving safety course, the defendant cannot have taken a course within the 12 months preceding the date of the offense. 45.0511(b)(2)/45A.352(a)(3)(A), C.C.P. The only way for a court to know whether a defendant has taken a course for dismissal in any of the hundreds of municipal and justice courts in Texas is to report this information to DPS! It then appears on the defendant's driving record. This is the reason that the law requires a driving record to be provided to the court for DSC.

2. Reporting Teen Court Dismissals

If a defendant charged with a traffic offense is granted teen court under Article 45.052/45A.401 of the Code of Criminal Procedure, the court is required to report the completion date of the teen court program to DPS. Art. 45.052(d)/45A.401(f), C.C.P.

3. Reporting Traffic Cases Dismissed Under Deferred Disposition

The court is prohibited from submitting a record of a dismissal following successful completion of a deferred disposition under Article 45.051/45A.302 of the Code of Criminal Procedure to DPS unless the judge subsequently adjudicates the defendant's guilt because the defendant failed to comply with the terms of the deferral. Then the judge must submit the record not later than the seventh day after the date on which the judge adjudicated guilt. Sec. 543.204, T.C.

4. Reporting Certain Convictions for Administrative DL Suspension

a. Fictitious License or Certificate by Person Under 21

Section 521.453 of the Transportation Code provides that a person under the age of 21 may not possess, with the intent to represent that the person is 21 years of age or older, a document that is deceptively similar to a driver's license or a personal identification certificate issued by DPS unless the document displays the statement "NOT A GOVERNMENT DOCUMENT" diagonally printed clearly and indelibly on both the front and back of the document in solid red capital letters at least one-fourth inch in height.

Sec. 521.347, T.C.

The court in which a person is convicted of an offense that requires automatic suspension under 521, T.C. or 522, T.C. may require the person to surrender the driver's license to the court.

DPS will automatically suspend a person's driver's license upon conviction of this offense upon receiving the report of conviction from the court. The period of suspension shall be for the period set by the court of not less than 90 days or more than one year. If the court does not set the period, DPS shall suspend the license for one year. Sec. 521.346, T.C.

b. Reporting Subsequent Offenses for Passing a School Bus

On a second or subsequent conviction for the offense of passing a school bus, the court may order the defendant's driver's license to be suspended. Sec. 545.066(d), T.C. The suspension cannot be for any longer than six months beginning from the date of conviction.

c. Failure to Comply with the Nonresident Violator Compact

All but seven states in the U.S. have signed on to the *Nonresident Violator Compact* (NVC). Created in 1977, the NVC recognized that out-of-state motorists charged with traffic offenses were faced with inequitable options for handling traffic citations, including mandatory posting of a bond, automatic detention, or immediate transport to court, all of which required significant law enforcement resources as well. The NVC seeks to allow motorists to receive the same treatment regardless of their state of origin while at the same time promoting compliance with the traffic laws of each state.

The compact requires that an officer issuing a traffic citation to an out-of-state motorist who has a driver's license from a compact state may not require the motorist to post collateral to secure appearance if the officer receives the motorist's personal recognizance that he or she will comply with the terms of the citation. Sec. 703.002, Art. III(a), T.C. If the motorist then fails to comply with the terms of their promise to appear, the court must then report the failure to DPS, which in turn will notify the licensing authority in the motorist's home jurisdiction. Sec. 703.002, Art. III(c), T.C.

Once the motorist's home state receives notice from DPS, the home state must notify the defendant and initiate a driver's license suspension action in accordance with the home jurisdiction's procedures. Sec. 703.002, Art. IV(a), T.C. The defendant's driver's license will be suspended until satisfactory evidence is presented of the motorist's compliance. Sec. 703.002, Art. IV(a), T.C. Members of the compact may also request the suspension of any Texas resident's driver's license when he or she fails to respond to a citation in the other state's respective jurisdiction. Ch. 703, T.C. All states and the District of Columbia are members except Alaska, California, Michigan, Montana, Oregon, Virginia (dropped out in 2019), and Wisconsin.

(1) Procedures

When an out-of-state violator fails to respond to a citation or to pay a fine for a violation, the court reports this to DPS on the *Notice of Failure to Comply* form, which includes vital information about the defendant, the court, and the alleged violation. This form can be ordered in six parts, or courts can use the single form with six copies. The steps to report non-compliance of an out-of-state violator are as follows:

- mail the original form (first page) to the defendant;

- hold form in file for 15 days to await response from the defendant;
- if the defendant fails to answer notice, mail second and third pages of the form to DPS;
- retain the fourth, fifth, and sixth pages of the notice in the court file; and
- when the defendant resolves the case; mail the fourth page (defendant's receipt) to the defendant and fifth page (notice of withdrawal of suspension) to DPS.

(2) Statutorily Exempt Violations

The NVC applies to traffic violations, but Section 703.002, Article VIII of the Transportation Code provides that no action will be taken under the terms of the NVC for the following violations:

- offenses which mandate personal appearance;
- moving traffic violations that alone carry a suspension;
- equipment violations;
- inspection violations;
- parking or standing violations;
- size and weight limit violations;
- violations of law governing the transportation of hazardous materials;
- motor carrier violations;
- lease law violations; and
- registration law violations.

(3) Time Limit for Reporting

It is important for the court to promptly file these reports because DPS may not transmit a report on any violation if the date of the transmission is more than six months after the date on which the traffic citation was issued. Sec. 703.002, Art. III(f), T.C.

5. Failure to Report

If a judicial officer fails to submit a traffic conviction report to DPS, he or she may be removed from office for misconduct. Sec. 543.206, T.C. Misconduct of office is any unlawful behavior by a public officer in relation to the duties of his or her office. It includes a failure to act when there is an affirmative duty to act.

6. Time to Report

Courts are required to report the convictions or forfeiture of bail to DPS by the seventh day after the date of the conviction or forfeiture of bail containing the information in Part 1-A above. Sec. 543.203, T.C. To count the seven days, start with the day after the date of final judgment or when the final judgment of bond forfeiture was entered. Sec. 311.014, G.C. DPS requires electronic reporting, and courts must contact DPS to get a secure identification number.

Sec. 543.203, T.C.

The court shall report to DPS not later than the seventh day after date of conviction or forfeiture of bail of a person violating a law regulating the operation of a vehicle on a highway.

Practice Note

The reporting deadline was shortened in 2009 to the current seven days. This is due to federal government rules that allow DPS only 10 days from the date of conviction to report certain convictions for commercial motor vehicles and commercial driver's license holders to the federal government. This may be an issue as the defendant still has three more days in which to appeal the conviction at the point this report is due. Regarding this conflict, DPS has been of the opinion in the past that it would rather courts report and then submit a conviction correction report than not report and jeopardize federal reporting deadlines.

B. Alcoholic Beverage Code

Courts are required to report to DPS certain information regarding Alcoholic Beverage Code offenses committed by minors. Sec. 106.117, A.B.C. For offenses under Chapter 106, this includes actual conviction for the offense, an order of deferred disposition, or an acquittal for the offense of DUI-Minor. Sec. 106.117(a), A.B.C. The Alcoholic Beverage Code defines a minor as any person under the age of 21. Sec. 106.01, A.B.C.

1. Reporting Convictions

The court is required to order the DPS to suspend a minor's driver's license upon conviction for certain offenses under the Alcoholic Beverage Code. If the minor does not have a driver's license, then it is still reported and DPS will deny the issuance of a driver's license or permit for the same period as a license suspension. Sec. 106.071(d)(2), A.B.C. The suspension or denial is effective the 11th day after the minor is convicted. Sec. 106.071(h), A.B.C. In addition, a prior deferred disposition for one of the offenses under Chapter 106 is considered a prior conviction for purposes of this section only. 106.071(f)(2), A.B.C.

Sec. 106.071(h), A.B.C.

A driver's license suspension under this section takes effect on the 11th day after the date the minor is convicted.

This applies to the offenses of Purchase of Alcohol by a Minor (Sec. 106.02); Attempt to Purchase Alcohol by a Minor (Sec. 106.025); Consumption of Alcohol by a Minor (Sec. 106.04);

Possession of Alcohol by a Minor (Sec. 106.05); and Misrepresentation of Age by a Minor (Sec. 106.07).

The court's report of the suspension or denial of issuance of driver's license notifies DPS of the conviction. The law provides that the length of suspension or denial is specifically set at 30 days for a first conviction, 60 days for a second conviction, and 180 days for a third or subsequent conviction. Sec. 106.071(d)(2), A.B.C.

Note that a municipal court does not have jurisdiction over third and subsequent Alcoholic Beverage Code offenses committed by minors aged 17 and over because the penalty includes confinement in jail. Sec. 106.71(c), A.B.C.

2. Awareness/Education Programs and Community Service Non-Compliance Reporting

The judge is required to order that a minor defendant successfully complete an alcohol awareness program or substance misuse education program upon first conviction of an offense in Chapter 106 of the Alcoholic Beverage Code. Sec. 106.115(a-1), A.B.C. For subsequent convictions under Chapter 106, the judge may order such a class. Sec. 106.115(a-1), A.B.C. Furthermore, for Purchase of Alcohol by a Minor (Sec. 106.02); Attempt to Purchase Alcohol by a Minor (Sec. 106.025); Consumption of Alcohol by a Minor (Sec. 106.04); Possession of Alcohol by a Minor (Sec. 106.05); and Misrepresentation of Age by a Minor (Sec. 106.07), the court is also required to order 8-12 hours of community service for a first offense and 20-40 hours of community service for a second offense. Sec. 106.071(d)(1), A.B.C.

Driving Under the Influence of Alcohol by Minor (DUI) (Sec. 106.041) has the same awareness/education program requirement, but a different number of required community service hours: 20-40 hours for a first offense and 40-60 hours for any subsequent offenses. Sec. 106.041(d), A.B.C.

If the defendant fails to show evidence of completion of the requirements, the judge is required to order DPS to suspend or deny issuance of the driver's license for a period up to six months for a first offense and up to a year for subsequent offenses. Sec. 106.115(d), A.B.C.

Interestingly, for defendants under age 18, the law allows the court to order the defendant's parent or guardian to attend the court ordered alcohol or substance misuse program with the defendant. Sec. 106.115(a-2), A.B.C.

3. Orders of Deferred Disposition for an Alcoholic Beverage Code Offense

Courts must report to DPS an Alcoholic Beverage Code offense deferred under Article 45.051/45A.302 of the Code of Criminal Procedure. Sec. 106.117(a)(3), A.B.C. Conditions of such deferrals must include an alcohol awareness or substance misuse education program as well as community service. Secs. 106.115(a) and 106.071(d), A.B.C. The report should be submitted to DPS when the court grants deferred disposition. Notice of the deferred disposition must be in a form prescribed by DPS and must contain the driver's license number, if any, of the defendant. Sec. 106.117(b), A.B.C.

4. Acquittals of Driving Under the Influence

Section 106.117(a)(4) of the Alcoholic Beverage Code requires courts to report to DPS the acquittal of the offense of driving under the influence of alcohol (DUI) by a minor. The court must submit this report to DPS. Notice of the acquittal must be in a form prescribed by DPS and must contain the driver's license number, if any, of the defendant. Sec. 106.117(b), A.B.C.

C. Penal Code

1. Public Intoxication by a Minor

When a person under the age of 21 is convicted of public intoxication, the court must follow the punishment rules under Sec. 106.071, A.B.C. that are required when a person is convicted of committing an Alcoholic Beverage Code offense. Sec. 49.02(e), P.C. Therefore, the procedures provided in Section B above may generally be used when handling Public Intoxication cases.

The court must:

- set the fine at no more than $500;
- require community service (per Sec. 106.071(d), A.B.C.);
- order the defendant's license suspended for 30, 60, or 90 days (per Sec. 106.071(d)(2), A.B.C.); and
- require attendance at an alcohol awareness program or substance misuse education program.

The above suspension takes effect on the 11th day after the conviction date. Sec. 106.071(h), A.B.C. Clerks should submit the report as soon as possible after the judgment date.

If the defendant does not complete the ordered program or perform the community service following a Public Intoxicated conviction, the court must order DPS to suspend or deny issuance of a driver's license for a period not to exceed six months for a first offense and not to exceed one year for a subsequent offense. Sec. 106.115(d)(1), A.B.C.

2. Possession of Alcoholic Beverage in Motor Vehicle

The offense of possession of an alcoholic beverage in a motor vehicle in Section 49.031 of the Penal Code is commonly referred to as "open container." Although this offense is in the Penal

Code, it is considered a traffic offense. Courts are required to report convictions of this offense to DPS.

3. Theft of Gasoline

Municipal courts have jurisdiction over theft under Section 31.03 of the Penal Code if the value of the property stolen is less than $100. The court must report all convictions of theft of gasoline to DPS. After DPS receives a report of a second conviction of theft of gasoline, DPS will automatically suspend the defendant's driver's license. Sec. 521.349, T.C.

Section 521.349 of the Transportation Code authorizes DPS to automatically suspend the defendant's driver's license for 180 days from the date of final conviction when there is a special affirmative finding under Art. 42.019, C.C.P. In the event the defendant's license is revoked or the defendant does not have a driver's license, the period of license denial is 180 days after the date the person applies for reinstatement or issuance of a driver's license. If the defendant has previously been denied a license under this section or had a license suspended, the period of suspension is one year from the date of a final conviction. The period of license denial is one year after the date the person applies to DPS for reinstatement or issuance of a driver's license.

D. Health and Safety Code – Failure to Complete Tobacco Awareness Program

For offenses committed prior to September 1, 2019, the court is required to order DPS to suspend or deny issuance of a driver's license for a period not to exceed 180 days if the defendant fails to complete the e-cigarette or tobacco awareness program or e-cigarette or tobacco related community service. Sec. 161.254, H.S.C.

Practice Note

The 86th Legislature made a number of changes to the statute relating to e-cigarettes, cigarettes, and tobacco products. This included raising the age for possession of these products to 21, reducing the maximum fine amount for the offense to $100, and removing the authority of the court to report a driver's license suspension if the remedial classes were not completed. Section 161.254 of the Health and Safety Code, cited above, was fully repealed. The bill changing the law specifically made it effective, however, only for offenses committed on or after September 1, 2019. This means that courts will still need to apply the old law, including the requirements of the repealed law, for any offenses committed before September 1, 2019.

E. Persons Under 17: Failure to Appear, Pay, or Violation of a Court Order

When a person under the age of 17 fails to pay a fine or court costs, violates a court order, or fails to appear, the municipal court conducts a contempt hearing. If the court finds the juvenile in contempt, the court may order DPS to suspend or deny issuance of the driver's license as a sanction of the contempt. Art. 45.050(c)(2)/45A.461(c)(2)(B), C.C.P.

- When the court reports the order, DPS shall suspend or deny issuance of a driver's license until the child fully complies. Secs. 521.201(8) and 521.3451, T.C.

- A minor whose license is suspended or revoked under this statute typically must pay a $100 reinstatement fee to DPS before their license may be reinstated. Sec. 521.313, T.C.

F. New Trial

When a defendant requests a new trial, the court does not report a conviction or order of driver's license suspension or denial unless the defendant is not granted the new trial and does not appeal. If a new trial is granted, the court reports upon conviction at the second trial when the defendant does not appeal. The report is submitted in the same manner as if no new trial had been granted.

G. Appeals

When a defendant appeals his or her conviction, the municipal court does not report the conviction or driver's license suspension because the municipal court judgment is not a final conviction. In non-record courts, if the defendant is convicted at the county level, the county court reports the conviction to DPS. In municipal courts of record, if the judgment is affirmed on appeal, the municipal court reports the conviction.

As mentioned above, for purposes of reporting convictions of traffic laws, the report must be made by the seventh day following the date of conviction. As defendants generally have 10 days to appeal, the court cannot wait for the appeal time to run before submitting the report. Thus, courts should be prepared to submit a conviction correction form when a defendant appeals thus making the judgment no longer final.

H. Chart of Forms

Forms DL-115, DIC-81, DR-18, and DIC-21 are produced and maintained by DPS. These forms are typically submitted electronically. The chart below outlines which form to use for some, but not necessarily all, common municipal court reports to DPS. Contact the DPS Conviction Reporting department with any submission-related questions.

	Form DL-115	Form DIC-81	Form DR-18	Form DIC-21
Alcoholic Beverage Code	**Under 21 Alcohol Offenses** • Conviction • DUI acquittal • Deferred disposition order • Failure to complete awareness program or community service	**Ages 10-17** • Court-ordered driver's license suspension or denial as a sanction of contempt under Art. 45.050(f)/45A.461(f), C.C.P.) (see Practice Note below)		

	Form DL-115	Form DIC-81	Form DR-18	Form DIC-21
Health and Safety Code		**Ages 10-17** • Court-ordered driver's license suspension or denial as a sanction of contempt under Art. 45.050(f)/45A.461(f), C.C.P.) (see Practice Note below)		
Penal Code	**Under 21 Public Intoxication** • Conviction • Deferred disposition order • Failure to complete awareness program or community service	**Ages 10-17** • Court-ordered driver's license suspension or denial as a sanction of contempt under Art. 45.050(f)/45A.461(f), C.C.P.) (see Practice Note below)	• Motor Vehicle Fuel Theft Conviction • Open Container Conviction	
Transportation Code		**Ages 10-17** • Court-ordered driver's license suspension or denial as a sanction of contempt under Art. 45.050(f)/45A.461(f), C.C.P.) • Juvenile non-appearance in a traffic case under Sec. 521.3452, T.C. (see Practice Note below)	• All traffic convictions and final bond forfeitures including city traffic ordinances • DSC/MOC Dismissal • Passing a School Bus driver's license suspension (court may order under Sec. 545.066(d), T.C. for second or subsequent conviction)	• Fictitious driver's license or certificate conviction (court may set suspension duration for 90-365 days under Sec. 521.346(a), T.C.)

Practice Note

Sec. 521.3452, T.C. requires courts to report juvenile non-appearance in traffic cases to DPS. In 2023, however, DPS informed courts across Texas that they would no longer accept the DIC-81 for failure to appear. This led to confusion with courts not knowing which form to utilize to fulfill their statutory obligation under Sec. 521.3452. Furthermore, 45.050(f)/45A.461(f), C.C.P. authorizes judges to order DPS to suspend or deny issuance of a juvenile's driver's license following a contempt finding. The fact that non-appearance may be the basis for contempt under 45.050(f)/45A.461(f) has led courts to question whether the DIC-81 is the proper form to report contempt. As of July 3, 2024, DPS has conveyed that if a court is making a report for juvenile non-appearance or contempt, they should utilize the DIC-81 and *not* check either of the options under **VIOLATION COMMITTED**. Currently, the options are **FAIL TO**

APPEAR and **FAIL TO PAY**. Checking **FAIL TO APPEAR** will result in the form being sent back to the submitting court.

True or False

1. Courts are required to keep and maintain certain information on defendants charged with traffic violations. _____
2. Courts must report nonresident defendants convicted of traffic violations within six months. _____
3. Courts must report to DPS forfeitures of bail on defendants charged with traffic violations even though the defendant has not been convicted. _____
4. Courts must report dismissals when a defendant charged with a traffic offense completes deferred disposition. _____
5. If a court fails to report traffic convictions to DPS, the judge or clerk could be removed from office for misconduct. _____
6. Courts must report traffic convictions not later than the seventh day of conviction. _____
7. When a defendant is charged with an Alcoholic Beverage Code offense, what events trigger required DPS reporting?_____
8. When is a suspension or denial of a driver's license for a conviction of an Alcoholic Beverage Code offense effective? _____
9. What DPS form does the court use to report a conviction for an Alcoholic Beverage Code offense? _____
10. What is the maximum driver's license suspension length a judge can order when a defendant fails to complete an alcohol awareness program? _____
11. What form is the court required to use to notify DPS of the court's order suspending the driver's license of a defendant who failed to complete the alcohol awareness program? _____ _____
12. When can the court order a driver's license suspension for a defendant under 17 who fails to pay a fine and costs? _____
13. When a defendant charged with an Alcoholic Beverage Code offense is granted deferred disposition, what must the court report to DPS? _____
14. If a defendant is found not guilty of the offense of driving under the influence of alcohol by a minor, what is the court required to report to DPS? _____
15. Although the offense of possession of an alcoholic beverage in a motor vehicle is a Penal Code offense, what is the court required to report to DPS? _____
16. What is the court required to report for conviction of theft of gasoline? _____
17. Who is required to keep a record of defendants charged with traffic offenses? _____
18. Who may keep the records of defendants charged with traffic offenses? _____

True or False

19. The court must report final judgments on bond forfeitures for traffic offenses. _____
20. The court must notify DPS of convictions for city ordinance traffic offenses. _____

21. When a defendant is granted a time payment plan to pay a fine, the court waits until the final payment before reporting the conviction to the DPS. ____
22. The court is required to send notice of all traffic convictions to DPS. _____
23. When a defendant discharges a traffic fine by community service, the court does not report that traffic conviction to DPS because the court did not collect any money. _____
24. List information to be reported to DPS on drivers of CMVs. _____
_____
25. When a defendant is convicted of an offense that requires automatic driver's license suspension, what may the court do with the defendant's driver's license? _____
_____
26. For offenses that require automatic driver's license suspension, what is the minimum and maximum amount of time the court may suspend the license? _____
27. When a defendant is convicted of an offense that requires an automatic driver's license suspension, what form must the court use to report that conviction? _____
_____
28. When a court reports to the DPS a defendant's completion of a driving safety course, what information must the court report? _____
29. What must the court report when a defendant charged with a traffic offense completes teen court? _____
30. What does a court do when a defendant under the age of 17 fails to appear or fails to pay a fine for a traffic offense? _____
31. If an out-of-state defendant fails to appear, what can the court do? _____
_____
32. If an out-of-state defendant resolves the case with the court, what is the court required to do? __
_____
33. List violations committed by an out-of-state violator that the court may not report under the *Nonresident Violator Compact*. _____
34. Why should clerks report an out-of-state violator as soon as they fail to appear or fail to pay?
_____
35. When a court grants deferred disposition to a defendant charged with a traffic offense, what does the court report to DPS? _____
36. What happens if a defendant appeals his or her traffic conviction? _____
_____
37. When a defendant convicted of a traffic offense is granted a new trial, when does a court report a conviction? _____

PART 2
REPORTS TO THE TEXAS ALCOHOLIC BEVERAGE COMMISSION

Section 106.116 of the Alcoholic Beverage Code requires courts to furnish upon request a notice of conviction of Alcoholic Beverage Code offenses to the Texas Alcoholic Beverage Commission (TABC). The report must be in the form approved by the TABC. If the TABC

wants to obtain information from a court, it will send a request to the court with a copy of the form on which to submit the information. These offenses include:

- Purchase of Alcohol by a Minor (Sec. 106.02);
- Attempt to Purchase Alcohol by a Minor (Sec. 106.025);
- Consumption of Alcohol by a Minor (Sec. 106.04);
- Driving Under the Influence of Alcohol by a Minor (Sec. 106.041);
- Possession of Alcohol by a Minor (Sec. 106.05); and
- Misrepresentation of Age by a Minor (Sec. 106.07).

PART 3
REPORTS TO THE TEXAS PARKS AND WILDLIFE DEPARTMENT

The Parks and Wildlife Code contains dozens of offenses that are punishable as a Class C Parks and Wildlife Code misdemeanor carrying a fine of not less than $25 and not more than $500. Although not expressly mentioned in the Parks and Wildlife Code, municipal courts would have jurisdiction over these offenses, provided they are committed in the city's territorial limits. Courts should be cautious not to confuse the Class C misdemeanor defined in the Penal Code (12.23, P.C.; fine up to $500) with the Class C Parks and Wildlife Code misdemeanor (12.406, P.W.C.; fine from $25-$500).

Section 12.107 of the Parks and Wildlife Code requires a justice of the peace, clerk of any court, or any other officer of the state who receives a fine imposed by a court for a violation of the code to send the fine to the Parks and Wildlife Department within 10 days after the date of collection. Section 12.107(b) provides that in county courts, 80% of the fine must be remitted, while in justice courts, 85% of the fine must be remitted. Presumably, municipal courts would remit 85% as well, but it is important to note that municipal courts are not specifically listed in the statute. Additionally, a statement must accompany the fine containing the docket number of the case, the name of the person fined, and the section of the code or regulation violated.

Practice Note

Should a percentage of what was once called the deferred disposition "special expense fee" be remitted for Parks and Wildlife offenses where the defendant is placed on deferred disposition? The Attorney General considered this issue in Attorney General Opinion GA-0745 in 2009. In that opinion, the Attorney General said no, stating that "it does not apply to all fees and costs that may be collected in a criminal proceeding…the special expense fee is not a fine." The issue has not been addressed more recently, though, in light of the 86th Legislature renaming the special expense fee as a fine in 2019.

PART 4
REPORTS TO THE OFFICE OF COURT ADMINISTRATION

The Office of Court Administration (OCA) is a state agency established in 1977 under the direction and supervision of the Texas Supreme Court. Its mission is to provide administrative assistance and technical support to all of the courts in Texas. The Texas Supreme Court appoints the Administrative Director of OCA who also serves as the Executive Director of the Texas Judicial Council.

The Texas Judicial Council is composed of 16 ex officio and six appointed members and is the policy-making body for the state judiciary. The Council uses the information reported by the courts to the OCA to study methods to simplify judicial procedures, expedite court business, and better administer justice. It examines the work accomplished by the courts and submits recommendations for improvement of the system to the Legislature, the Governor, and the Supreme Court. There are two primary OCA reports: (1) Monthly Court Activity Report; (2) Appointments and Fees Monthly Report.

A. Notification of City Appointments and Elections

The city secretary is required to notify the Texas Judicial Council of the name of each person who is elected or appointed as mayor, municipal judge, and clerk of municipal court within 30 days after the date of the person's election or appointment. Sec. 29.013, G.C. The city secretary must also notify the Texas Judicial Council of any vacancies in those offices within 30 days.

B. Judicial Council Monthly Court Activity Report

It is a duty of each judge, clerk, or other court official to report statistical information pertaining to the business transacted in the court to OCA. If an official fails to submit the report, OCA may request the information from the official. If, after a reasonable amount of time, the official does not supply the information, he or she is presumed to have willfully refused the request. Sec. 71.035, G.C. The Attorney General may file and prosecute an action for mandamus on behalf of the Texas Judicial Council. A writ of mandamus is an order from a court of superior jurisdiction compelling the lower court judge or clerk to perform a particular act that he or she has a duty to do. In this instance, the writ would order the court to submit the monthly report. All courts, except the Supreme Court and the Court of Criminal Appeals, must submit a monthly report.

1. Time Requirement

Municipal courts must submit to OCA the court activity report for each month by the 20th day following the end of the month being reported. Sec. 171.2, T.A.C. This means that the report for the month of February, for example, would be submitted to the OCA by March 20. Although the judge is tasked with this report, it is a duty delegated to the court clerk in many municipal courts.

Rule §171.2, T.A.C.

The Monthly Court Activity Report is due no later than 20 days following the end of the month reported.

2. Monthly Report Form

Courts use the form provided by OCA to report the activity of the court every one-month period. The report requires the court to identify the name of the municipality, presiding judge, and court clerk along with the mailing address of the court and the name and office telephone number of the person who actually prepares the report. For copies of the report and reporting guidelines, contact OCA.

3. Form of the Report

The report does not require the court to report every activity but is designed to report information on the primary activity of the court as defined by OCA. If a court does not have any activity in a section of the monthly report, the court must still report and show "zero" activity. Although the form is periodically updated, the last substantial revisions to the form were implemented in September 2011.

C. Appointments and Fees Monthly Report

Every municipal court in Texas is also required to submit a second report to OCA. This report, the Appointments and Fees Monthly Report, is due on a different date than the Monthly Court Activity Report. For this reason, it is important for clerks to pay close attention to OCA reporting deadlines.

1. Time Requirement

Municipal courts must submit to OCA the Appointments and Fees Monthly Report for each month by the 15th day following the end of the month being reported. Sec. 171.9(a)(2), T.A.C. This means that the report for February, for example, would be submitted to the OCA by March 15. Note that this is five days earlier than the date that the Monthly Court Activity Report is due. Although the two reports appear to be linked to the same database, the requirements of the law require that each is submitted separately to the OCA.

Rule §171.9, T.A.C.

The Appointments and Fees Monthly Report is due no later than 15 days following the end of the month reported.

2. Appointed Attorneys

As discussed in Chapter 5, Trial Process and Procedure, there is generally no right under current law to have an attorney appointed in a fine-only misdemeanor case heard in municipal court. Remember that it is possible, however, to have an attorney appointed if the court concludes that the interests of justice require representation due to the defendant's indigence. Art. 1.051(c), C.C.P. Despite this exception, municipal courts usually do not appoint attorneys. In addition, this report specifically asks about attorney ad litem appointments. The number for most municipal courts will thus likely be zero appointments. Regardless, the municipal court is still legally obligated to submit the report. Sec. 36.004(a), G.C.

Practice Note

Understanding the many fields and queries of the "OCA Report" can be a daunting task for court clerks. For this reason, an hour-long class is provided to new clerks at the New Clerks Conference offered twice a year by TMCEC. Representatives from OCA provide step by step guidance on the report during the class. In addition, the OCA maintains a number of valuable resources on the training portion of their website at http://www.txcourts.gov/reporting-to-oca/judicial-council-trial-court-activity-reports/justice-municipal-court-reports/.

38. What is the Office of Court Administration (OCA)? _____
_____
39. List the names of offices that the city secretary is required to report to the Texas Judicial Council when a person is either elected or appointed to office. _____
_____
40. How long does the city secretary have to make the report? _____
_____
41. When is a person presumed to have willfully refused to supply information to the Office of Court Administration? _____
42. How is the duty to supply information to the Office of Court Administration enforced?
_____
43. Which courts are not required to submit monthly statistical reports to OCA? _____
_____
44. How often is court activity reported to OCA? _____
45. What identifying information must the court place on the form? _____
_____
46. How often are appointments and fees reported to OCA? _____
47. What are the two reports that municipal courts must submit to OCA? _____
_____
48. If the court has no activity, how does the court report that fact? _____
_____

PART 5
REPORTS TO THE SECRETARY OF STATE

Beginning September 1, 2023, clerks of court shall maintain a list of the name and address of each person who is convicted of misdemeanor theft. Sec. 62.115(a), G.C. There are four theft offenses in Chapter 31 of the Penal Code that may be filed in municipal court:

- Sec. 31.03, P.C. (Theft);
- Sec. 31.04, P.C. (Theft of Service);
- Sec. 31.12, P.C. (Theft of or Tampering with Multichannel Video or Information Service); and
- Sec. 31.16, P.C. (Organized Retail Theft).

On the third business day of each month, the clerk shall send to the secretary of state a copy of the list from the preceding month. Sec. 62.115(d), G.C. Despite the language of the statute, due to security reasons regarding the use of the statewide database, municipal courts should provide the list directly to their county. The county will then forward the list to the Secretary of State through the statewide database that counties have access to. Individuals on the list are permanently disqualified from serving as a juror. Sec. 62.115(b), G.C.

PART 6
REPORTS TO STATE COMPTROLLER OF PUBLIC ACCOUNTS

The Texas Comptroller is the state's chief financial officer, elected by popular vote every four years. The Comptroller is required by Article III, Section 49a of the Texas Constitution to certify the state's budget and revenues to the Legislature. In addition, the Comptroller's office is tasked with financial management of the court costs, fees, and some fines collected by the state's courts. In other words, the Comptroller of Public Accounts is tantamount to an accountant for the State of Texas.

Broadly speaking, state law mandates that courts collect, report, and remit costs and fees to the Comptroller. Court costs are generally collected when a judgment and sentence are imposed on the defendant, when the defendant receives deferred disposition, or when the court formally defers final disposition of the case or imposition of the judgment and sentence. Sec. 133.101, L.G.C. This is documented through a required report that the court must transmit to the Comptroller once every quarter. Some of the costs and fees are retained by the city, some are required to be remitted to the State, and some are split by percentage depending on the specific statutory authorization.

It is important to clearly understand the statutory authority for every cost and fee ordered and collected in court. Courts may not impose a cost that is not expressly authorized by law. Art. 103.002, C.C.P. Funds that are collected without authority are considered by the State to be unjust enrichment. The statutory authority for the collection of costs is found in various state laws. These laws either directly authorize collection of the costs, or specifically allow the city to adopt an ordinance for the collection of the costs. Without this specific authority, cities cannot impose or collect costs through a municipal ordinance. Art. 45.203(d)/45A.264(e), C.C.P. Additionally, some court costs, and even fines, have specific uses outlined in the law. This means that the city or state can only use those costs or fines, once collected, for the specific use authorized. This section will provide an overview of these and related issues below.

A. General Information

1. What are Court Costs?

> ***Weir v. State, 278 S.W.3d 364 (Tex. Crim. App. 2009)***
>
> Court costs are not fines, but are a "non-punitive recoupment of the costs of judicial resources expended in connection with the trial of the case."

Historically, court costs have been understood as separate from the fine. Court costs are reported to the State, which takes the majority of the amount collected, and the fine is kept by the city. This understanding has changed somewhat following changes by the 86th Legislature as to what is labeled as a court cost and what is labeled as a fine in the law. A general understanding of the difference between a court cost and fine, though, can be found in existing case law. In general terms, notwithstanding issues raised by the recent changes, fines are meant to be a punishment for the criminal offense and court costs are meant to recoup costs expended in the trial of the case. *Weir v. State*, 278 S.W.3d 364 (Tex. Crim. App. 2009). Later cases further explored this concept, with courts closely examining how the cost is used after collection. The Court of Criminal Appeals decided, six years after *Weir*, that for a court cost to pass constitutional muster, it must also be used for a "legitimate criminal justice purpose." *Peraza v. State*, 467 S.W.3d 508 (Tex. Crim. App. 2015). The Court of Criminal Appeals has decided that the question of what constitutes a "legitimate criminal justice purpose" should be decided on a case-by-case basis. The result of this is that our understanding of court costs may be continually evolving. What is clear, however, is that until the Court of Criminal Appeals or the Texas Legislature have given courts guidance, court clerks must assess court costs as dictated by current law.

2. Assessing Court Costs

> **Meaning of Conviction**
> 133.101, LGC
>
> - Judgment and sentence imposed
> - Deferred disposition ordered
> - Court defers final disposition or imposition of judgment and sentence

A defendant will be assessed court costs and potentially a fine within the range prescribed by law upon conviction in municipal court. The definition of conviction for purposes of costs may be confusing, and perhaps counter-intuitive, however, for new clerks. As discussed in the law chapter, certain court orders and forms of probation may lead to a dismissal of a case. This would lead clerks to believe that court costs are not collected, as there is no final conviction. It is important to note that in the law some terms may have multiple, sometimes contrasting, definitions. The application of the specific definition will be dependent on what it is being applied to and what the law says. In this case, the definition of conviction when assessing court costs is much broader than what is considered a final conviction when looking at a criminal record. Section 133.101 of the Local Government Code defines conviction when assessing court costs as when a judgment, a sentence, or both a judgment and a sentence are imposed on the defendant; the person receives community supervision, deferred adjudication, or deferred disposition; or the court defers final disposition of the case or imposition of the judgment and sentence. This means that court costs

are collected on conviction as defined in the law even when there is not a final conviction for purposes of a criminal record. Practical examples of this include the costs collected on taking a driving safety course and the costs collected on an order of deferred disposition. Successful completion of either of these types of probation results in a dismissal with no final conviction appearing on a person's record. Court costs are still collected, however, when going back to the definition provided by the Local Government Code. Deferred disposition falls under the second bullet in the graphic to left; driving safety could fall under the third bullet. A close reading of the statute is important, though, so as not to apply court costs too broadly and beyond the express meaning of the Local Government Code definition. A final conviction might also be practically deferred in other instances, such as at pre-trial or when the prosecutor eventually moves for dismissal pursuant to a plea agreement; but these are not listed in the statute when assessing costs, and collection of court costs would not be appropriate. Likewise, mechanisms such as prosecutor "pre-trial diversion" are also not mentioned with regard to municipal court costs. Therefore, no costs are authorized in those instances.

3. Effective Date of New Court Costs

Court costs are subject to change each legislative session. Changes generally apply to offenses that occur on or after the date that the changes go into effect. According to Section 51.607 of the Government Code, notwithstanding the effective date of a legislative act, new court costs and fees are effective for offenses committed on or after January 1st following the date of the new law's effective date. This rule, however, does not apply to a court cost or fee if the legislative act takes effect on or after the January 1st following the regular legislative session that enacted the new cost or fee. Courts must keep court costs charts from prior years in order to know the correct amount to collect for past offenses. County and district courts, however, have express direction to calculate costs based on the costs in effect on the date of conviction.

Practice Note

Section 51.608 of the Government Code provides that in criminal cases, county and district courts assess the court costs that are in effect at the time of the conviction. Municipal and justice courts were specifically pulled from the bill that created this statute prior to it becoming law in 2013. This sets up a potential scenario where a defendant could be assessed different court costs on the same case following legislative years, depending on whether the person decides to appeal. The costs in municipal court would be based on the offense date for the case, while the conviction in county court would be based on the conviction date. If the court costs have gone up, the person would pay the new, and likely higher, court costs.

4. Interest and Fee Retention

If reported timely, the city may keep the interest as well as a portion of the applicable fee as a service fee. The portion that the city may retain is generally 10 percent of any collected fee if it is timely reported to the Comptroller. Sec. 133.058, L.G.C. This is a general statute that would govern any fee that does not explicitly provide for a service fee. Consequently, the service fee for the State Consolidated Fee, for example, is 10 percent. In practical terms, this means that the city

would keep 10 percent of the fee collected from the defendant, and then send the remainder to the Comptroller. In other cases, the portion retained may depend on a specific statute. The service fee for the State Traffic Fine, for example, is 4 percent. Why this specific amount? It is explicitly authorized in the State Traffic Fine statute, Section 542.4031(f) of the Transportation Code.

The Local Government Code also authorizes cities to maintain certain court costs and fees in an interest-bearing account. Sec. 133.053, L.G.C. If a city fails to report timely, though, the city must remit the entire 100 percent of the court costs collected, including handling fees and interest accrued, to the Comptroller. Sec. 133.055, L.G.C. Courts are not required to have a separate bank account for court costs, but separate records must be kept of collected funds. Costs with dedicated funds or statutory use requirements cannot be co-mingled with the city's general revenue.

5. Reporting

Art. 45.203(d)/45A.264(e), C.C.P.

City councils do not have general authority to impose or collect costs in criminal cases by municipal ordinance.

Court cost reports for the preceding quarter must be transmitted to the Comptroller by the last day of the month following each calendar quarter. Sec. 133.056(a), L.G.C. Similar to the OCA Monthly Activity Report mentioned in the prior section, a report must still be sent even if nothing was collected. If the treasurer does not collect any fees during a calendar quarter, the treasurer still files a report in the regular manner and then reports that no fees were collected. Sec. 133.055(b), L.G.C. For fees collected for convictions of offenses committed on or after January 1, 2004, a municipality or county shall report the fees collected for a calendar quarter categorized according to the class of offense. Sec. 133.056(b), L.G.C.

6. Partial Payments: Allocation and Proration

As discussed in Chapter 6, Texas law has long provided for installment payments when a defendant is unable to immediately pay the costs and fine assessed in a case. When the judge orders a defendant to pay fines and court costs through an installment plan, though, clerks must ensure proper reporting and remittance of the court costs and fees. The Comptroller follows a rule that requires courts to allocate money collected first to court costs and fees, and then to the fine. This rule, called the "Costs-First Allocation Rule" states that where a defendant pays only part of the required costs, fees, and fine ordered, the money collected should go first to the payment of the costs and fees, then second to the fine amount once costs have been paid. This concept was first stated in an Attorney General Opinion by Texas Attorney General Gerald Mann in 1939. Texas Attorney General Opinion No. O-755 (1939). In the opinion, the Attorney General lays out the principle that costs are paid first and if insufficient money is collected to even cover the costs, then the amount collected is allocated *pro rata*, or pro-rated, with no one cost taking precedence over another. *Pro rata* is a Latin term meaning in proportion, so this means that the money collected would be allocated in equal portions to the remaining costs. An example of the mathematical formula to accomplish this is below.

More recently, an opinion from 2004 reaffirmed this process, indicating that it was the Texas Attorney General's opinion for "over sixty years" addressed in six different opinions during that time. Texas Attorney General Opinion No. GA-0147 (2004). It is noteworthy, however, that the "Costs-First Allocation Rule" is simply a long-standing administrative construction of the law by the Texas Attorney General and the Comptroller. This has weight under the law, but there are no statutes or cases specifically discussing the rule.

Thus, in practice, when a court collects all costs owed during one quarter even though they were paid through installments, the clerk reports all the costs on that quarter's report. If the court collects only part of the costs in a reporting quarter, the court then prorates the costs collected among all the court costs and reports the State's portion on the quarterly report. Remember, if the court does not report, the city may not retain any percentage of the fees.

Costs-First Allocation Rule

"Where a defendant pays only part of the required fines and costs, the money collected should go first to the payment of the costs and the balance, if any, to the amount of the fine."

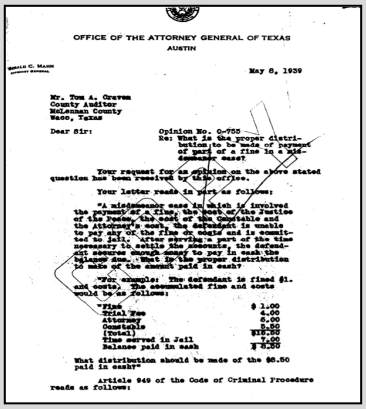
To prorate, use the following formula:

$$\frac{\text{Amount collected}}{\text{Total costs/fees}} = \text{Percentage to apply to each cost/fee}$$

For example, a defendant convicted of the offense of speeding is assessed a fine of $175 and court costs of $129.00, but only pays $46.00.

$$\frac{\$46.00}{\$129.00} = 50\% \text{ to each cost/fee}$$

Practice Note



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

May 8, 1939

Mr. Tom A. Craven
County Auditor
McLennan County
Waco, Texas

Dear Sir:

Opinion No. O-755
Re: What is the proper distribution to be made of payment of part of a fine in a misdemeanor case?

Your request for an opinion on the above stated question has been received by this office.

Your letter reads in part as follows:

"A misdemeanor case in which is involved the payment of a fine, the cost of the Justice of the Peace, the cost of the Constable and the attorney's cash, the defendant is unable to pay any of the fine or costs and is committed to jail. After serving a part of the time necessary to satisfy the judgment, the defendant does not have enough money to pay in cash the balance due. What is the proper distribution to be made of the amount paid in cash?

"For example: The defendant is fined $1.00 and costs. The accumulated fine and costs would be as follows:

Fine	$ 1.00
Trial Fee	4.00
Attorney	6.00
Constable	5.00
(Total)	$16.00
Time served in Jail	7.00
Balance paid in cash	$ 9.00

What distribution should be made of the $9.00 paid in cash?"

Article 949 of the Code of Criminal Procedure reads as follows:

Texas Attorney General Opinion No. O-755, seen to the left, first laid out the Costs-First Allocation Rule in 1939. The Rule has been addressed six times in the last 80 years, which shows that debating court costs issues is not unique to 21st Century courts. Another similarity to today? A case where the court costs exceeded the amount of the fine assessed by the court. In the 1939 opinion, the costs at issue totaled $15.50. The fine? Just $1.00.

7. Costs When Satisfied Through Other Alternatives

Art. 45.048(a)(2)/45A.262(a)(2), C.C.P.

The rate of jail-time credit is not less than $150 per eight hours of time served in jail as specified in the payment.

Other alternatives that would satisfy an outstanding judgment are court orders for community service, jail credit, or even waiver of the costs and fine entirely. If a defendant discharges the total amount due to satisfy the judgment under one of these alternatives, the court does not have to remit to the Comptroller the money that it did not actually collect. If the defendant discharges only part of the total amount due through an alternative mean and pays

money for part of the remaining judgment, the allocation still follows the proration described above. As custodians of the records, court clerks are responsible for properly recording community service, jail credit, or waiver of the costs, fees, and fine. If a defendant does not pay any money to the court because the defendant had sufficient jail-time credit for both fine and court costs, for example, the Comptroller does not require the court to remit court costs that were not collected in money. It is important that the credit is documented and specified in the judgment or order. This provides a written record documenting what was ordered and clearly indicates in the court case file why no actual money was collected.

Similarly, if the judge waives all or part of the outstanding court costs, fees, or fine, the court should document this finding in a written order. Remember, waiver of the fine or costs is possible through parameters outlined in Article 45.0491/45A.257 of the Code of Criminal Procedure. This statute permits the judge to waive all or part of a fine or costs imposed on a defendant if the judge makes certain determinations provided by the statute. This can not only affect reporting to the Comptroller but is also required to be documented for reporting to the Office of Court Administration.

8. Deferred Disposition, Driving Safety Course, and Teen Court Costs

Court costs are assessed when deferred disposition or a driving safety course are ordered. When deferred disposition is ordered by the judge under Article 45.051/45A.302 of the Code of Criminal Procedure, the judge may allow a defendant to enter into an agreement for payment of court costs in installments during the defendant's period of probation, require the defendant to discharge the payment of the court costs by performing community service, or require both payment of the court costs in installments and performance of community service. Art. 45.051(a-1)/45A.303(a), C.C.P. When a mandatory driving safety course is ordered, the court collects costs and may assess a non-refundable reimbursement fee not to exceed $10. Art. 45.0511(f)/45A.358(a)(1), C.C.P. If a discretionary driving safety course is granted under Article 45.0511(d)/45A.352(c), in addition to costs, the court may collect, under 45.0511(f)(2)/45A.358(a)(2), a fine not to exceed the maximum possible amount of the fine that could have been imposed. If the defendant complies in either case, then the court dismisses the case.

a. Using State Electronic Internet Portal to Obtain Driving Record for DSC

Article 45.0511(c-1)/45A.359 of the Code of Criminal Procedure provides that the court may request that DPS send the judge a copy of the defendant's driving record through the state's electronic internet portal showing the information required by the driving safety course order. If the court does this, then it may assess a reimbursement fee at the time that the defendant requests the driving safety course. This fee, established by Section 521.048 of the Transportation Code, would be in addition to the reimbursement fee charged when granting the driving safety course. If the court collects the fee, the court must send the money to the Comptroller quarterly. The Comptroller then credits the money to DPS.

Sec. 521.048, T.C.

The Department of Public Safety may disclose information relating to the driving record of a license holder on payment of a $10 fee for each individual request.

b. Teen Court Reimbursement Fees and Exemption

There are two optional $10 reimbursement fees that may be imposed upon a defendant's request for a teen court program. The first reimbursement fee, which may be an amount up to $10, is set by the court to cover the costs of administering the teen court program. It is deposited in the municipal treasury. Art. 45.052(e)/45A.401(g), C.C.P. The second reimbursement fee, which is set at exactly $10, is to cover the cost to the teen court for performing its duties. This reimbursement fee is paid by the court to the teen court program. The teen court must then account to the court for the receipt and disbursal of the reimbursement fee. Art. 45.052(g)/45A.401(j), C.C.P. Neither reimbursement fee is refundable if the defendant does not successfully complete the teen court program.

If the court is located in a county on the Texas-Louisiana border, it may assess two $20 reimbursement fees instead of the $10 fees. The $20 reimbursement fees apply to the counties of Bowie, Camp, Cass, Delta, Franklin, Gregg, Harrison, Hopkins, Lamar, Marion, Morris, Panola, Red River, Rusk, Smith, Titus, Upshur, and Wood. Sec. 2056.002(e)(2), G.C.

Finally, the teen court statute also includes the unique authority to exempt teen court participants from court costs. If a defendant has his or her criminal proceedings deferred under the teen court program, the court may exempt the defendant from the requirement to pay a court cost or reimbursement fee that is imposed by another statute. Art. 45.052(h)/45A.401(l), C.C.P. This is a different process from waiver, but the court should document any such exemption.

Practice Note

Efforts have been made in this book to provide an overview of court costs for educational purposes. This overview is not a comprehensive list that should be directly utilized in assessing court costs and fees. This is especially true when one considers the large court cost reorganizations by the Texas Legislature in 2003 and 2019 that repealed and replaced various costs. If the court does not have court costs charts for prior years, TMCEC and OCA maintain information on historical costs for certain years that may be useful:

TMCEC Charts (1999-present)

http://tmcec.com/resources/charts/

OCA Charts (2011-2019)

http://www.txcourts.gov/publications-training/publications/filing-fees-courts-costs/criminal/

9. Cash Bond Forfeiture for Fine and Costs

A judge may enter a judgment of conviction and forfeit a cash bond to satisfy a defendant's fine and costs if the defendant fails to appear. Article 45.044/45A.256 of the Code of Criminal Procedure provides that this is possible if the defendant has entered a written and signed plea of no contest, waived a jury trial, and failed to appear according to the terms of the defendant's

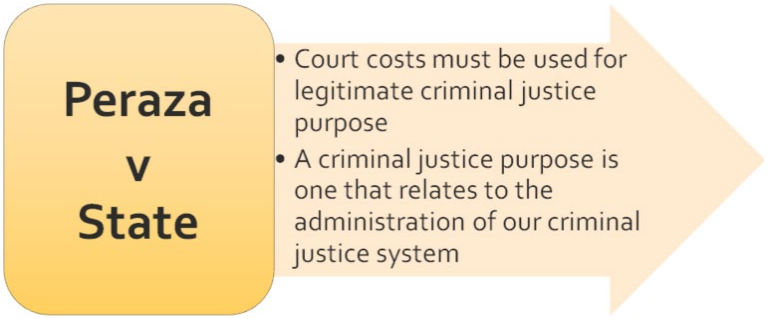
bond. Because there is a conviction, court costs would be paid to the State. The court must then immediately send notice to the defendant of the conviction, forfeiture, and right to apply for a new trial. Art. 45.044(b)/45A.256(b), C.C.P.

10. Court Costs on Appeal

When a defendant files appeals from a non-record court, the municipal court does not collect court costs and report to the Comptroller. If the defendant is convicted in county court, the county court collects the costs and reports them. In a municipal court of record, if the county court affirms the judgment, the municipal court collects and reports the costs. Art. 44.281, C.C.P.

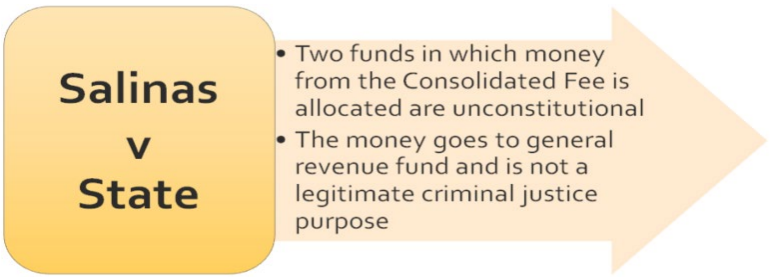
B. State Court Costs and Fines

State court costs and fines in this section are those in which the majority are primarily sent to the State of Texas once assessed and collected. The city generally may retain a small percentage or a service fee for timely reporting to the Comptroller. In recent years, the question of what happens to the money once it is sent to the Comptroller has been subject to substantial litigation. For many years, following a case called *Ex Parte Carson*, courts would look at whether the cost was "necessary or incidental to the trial of a criminal case." *Ex Parte Carson*, 159 S.W.2d 126 (Tex. Crim. App. 1942). This was specifically rejected, however, in a case called *Peraza* in 2015. In that case, the Court of Criminal Appeals considered the argument that collection and allocation of court costs in certain circumstances could essentially make courts tax gatherers (a role reserved for the Executive branch), which would violate separation of powers. The Court of Criminal Appeals held that for a court cost to be held constitutional, it must be used for a legitimate criminal justice purpose. It further stated that a legitimate criminal justice purpose is one that relates to the administration of our criminal justice system. *Peraza v State*, 467 S.W.3d 508, 518 (Tex. Crim. App. 2015). Consequently, it is important to be familiar with how certain court costs are allocated. Some are apportioned between the city and state, while others are divided between numerous funds or accounts with specific uses. Generally, courts will look to these specific uses in order to determine whether the court costs in constitutional.



1. State Consolidated Fee

The State Consolidated Fee is a $62 court cost collected on conviction for fine-only misdemeanor offenses other than pedestrian or parking offenses. Sec. 133.102, L.G.C. If reported timely, the court is authorized to retain a 10 percent handling fee. The Comptroller allocates its portion of the State Consolidated Fee to 17 different accounts or funds



based on percentages listed in the statute. The allocation to these accounts or funds has been subject to litigation, with some being found unconstitutional under the standard laid out in *Peraza*. Most recently, in the *Salinas* case, the Court of Criminal Appeals found two accounts, the Comprehensive Rehabilitation Account and the Abused Children's Counseling Account, to be unconstitutional. The court found that neither account was used for a legitimate criminal justice purpose; in fact, one of the accounts ended up allocating the money into the state's general revenue fund. *Salinas v. State*, 523 S.W.3d 103, 110 (Tex. Crim. App. 2017). The practical result of the case on the State Consolidated Fee was that the portion allocated to these two funds was invalidated. The legal result was that the Texas Legislature then amended the State Consolidated Fee statute in 2017 and again in 2019 to address such issues. In 2019, the number of funds increased and the individual apportionments to each fund all decreased, with the exception of the Fair Defense Account. The Fair Defense Account remains the biggest beneficiary of the post-*Salinas* legislative changes, with its percentage of the State Consolidated Fee going from 8.0143 percent in 2015 to 17.8448 percent in 2017 to 17.8857 percent in 2020. Currently, the largest accounts or funds that the Comptroller allocates the $62 court cost to include the Compensation to Victims of Crime Account (24.6704%), Fair Defense Account (17.8857%), and the Judicial Fund (12.2667%).

2. State Traffic Fine

The State Traffic Fine is a $50 court cost collected upon conviction of Subtitle C, Rules of the Road, Transportation Code offenses located in Chapters 541-600. This includes parking and pedestrian offenses. The city keeps a four percent handling fee if it is reported and remitted timely to the Comptroller. Sec. 542.4031, T.C. Interestingly, the Comptroller allocates its portion to the state's general revenue fund (70%) and the Designated Trauma Facility and Emergency Services Account under Section 780.003 of the Health and Safety Code (30%).

Practice Note

Keep the change? From January 1, 2010 to September 28, 2011, courts collected a 15 cent Child Safety Seat Court Cost on convictions for child safety seat offenses. The purpose of the cost was to fund the purchase of child safety seats for needy families. The cost was repealed effective September 28, 2011. A similar cost, the 10 cent Moving Violation Fee was imposed on all moving violations from September 1, 2009 to December 31, 2019. Cities kept 10 percent and the rest went to the state. It was also repealed effective December 31, 2019, leaving the remaining court costs as even dollar amounts.

49. May a city pass an ordinance to collect court costs without authorization by state law?

    _____

50. For the purpose of collecting court costs, how is "conviction" defined?

    _____

    _____

51. When must a city submit a report on court costs to the State? _____

_____

52. If the city keeps the court costs in an interest-bearing account, what happens to the interest? _____
53. If the city does not report timely, what happens to the fee that a city may retain?

_____

54. Even if the court deposits court costs into the city treasury, what type of records is the court required to keep? _____

True or False

55. When the court collects only part of the fine and costs, the clerk may allocate all of the money to the fine. _____
56. Courts may choose to wait until all court costs are collected before remitting them to the State. _____
57. When a court prorates court costs and fees, the costs and fees owed to the State must be paid before the costs and fees retained by the city. _____
58. If a defendant discharges a fine and costs by community service, the city must pay the court costs from the city's general revenue fund. _____
59. A defendant cannot discharge court costs by jail credit. _____
60. Courts may grant deferred disposition and allow defendants to pay court costs during the deferral. _____
61. If a defendant is granted a driving safety course, the defendant must pay court costs. _____
62. When a case is appealed, must the court collect the court costs? _____

63. When the Legislature changes court costs, when do the changes apply? _____
64. What must a city do if its court does not collect any court costs or fees during a calendar quarter? _____

_____

True or False

65. The State Consolidated Fee is collected on all Class C misdemeanor convictions. _____
66. The court keeps a 10 percent handling fee on the Consolidated Fee if remitted and reported timely. _____
67. The State Traffic Fine is collected on all traffic convictions. _____
68. The court keeps a 5 percent handling fee on the State Traffic Fine. _____

PART 7
LOCAL COURT COSTS AND FINES

A. Court Costs and Fines Retained by the City

State court costs and fines in this section are those in which the majority, if not all, of the amounts are primarily retained by the city once assessed and collected. These are sometimes referred to as local court costs. Although the city retains the amounts, however, it is important to note that the city cannot necessarily expend the costs and fines on any use. Similar to the state court costs reported to the Comptroller in the previous section, the local court costs generally

will have specific authorized uses in the authorizing statute or allocations broken down by fund or account. The amounts collected may only be expended on those specific statutory uses.

1. Local Consolidated Fee

The Local Consolidated Fee is a $14 court cost collected on conviction for a misdemeanor offense, including a criminal violation of a municipal ordinance. Sec. 134.103, L.G.C. On its surface, the $14 Local Consolidated Fee appears to be a smaller version of the $62 State Consolidated Fee. In some ways, this is true. The court assesses a single dollar amount that is then allocated to various funds by percentages outlined in Chapter 134 of the Local Government Code. The difference between the Local and State Consolidated Fee, however, is that the Comptroller is not the one responsible for the correct division, allocation, and legal maintenance of the funds. Rather, it is solely the responsibility of the municipality.

Chapter 134 provides for four funds into which the fee is allocated. Some of these funds previously existed as separate court costs that required specific city ordinances to collect prior to legislative changes effective on January 1, 2020. It is possible that, for an offense committed prior to January 1, 2020, courts will need to refer to the old costs. The Local Consolidated Fee funds for offenses committed on or after January 1, 2024, are summarized in the table below along with the statutory percentage and dollar amount. Following the table, the individual funds are further discussed.

Local Consolidated Fee ($14)		
Fund	Percent	Dollar
Municipal Court Building Security Fund	35	$4.90
Municipal Court Technology Fund	28.5714	$4.00
Local Youth Diversion Fund	35.7143	$5.00
Municipal Jury Fund	.7143	$0.10

a. Building Security Fund

The Building Security Fund is required by statute to be administered by or under the direction of the governing body of the city. The fund has specific prescribed uses, however, that will directly impact security in the municipal court. The law provides that the fee may only be used for security personnel, services, and items related to buildings that house the operations of municipal courts. The administrator of the fund will need to carefully weigh whether an expense falls within this statutory definition of permissible uses. To aid in this determination, the statute includes a non-exhaustive list of examples. These permissible uses include the purchase or repair of x-ray machines and conveying systems, handheld and walkthrough metal detectors, bailiffs or security personnel when they are providing security services, bullet-proof glass, and more. The entire list may be found in Article 102.017(d-1) of the Code of Criminal Procedure.

Practice Note

Another permitted use of the Building Security Fund that is listed in Article 102.017 of the Code of Criminal Procedure is "continuing education on security issues for court personnel and security personnel." Court administrators in particular should pay attention to this provision: TMCEC regularly provides classes and entire conferences on court security. Thus, a court could potentially use the fund to pay the cost of sending court personnel to TMCEC seminars or other continuing education programs.

b. Technology Fund

Similar to the Building Security Fund, the Technology Fund has specific uses that are listed in its authorizing statute, Article 102.0172 of the Code of Criminal Procedure. Money allocated to this fund may only be used to finance the purchase of or to maintain technological enhancements for a municipal court. A non-exhaustive list provides further examples and is included in the statute. These permissible uses include municipal court technology such as computer systems, computer software, imaging systems, electronic kiosks, electronic ticket writers, and more. The entire non-exhaustive list is found in Article 102.0172(d) of the Code of Criminal Procedure.

Practice Note

The Technology Fund and the Building Security Fund statutes both existed in a different form prior to recent legislative changes. It is important to note that today the two funds are not separate costs; rather, they are funds that are allocated from the Local Consolidated Fee, which is required to be assessed under state law for offenses on or after January 1, 2020. For offenses prior to this date, only cities that had passed ordinances authorizing each fund could assess them, but as a separate, stand-alone court cost.

c. Local Youth Diversion Fund

The Local Youth Diversion Fund is primarily used to finance the position of juvenile case manager. The juvenile case manager, colloquially known as a JCM, is a relatively recent addition to the list of municipal court personnel. The position, which did not exist prior to 2001, was originally called "Truancy Case Manager." The juvenile case manager is authorized in Article 45.056/45A.451 of the Code of Criminal Procedure, which allows the juvenile case manager to assist the court in administering the juvenile docket. This means that the juvenile case manager is akin to a court clerk that specializes in assisting the court with juveniles. For courts with significant juvenile cases, the Local Youth Diversion Fund would be a useful means to fund this position.

In 2020, the Local Truancy Prevention and Diversion Fund replaced the Juvenile Case Manager Fee, which required an ordinance for a municipal court to collect. In 2024, the Local Youth Diversion Fund replaced the Local Truancy Prevention and Diversion Fund. The Local Youth Diversion Fund is a required allocation as part of the state-mandated Local Consolidated Fee. This means that every court must assess the fee, regardless of juvenile case volume or whether

the court has a juvenile case manager at all. Additionally, more than a third of the Local Consolidated Fee is allocated by statute into this fund, so it is important to know how it may be used by the city. Prior to 2024, the fund could only be used to finance the JCM position. Today, if a court has a JCM, this fund still may only be used to finance the position. However, if a court does not have a JCM, effective January 1, 2024, the fund may be used for the support of a local mental health authority, juvenile alcohol and substance abuse programs, educational and leadership programs, teen court programs, and any other project designated to prevent or reduce the number of juvenile referrals to court. Sec. 134.156, L.G.C. This expansion is good news for municipal courts that do not have a JCM and previously had no permissible way to use money in the Local Truancy Prevention and Diversion Fund.

Finally, the Local Youth Diversion Fund should not be confused with the Youth Diversion *Account* (formerly the Truancy Prevention and Diversion Account). The latter is an account into which the Comptroller allocates roughly two and a half percent of the State Consolidated Fee. Despite the similar name, these are two entirely separate pools of money. The Youth Diversion Account is a dedicated account within the state's general revenue fund and is used by the legislature for tyouth diversion services. Section 133.125 of the Local Government Code provides that a local government may request those funds from the criminal justice division of the governor's office. Short of this, the local government would not otherwise have access to the Account's funds.

d. Juror Fund

The Municipal Jury Fund in Section 134.154 of the Local Government Code may be used to fund juror reimbursements or finance jury services. As with other funds within the Local Consolidated Fee, this fund should not be confused with the similarly named Jury Service Fund within the State Consolidated Fee.

2. Fees and Fine Assessed on Nonappearance

There are certain court costs, and one fine, that may only be assessed upon the nonappearance of a defendant in some manner. These each have different requirements beyond the nonappearance, which are described further below.

a. Warrant Reimbursement Fee

Article 102.011(a)(2) of the Code of Criminal Procedure requires a $50 warrant reimbursement fee be collected upon conviction if an arrest warrant, capias, or capias pro fine is executed or processed by a peace officer. A warrant, capias, or capias pro fine is executed if the officer serves the warrant by arresting the defendant. The statute does not define what processing means, so it will ultimately be up to the judge to decide what he or she considers as processing if the warrant has not been served. Some processes that a peace officer might conduct prior to serving a warrant are telephone calls to the defendant, courtesy letters, or entering the warrant into the local police department computer. Regardless of what the judge accepts as processing, documentation of the processing by a peace officer must be provided to the judge before he or she may assess the fee.

If a law enforcement agency other than the agency of the court's jurisdiction that processed the arrest warrant, capias, or capias pro fine executes it, and there is a conviction, then that agency may request the $50 fee. The request must be made within 15 days after the arrest. Art.

102.011(a)(2)(A), C.C.P. If that agency fails to request the fee, it is still required to be collected, but is paid into the issuing city's treasury. In addition, if a peace officer employed by the state executes or processes the warrant, fees imposed must be forwarded to the comptroller the last day of the month following the quarter in which it was collected after deducting four-fifths of the amount of each fee. Sec. 133.104, L.G.C. The statute does not require that this fee be used for any specific purpose.

Practice Note

A Texas Attorney General Opinion from the 1980's sheds some light on the issue of warrant fees and officer compensation. Attorney General Opinion JM-462 (1986) states that the police may legally serve arrest warrants outside of their regular hours but may only receive overtime as compensation for this service. In addition, the officer may not receive the actual fee as compensation for the service of a warrant. The Attorney General points out that the fee must be paid directly to the city treasury, and it may not serve as compensation to an officer for performance of his or her official duty.

b. Fail to Appear/Violate Promise to Appear Fine by Ordinance

This $25 fine is authorized under Article 45.203(c)/45A.264(d) of the Code of Criminal Procedure if the city has passed an ordinance. The fine may only be collected for the criminal offenses of failure to appear (FTA) under Section 38.10(e) of the Penal Code and violate promise to appear (VPTA) under Section 543.009 of the Transportation Code. Remember that these offenses, discussed at greater length in Chapter 4 (Charging and Pre-Trial), are criminal charges for failing to appear on an underlying offense, and are filed separately from the original criminal charge depending on the prosecutor. Additionally, this $25 fine should be understood as separate and distinct from the statutory fine ranges provided for FTA in the Penal Code and VPTA in the Transportation Code. Article 45.203(c)/45A.264(d) simply states that a fine not to exceed $25 may be prescribed for these two offenses if the city has passed an ordinance. Prior to January 1, 2020, the law required that the $25 be assessed on a warrant for these two offenses. That language was struck from the current version. This means that if the prosecutor files a violate promise to appear charge on an underlying speeding case, for example, it appears that the maximum fine possible under the Transportation Code would be $200, but if the city has an ordinance, an additional $25 fine could also be assessed.

c. Failure to Appear for Jury Trial

A municipal court may order a defendant who does not waive a jury trial and fails to appear for trial to pay a reimbursement fee for the costs incurred for impaneling the jury. Art. 45.026/45A.157, C.C.P. The court may release a defendant from the obligation to pay for good cause. If the court requires the defendant to pay the costs, the statute also provides that the order may be enforced as contempt under Section 21.002(c) of the Government Code.

Practice Note

The amount of this cost will vary depending upon the costs incurred by the court. The legislature recently amended the statute to further clarify that this cost is a *reimbursement* fee, meaning that it is meant to reimburse the court for costs incurred in the trial of the case. One practice is for the clerk to do an analysis of the costs for summonsing a jury and have it available for the judge so that the judge may more accurately assess the cost. Some possible costs include:

- cost of jury summons (paper and printing costs);
- cost of envelopes and stamps; and
- time spent preparing jury summons, handling requests for exemptions before trial, and managing the jury on the day of trial.

3. Fines for Child Safety Fund

a. Parking Offenses

If a parking offense is charged under a city ordinance in a city with a population greater than 1.3 million, the governing body shall require the assessment of a $2 to $5 fine upon conviction. If a parking offense is charged under a city ordinance in a city with a population fewer than 1.3 million, the court may collect a fine not to exceed $5 upon conviction. Art. 102.014, C.C.P.

b. School-Crossing Zone

Article 102.014(c) of the Code of Criminal Procedure provides that the court must assess a $25 fine for any offense under Subtitle C of the Transportation Code committed in a school-crossing zone.

Sec. 541.302, T.C.

School Crossing Zone means a reduced speed zone designated on a street by a local authority to facilitate safe crossing by children during the time the reduced speed applies.

An offense under Subtitle C of the Transportation Code is any offense found in the Rules of the Road located in Chapters 541-600, T.C. School crossing zone is defined in Section 541.302 of the Transportation Code. A school crossing zone is "a reduced-speed zone designated on a street by a local authority to facilitate safe crossing of the street by children going to or leaving a public or private elementary or secondary school during the time the reduced speed limit applies." As the definition states, in order for the court to assess the $25 fine for offenses committed in the school-crossing zone, the Subtitle C offense must have occurred during the time that the reduced speed limit is in effect.

c. Passing a School Bus

Article 102.014(c) also provides that the court is required to assess a $25 fine for the offense of passing a school bus under Sec. 545.066, T.C.

d. Parental Offense

Article 102.014(d) provides that courts must collect a $20 fine for a conviction of the offense of parent contributing to nonattendance under Section 25.093 of the Education Code. The related offense of failure to attend school was repealed in 2015, but parent contributing to nonattendance remains a criminal offense.

e. How Fund is Administered

Administration of the Child Safety Fund depends on the size of the city. There are also specific uses that the money may be used for that are outlined in the statute.

Greater than 1.3 Million

If a city has a population greater than 1.3 million, it must deposit the money in the Municipal Child Safety Fund established in the treasury, for the purpose of providing school crossing guard services. Ch. 106, L.G.C. The city may contract with one or more school districts to provide school-crossing guard services and may also provide services to an area of the city that is not a part of the school district. The employment, training, equipping, and location of school crossing guards by a political subdivision are a government function. The city is required to determine the number of school crossing guards needed by the city and then provide for the use of school crossing guards to facilitate the safe crossing of streets by children going to or leaving public, parochial, private, elementary, and secondary schools. The city must also consider the recommendations of schools and traffic safety experts when determining the need for school crossing guards. After contracting with a school district, the city may deduct from the fund the administrative cost of contracting for the services and distributing the funds to the school districts, but this may not exceed 10 percent of the fund. Ch. 343, L.G.C. After paying the expenses of the school crossing guard services, any remaining money in the fund may be used for programs designed to enhance child safety, health, or nutrition, including child abuse intervention and prevention, and drug and alcohol abuse prevention. Ch. 106, L.G.C.

1.3 Million or Less

If the city has a population less than 850,000, it must use the money for a school crossing guard program if the city operates one. If the city does not operate one, or if the money exceeds the amount necessary to fund it, the city can deposit the money in an interest-bearing account; expend the money for programs designed to enhance child safety, health, or nutrition, including child abuse prevention and intervention and drug and alcohol abuse prevention; or expend the additional money for programs assigned to enhance public safety and security. Art. 102.014(g), C.C.P.

4. Local Traffic Fine

Section 542.403 of the Transportation Code provides that a person shall pay a $3 fine upon conviction of a Rules of the Road offense under Subtitle C of the Transportation Code. The city must deposit this money in the municipal treasury. Courts must also be careful not to assess the $3 fine on traffic offenses outside of Subtitle C, of Title 7, such as failure to maintain financial responsibility, driver's license offenses, registration offenses, and commercial driver's license offenses.

6. Additional Fees that May be Assessed

The court is required to assess certain reimbursement fees for services of a peace officer. These reimbursement fees are paid by the defendant upon conviction and can be used by the municipality for any legal purpose. Other required fees depend on the type of trial requested or actions of the defendant.

a. Arrest Reimbursement Fee

Courts must collect a $5 arrest fee upon conviction when a peace officer issues a written notice to appear for a violation of a traffic law, municipal ordinance, penal law of this state, or makes a warrantless arrest. Art. 102.011(a)(1), C.C.P. A written notice to appear is a citation. Thus, a criminal charge that is initiated by complaint, rather than citation, would generally not qualify for the arrest fee. The statute does not require the arrest reimbursement fee be used for a specific purpose.

Practice Note

What happens to the arrest fee if a peace officer employed by the state, such as a DPS Trooper, issued the citation or made the warrantless arrest? In that case, the law provides that the arrest fee shall be forwarded to the Comptroller after four-fifths is deducted by the city. On the $5 arrest fee, this means 20 percent, or $1, must be reported to the Comptroller on the last day of the month following the quarter in which it was collected. This process applies to both the arrest fee and the warrant fee. Sec. 133.104, L.G.C.

b. Summoning a Defendant

When a peace officer serves a summons on a defendant, upon conviction, the court must collect a $35 reimbursement fee for the officer's services. Art. 102.011(a)(4), C.C.P. A summons may be served by delivering a copy to the defendant personally, by leaving it at the defendant's house or usual place of abode with some person of suitable age, or by mailing it to the defendant's last known address. Arts. 23.03 and 15.03(b), C.C.P.

c. Summoning a Witness

When a peace officer summons a witness by serving a subpoena and the defendant is convicted, the defendant must pay a $5 reimbursement fee for the services of the peace officer. Art. 102.011(a)(3), C.C.P.

d. Jury Reimbursement Fee

When a peace officer summonses a jury and the defendant is convicted, the defendant must pay a $5 reimbursement fee for the services of a peace officer. Art. 102.011(a)(7), C.C.P.

e. Cost of Peace Officer Overtime when Testifying

Defendants must, upon conviction, pay a reimbursement fee of overtime paid to a peace officer for time spent testifying at or traveling to or from trial. Art. 102.011(i), C.C.P. Since the reimbursement fee is for time spent testifying in the case, no overtime may be assessed if the officer did not testify. The amount collected varies depending on the officer's salary and the amount of time spent testifying.

Practice Note

It is important for clerks to add the determination of whether the officer is on overtime at the time the officer testifies to the clerk's trial checklist, and then to document the time spent on the witness stand. Clerks will need to make sure that the judge has information about officers' salaries so that the judge may assess this cost. One practice is to also have an affidavit for the officer to sign after testifying so that the court has documentation of the officer's time and the cost to assess.

Article 102.011(b) of the Code of Criminal Procedure also requires defendants convicted of a misdemeanor or felony to pay all necessary and reasonable expenses for meals and lodging incurred by peace officers when performing the following services:

- conveying a prisoner after conviction to the county jail;
- conveying a prisoner arrested on a warrant or capias issued in another county to the court or jail of the county; or
- traveling to execute criminal process, summon or attach a witness, or execute process not otherwise described by Article 102.011, C.C.P.

7. Time Payment Reimbursement Fee

Article 102.030 of the Code of Criminal Procedure provides that the court assess a $15 time payment reimbursement fee whenever a defendant pays any portion of the amount owed on or after the 31st day after the judgment assessing the amount. Prior to a law that went into effect on January 1, 2020, the fee was $25 and divided in half between the Comptroller and city. The city's portion was further divided, with 10%, or $2.50, used for the express purpose of improving the efficiency of the administration of justice, and the remaining $10 placed in the city's general revenue fund. On January 1, 2020, the law changed for offenses on or after that date. The fee was amended and reduced to $15. The entirety of the fee is required to be placed in a separate account within the city's general revenue fund. That account is required to be used for the purpose of improving the collection of outstanding court costs, fines, or reimbursement fees, or improving the efficiency of the administration of justice. This means that the city keeps more of the fee than under prior law, but it must now all be used for a dedicated purpose. The Comptroller does not receive any portion of the $15 fee.

Practice Note

The time payment fee has been challenged as unconstitutional in several Courts of Appeals. The argument has been, based on precedent, that the fee is not allocated to be used for a legitimate criminal justice purpose. Some Courts of Appeals have found that all but $2.50 (the portion that is expressly used for the administration of justice) is unconstitutional. Thus far, the Court of Criminal Appeals has not ruled on the issue.

In 2021, the Court of Criminal Appeals ruled that because an appeal suspends the obligation to pay court costs, an appeal suspends the running of the clock for the time payment fee. *Dulin v. State*, 620 S.W.3d 129 (Tex. Crim. App. 2021). *Dulin* relates to a growing concern that it is improper to assess the time payment fee upon conviction because, at that point, it cannot be known with certainty—even if the defendant enters into a payment plan—that the defendant will actually pay a portion of the amount owed 31 days or more after the judgment.

8. Expunction Fees

There are four types of expunction in municipal courts. The expunction type depends on the defendant's age, offense, and case disposition. Some are available only following dismissal or completion of deferred disposition, while others allow for expunction even after conviction. Each also has a reimbursement fee set by the specific statute authorizing the expunction. It is important for the court to accurately process the correct type of expunction so that the correct fee is assessed.

Three of the expunction types have a $30 reimbursement fee, although the statutory authorization is in different places. Expunctions under Article 45.0216(i)/45A.463(j) of the Code of Criminal Procedure, Section 106.12(e) of the Alcoholic Beverage Code, and Section 161.255(b) of the Health and Safety Code carry the $30 reimbursement fee. The law provides that the fee is to defray the cost of notifying agencies of the expunction. These expunctions are available to a qualified petitioner in any municipal court.

The fourth type of expunction, under Chapter 55/55A of the Code of Criminal Procedure, is only available to a petitioner in a municipal court of record, justice court, or district court in the

county where the fine-only offense occurred, or the petitioner was arrested. This means that these courts have concurrent jurisdiction within those parameters for fine-only offenses. A petitioner can thus file for the expunction in any of these courts within the county. The statute authorizes fine-only cases to be expunged in instances such as acquittal at trial or successful completion of deferred disposition. Courts should read Chapter 55/55A closely, however, as the chapter is complicated with many requirements to qualify for the expunction.

Cases that qualify for expunction under Chapter 55/55A carry a reimbursement fee of $100 to defray the cost of notifying agencies of the expunction. Art.102.006(a-1), C.C.P. This statute also requires the court to waive the $100 fee if the petitioner was acquitted and files the petition no later than the 30th day after acquittal. Art. 102.006(b), C.C.P.

True or False

69. The municipal court in a city with a population less than 1.3 million is required to collect a fine of up to $5 on parking convictions if the city orders the collection. _____
70. A city with a population of less than 1.3 million is not required to order the collection of the parking fine for the Child Safety Fund. _____
71. When a defendant is convicted of a Subtitle C offense in a school-crossing zone, the defendant is required to pay a $25 fine. _____
72. A defendant convicted of passing a school bus does not have to pay a $25 fine to the Child Safety Fund unless the offense occurs within a school-crossing zone. _____
73. A school-crossing zone is a reduced speed zone to facilitate the safe crossing of students in public schools only. _____
74. Someone convicted of the offense of parent contributing to nonattendance does not have to pay a $20 fine for the Child Safety Fund. _____
75. A city with a population of 1.3 million or more is required to use the Child Safety Fund for the purpose of providing school crossing guard services. _____
76. A city with a population of less than 1.3 million must use the money collected for the Child Safety Fund for a school crossing guard program if the city operates one. _____
77. The $3 Traffic Fine court cost must be collected on all traffic convictions. _____
78. The court must deposit money collected for the Traffic Fine into the city treasury. _____
79. The court is required to assess the $5 arrest reimbursement fee when a defendant is convicted after a warrantless arrest. _____
80. The court is required to assess the $5 arrest reimbursement fee when a defendant is convicted after being issued a citation. _____
81. If a defendant is convicted of the offense of failure to appear, the court is required to assess the $5 arrest reimbursement fee. _____
82. The warrant reimbursement fee may be collected only when a peace officer executes or processes the warrant, capias, or capias pro fine. _____
83. If an agency, other than the one issuing the warrant, executes the warrant, that agency may request the $50 reimbursement fee. _____
84. When a peace officer with statewide authority arrests a person, the court is required to remit

$10 of the warrant reimbursement fee to the State upon conviction. _____

85. If a city wants to collect a fine not to exceed $25 for the offense of failure to appear, the city must adopt an ordinance authorizing the collection of the fee. _____

86. When a peace officer serves a summons on a defendant, how much must the defendant pay if he or she is convicted? _____

87. When a peace officer serves a subpoena, how much must a defendant pay if he or she is convicted?

88. When a peace officer summons a jury, how much must a defendant pay if he or she is convicted?

_____

True or False

89. When an officer testifies during regular duty hours, the defendant, if convicted, must pay a reimbursement fee for the officer's time testifying in court. ___

90. When an off-duty peace officer appears at the trial but does not testify, the court may not assess a reimbursement fee for the peace officer appearing for the trial. ___

91. If a defendant fails to appear for a jury trial and the court assesses a reimbursement fee for impaneling the jury, how may the defendant be released from paying these costs? _____

_____

92. What are some items that a clerk may consider when preparing an analysis for costs incurred for summoning and impaneling a jury? _____

_____

93. What is the reimbursement fee that a municipal court of record must assess for an expunction petition filed under Chapter 55/55A of the Code of Criminal Procedure?

_____

True or False

94. The Local Youth Diversion Fund can be used to pay the salary of a court administrator if there is not a juvenile case manager. ___

95. The Building Security Fund may be used for bailiff education, but may not be used to pay for continuing education on court security issues for court clerks. ___

96. The purpose of the Building Security Fund is to provide all city buildings with security. ___

97. The city must use the Building Security Fund to purchase security items for the court. ___

98. The Technology Fund may only be assessed if the city establishes the fund by ordinance. ___

99. The Technology Fee may be used to pay for maintenance of court technology. ___

PART 8
WEIGHT AND COMMERCIAL

Certain statutes divide particular fines and costs between the city and the state. Oftentimes, the division is based on a percentage. Those listed below are imposed only at certain times or with specific jurisdiction, so they may not be collected by every court.

A. Over Gross Weight Violations

On conviction of an offense involving operating or loading overweight vehicles under Section 621.506 of the Transportation Code, the court is required to send an amount equal to 50 percent of the fine to the Comptroller. Sec. 621.506(g), T.C. If the offense occurred within 20 miles of the international border, however, the entire amount may be retained by the city for the purpose of road maintenance. Sec. 621.506(h), T.C.

B. Commercial Motor Vehicle Safety Standards

This section is only applicable for cities that may enforce commercial motor vehicle safety standards under Chapter 644 of the Transportation Code. Those cities may only keep part of the revenue from enforcement under the chapter. To enforce these types of violations, municipal police officers must be certified by DPS. Police officers from any of the municipalities on a specific list included in the statute may apply for certification. These include municipalities with a population of 50,000 or more, municipalities in a county bordering Mexico, municipalities in certain counties adjacent to Harris County, and more. The entire list is located in Section 644.101(b) of the Transportation Code.

In each fiscal year, a municipality may keep fines from the enforcement of Chapter 644 in an amount not to exceed 110 percent of the municipality's actual expenses for enforcement in the preceding fiscal year. Section 644.102(d), T.C. This is determined by the Comptroller after reviewing the most recent municipal audit conducted under Section 103.001 of the Local Government Code. If there are no actual expenses for enforcement of Chapter 644 in the most recent municipal audit, a municipality may retain fines in an amount not to exceed 110 percent of the amount the Comptroller estimates would be the municipality's actual expenses for enforcement of Chapter 644 during the year. The municipality must send the Comptroller the amount of the fines that exceeds the limit imposed by the Comptroller. Sec. 644.102(f), T.C.

True or False

100. When a city is not within 20 miles of an international border, the city must remit to the State 50 percent of the fines collected for over gross weight violations. _____

101. When a city enforces commercial motor vehicle safety standards, the city may keep fines from these offenses as long as the amount does not exceed 110 percent of the city's actual expenses for enforcement in the preceding fiscal year. _____

PART 9
SPECIAL FINE DISPOSITION STATUTES

A. Traffic Fines

Generally, the fine collected in a criminal case is deposited into the city's general revenue fund and may be used for any lawful purpose. Fines collected for offenses under certain sections of the Transportation Code, however, may only be used for specific purposes. Section 542.402(a) of the Transportation Code requires cities to expend fine money collected on convictions under Title 7 of the Transportation Code for (1) construction and maintenance of roads, bridges, and culverts in the city; and (2) enforcement of laws regulating the use of highways by motor vehicles.

B. Cities Under 5,000 Population

For cities with a population of less than 5,000, the Legislature restricts the amount of revenue that may be retained from offenses under Title 7 of the Transportation Code. The law, Section 542.402(b) of the Transportation Code, essentially prevents small cities from collecting too large a portion of their budget solely from traffic fines.

The city may keep all the fines, including those under Article 45.051(a)/45A.302, collected for offenses under Title 7 up to 30 percent of its total revenue in the preceding fiscal year. Federal funds and bond sale proceeds do not count in figuring total revenue. When fines for offenses charged under Title 7 equal 30 percent of the budget, all but $1 of each fine (including the special deferred disposition fine, previously known as the "special expense fee") collected for Title 7 offenses must be remitted to the State. The city keeps the $1 as a service fee and remits the revenue with the other quarterly reports.

Additionally, in a fiscal year when the fines for offenses charged under Title 7 reach 20 percent, the court must file a report with the Comptroller. The report must be submitted to the Comptroller within 120 days after a city's fiscal year ends and (1) must include a copy of the city's financial statement that is prepared for that fiscal year and filed as required by the Local Government Code, Chapter 103 and (2) show the total amount collected from Title 7 offense fines and special deferred disposition fines. Sec. 542.402(d), T.C. Failure to report may result in an audit conducted by the Comptroller. Sec. 542.402(c), T.C.

C. Fines for Parent Contributing to Nonattendance

If a parent is convicted of the offense of parent contributing to nonattendance, one half of the fine must be paid to the school district in which the child attends school, the open enrollment charter school the child attends, or the juvenile justice alternative education program that the child has been ordered to attend. The other half of the fine goes into the city's general fund. Sec. 25.093(d), E.C.

True or False

102. The Transportation Code requires all cities to allocate fine money collected for traffic convictions in a certain manner in the city's budget. _____

103. Cities with a population under 5,000 must pay the State all but $1 of the fines collected for

offenses under Title 7 of the Transportation Code after fines and special expenses reach 30 percent of their budget. _____

104. When a parent is convicted of contributing to nonattendance, the city must pay the fine to the school district. _____

PART 10
PASSIVE ENFORCEMENT

A. OmniBase Reimbursement Fee

Cities may contract with DPS to deny driver's license renewal to a person who fails to appear, fails to pay, or fails to satisfy the judgment in a manner ordered by the court. Ch. 706, T.C. If a city enters into such an agreement with DPS, the court is required to collect a reimbursement fee from defendants. Prior to a law that went into effect on January 1, 2020, the fee was $30. Twenty dollars of the fee was remitted to the State, $6 was paid to OmniBase (the vendor that DPS has contracted with), and the city kept $4. For offenses on or after January 1, 2020, the fee was reduced to $10. Per contract between the city and OmniBase, $6 is paid to OmniBase and the city keeps $4. The state does not receive any portion of the $10 reimbursement fee.

B. Scofflaw Reimbursement Fee

Cities may contract with their county to deny vehicle registration renewal to persons who fail to appear or pay on certain traffic warrants. Ch. 702, T.C. Cities may assess a $20 reimbursement fee on each person who is reported to the "Scofflaw" program. The city must send the entire $20 to the county tax assessor-collector and may not retain any of the reimbursement fee.

C. Private Collection Contract Fees

The law also authorizes cities to contract with a private attorney or a private vendor for collection services. Art. 103.0031, C.C.P. The terms of these contracts typically vary depending on what is negotiated between the individual city and the particular vendor or private attorney. The law requires, though, that the contracts must specify a 30 percent collection fee or it is not authorized by Article 103.0031. The fee does not apply if a case is dismissed, the defendant is acquitted, or to any part of the fine or costs discharged by jail credit or community service. If a defendant makes a partial payment, the vendor is paid its 30 percent, then the money is allocated on a pro-rata basis to the State and local costs, and any remaining money is applied toward the fine. Tex. Atty. Gen. Op. GA-0147 (2004). If the defendant has been given notice of a time and place to appear and failed to appear, the court must wait 60 days before reporting the case to the vendor. Courts can refer cases with fine or costs still owed on the 61st day after they are to be paid. Subsection 103.0031(i) also allows cities to enter into a contract to collect a debt incurred on an offense that was committed before June 18, 2003, but no collection fee applies.

True or False

105. To deny the renewal of driver's licenses to defendants who fail to appear or fail to pay, cities must contract with DPS. _____

106. When a city contracts with the Texas Department of Motor Vehicle to deny vehicle registration to defendants who fail to pay or appear, the court collects upon conviction a $30 reimbursement fee. _____

107. Vendor contracts can specify any amount of collection fee. _____

108. If a defendant makes a partial payment, the vendor is paid after local and state court costs are paid. _____

ANSWERS TO QUESTIONS

PART 1

1. True (the court is required to submit traffic conviction reports to DPS).
2. True.
3. True.
4. False (courts do report when a defendant completes a driving safety course, not a deferred disposition).
5. True.
6. True.
7. The court is required to report the:
   - conviction:
     - orders of the driver's license suspension; and
     - failure to complete the alcohol awareness/substance misuse education program or community service; and failure to pay a violation of a court order;
   - failure to appear;
   - orders of deferred; and
   - acquittals of driving under the influence of an alcoholic beverage (minor).
8. It is effective 11 days after the judgment is entered.
9. The DL-115.
10. Not to exceed six months.
11. The DL-115.
12. The court can order DPS to suspend or deny issuance of the driver's license when a person fails to pay or violates a court order after conducting a contempt hearing under Article 45.050/45A.461 of the Code of Criminal Procedure, retaining jurisdiction, and ordering the suspension as a sanction.
13. The court must report that deferred disposition was granted and the date granted.
14. The court is required to report the acquittal to DPS.
15. Courts must report a conviction of this offense in the same manner as traffic offenses.
16. The court is required to report convictions to DPS. When a judgment is entered for this offense, the court is required to note an affirmative finding in the judgment. If the offense is a subsequent offense, the court is required to enter a special affirmative finding. When DPS receives the second conviction report, DPS will suspend the driver's license.
17. Each magistrate, judge of a court of non-record, and clerk of a court of record is required to keep records of persons charged with traffic offenses.
18. Since keeping records is a ministerial duty, usually the clerk of the court maintains all the records including those cases where a traffic offense is charged.
19. True.
20. True.
21. False.

22. False (the court must submit the report within seven days of the judgment).
23. False (the defendant remains convicted of the traffic offense, even if the fine was discharged through community service).
24. Section 543.202 of the Transportation Code requires that the DR-18 report of traffic convictions of commercial drivers operating a commercial motor vehicle contain the following additional information:
    - commercial driver's license number and social security number, if available;
    - the fact that the vehicle was a commercial motor vehicle;
    - whether the vehicle was involved in the transporting of hazardous materials; and
    - date and nature of offense, including whether the offense was a serious traffic offense as defined in Section 522.003(25) of the Transportation Code (Serious traffic offenses arise from excessive speeding 15 mph over the posted limit or more; reckless driving; violations of state and local traffic laws other than parking, weight, or vehicle defect violations, arising in connection with a fatal accident; improper or erratic lane change; or following too closely.)
25. The court may require the defendant to surrender all of his or her driver's licenses. If the court takes a license, the clerk must not later than the 10th day after the license is surrendered forward the license together with a record of the conviction to DPS.
26. Not less than 90 days or more than one year.
27. Courts are required to report on DPS form DIC-21.
28. The date that the defendant completed the driving safety course.
29. The date the defendant completed the teen court program.
30. The municipal court conducts a contempt hearing. If the court retains jurisdiction of the juvenile and finds the juvenile in contempt, the court may order DPS to suspend or deny issuance of the driver's license as a sanction of the contempt. Art. 45.050(c)(2)/45A.461(c)(2), C.C.P. This is on the DIC-81 form.
31. The court must first send the defendant notice reminding the defendant to take care of their business with the court. The court waits 15 days for a response from the defendant. The court should use the Nonresident Violator Compact form.
32. The court must mail the 4th copy (defendant's receipt) to the defendant and mail the 5th copy of the notice, which is the notice of withdrawal of suspension to DPS.
33. No action will be taken under the terms of the *Nonresident Violator Compact* for the following violations:
    - offenses which mandate personal appearance;
    - moving traffic violations that alone carry a suspension;
    - equipment violations;
    - inspection violations;
    - parking or standing violations;
    - size and weight limit violations;
    - violations of law governing the transportation of hazardous material;
    - lease law violations; and

- registration law violations.

34. Because DPS may not transmit a report on any violation if the date of the transmission is more than six months after the date on which the traffic citation was issued.
35. Nothing. The court only reports a traffic conviction to DPS if the defendant fails to complete the terms of the deferred disposition. The report is submitted after the judge enters a final adjudication in the case (signs the final judgment of guilty).
36. The municipal court does not report the conviction to DPS until it is final.
37. The court only reports a conviction if the defendant is convicted in the new trial.

PART 4

38. The OCA is a state agency and operates under the supervision of the Texas Supreme Court.
39. The city secretary must notify the Texas Judicial Council of the name of each person who is elected or appointed as mayor, municipal judge, and clerk of the municipal court.
40. Within 30 days after the date of the person's election or appointment.
41. If an official does not supply the information requested by OCA after a reasonable amount of time, he or she is presumed to have willfully refused the request.
42. The duty to supply information to OCA may be enforced with a writ of mandamus, an order from a court of superior jurisdiction compelling the municipal judge or clerk to perform a particular act that he or she has a duty to do.
43. The Texas Supreme Court and the Texas Court of Criminal Appeals are not required to submit monthly reports.
44. Court activity for each month must be reported to OCA by the 20th day following the end of the month being reported.
45. The court must identify the name of the municipality, the presiding judge, the court clerk, the mailing address of the court, the name of the person actually preparing the report, and the office telephone number of that person.
46. Appointments and fees must be reported to OCA by the 15th day following the end of the month being reported.
47. Every municipal court is required to submit (1) Monthly Court Activity Report; (2) Appointments and Fees Monthly Report. Both are required even if there is no activity and the reported numbers are zero. They are due, however, on different dates.
48. If a court does not have activity, the court should not leave the space blank, but should show "zero" activity.

PART 6

49. No.
50. For the purpose of collecting court costs, Section 133.101 of the Local Government Code defines conviction as:
    - a judgment, a sentence, or both a judgment and a sentence imposed on the person;
    - the person receives community supervision, deferred adjudication, or deferred disposition; or
    - the court defers final disposition of the case or imposition of the judgment and sentence.

51. Court cost reports must be filed with the State by the last day of the month following each calendar quarter.
52. The city may keep the interest if it reports timely.
53. Cities may not keep the handling fee but must remit it to the State.
54. Courts are required to keep separate records of the funds.
55. False (collected money goes first to costs).
56. False.
57. False (collected money is prorated among all costs).
58. False.
59. False.
60. True.
61. True.
62. No, because the conviction is not final—it is appealed.
63. Notwithstanding the effective date of a legislative act, new court costs and fees are effective for offenses committed on or after January 1st following the date of the new law's effective date. This rule, however, does not apply to a court cost or fee if the legislative act takes effect on or after the January 1st following the regular legislative session that enacted the new cost or fee.
64. The treasurer must still file a report with the Comptroller and report that no fees were collected.
65. False (on all fine-only offenses other than parking and pedestrian).
66. True.
67. False (on all Rules of the Road offenses).
68. False (The city keeps four percent. The law changed in 2019. For offenses on or after September 1, 2019, the city keeps four percent. For offenses prior to September 1, 2019, the city keeps five percent).

PART 7

69. False.
70. True.
71. True.
72. False.
73. False.
74. False.
75. True.
76. True.
77. False (on all Rules of the Road offenses).
78. True.
79. True.
80. True.
81. False (the offense of failure to appear is initiated by complaint, not a citation).

82. True.
83. True.
84. True.
85. True.
86. Thirty-five dollars.
87. Five dollars.
88. Five dollars.
89. False.
90. True.
91. For good cause at a show cause hearing.
92. Some items that a clerk may want to consider when preparing the analysis are costs of jury summons (paper and printing costs); costs of envelopes and stamps; and clerks' salaries.
93. The reimbursement fee for an expunction under Chapter 55 is $100.
94. False.
95. False. Although the Building Security Fund may be used for x-ray machines and bailiff education, it may also be used for court clerks. See the Practice Tip in the Building Security section. Article 102.017 of the Code of Criminal Procedure allows the fund to be used for "continuing education on security issues for court personnel and security personnel."
96. False.
97. True.
98. False. The fund is a required allocation as part of the $14 Local Consolidated Fee, which is assessed under state law. Prior to January 1, 2020, the law required cities to pass an ordinance to collect an earlier version of the Building Security Fund.
99. True.

PART 8

100. True.
101. True.

PART 9

102. True.
103. True.
104. False. The city must only pay one half of the fine to the school district.

PART 10

105. True.
106. False. The court may assess a $20 fee for "Scofflaw."
107. False.
108. False.

8

Traffic Law

Table of Contents

INTRODUCTION

The purpose of this chapter is twofold. First, it is important for court clerks to have a fundamental understanding of "traffic law." Although the United States is a common law country, most traffic codes in this country have developed into lengthy codes that must address everything from running a red light to the weight of commercial motor vehicles. This chapter will provide clerks with an overview of some of the traffic laws commonly handled by municipal courts and provide guidance to where specific laws or regulations may be found in the code. Second, the chapter will provide an overview of certain collateral issues intertwined with the traffic law. These include statutes concerning arrest and appearance, culpability, and criminal penalties. All of these areas have been discussed in prior chapters. It may be useful to review those chapters for deeper understanding. This chapter will not rehash these topics; rather, it will demonstrate where these issues fit in with the traffic law.

Finally, it is important to note that this chapter is not a comprehensive study of the entire Transportation Code. Clerks should always consult the actual Transportation Code or the city's legal advisor for practical application and day-to-day job functions. Additionally, it would be helpful to have both the "Green Book" and "The Brick" available when reviewing this chapter. These publications may provide greater detail on areas referenced below.

PART 1
TRANSPORTATION CODE

The Transportation Code is broadly organized into *titles*. Each *title* is divided into *subtitles,* which in turn are further broken down into *chapters*, *subchapters*, and *sections*. Within the Transportation Code, three primary titles−*General Provisions*, *Roadways*, and *Vehicles and Traffic*−contain the majority of information on traffic offenses commonly encountered in municipal court. Brief descriptions are included in Part 1.

A. Title 1 – General Provisions

Title 1, *General Provisions*, contains general information on the Transportation Code's purpose and construction. Section 1.002 provides that Chapter 311 of the Government Code (the Code Construction Act) applies to the construction of the Transportation Code except where expressly stated otherwise.

B. Title 6 – Roadways

Title 6, *Roadways*, contains information on toll roads, bridges, ferries, turnpikes, and state highways. More specifically for municipal courts, Subtitle Z, *Miscellaneous Roadway Provisions*, contains the definition for a construction or maintenance work zone. Sec. 472.022(e)(2), T.C.

C. Title 7 – Vehicles and Traffic

The bulk of Texas traffic laws are contained in Title 7, *Vehicles and Traffic*. It is divided into the following 11 subtitles.

1. Subtitle A

Subtitle A, *Certificates of Title and Registration of Vehicles*, contains rules on how vehicles are registered, sold, and tagged. Most of this subtitle is dedicated to special registration rules, but the offenses regarding driving an unregistered or improperly registered vehicle and driving a vehicle

without or with improper license plates are contained in Chapters 502, *Registration of Vehicles*, and 504, *License Plates*, respectively.

2. Subtitle B

Subtitle B, *Driver's Licenses and Personal Identification Cards*, regulates driver's license requirements, records, applications, examinations, restrictions, expirations, suspensions, and fees. Most of the provisions are administrative and do not affect the daily operation of municipal courts, but courts receive many questions about the effect a conviction may have on a driver's license. This subtitle does contain common offenses such as failure to carry a driver's license, driving without a license, or driving while license invalid. The laws pertaining to driver's licenses are found in Chapter 521; laws for commercial driver's licenses are found in Chapter 522.

3. Subtitle C

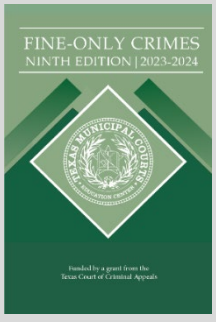
Subtitle C, *Rules of the Road*, is by far the portion of the code most often encountered by municipal courts. Subtitle C is divided into chapters, from Chapter 541 through 600. (Note: Chapters 554 to 599 are reserved and do not contain any laws or rules at this time.)

Rules of the Road

Anything contained in Subtitle C, Title 7 (Chapters 541-600) of the Transportation Code. Important for certain court costs and also an adult's right to take a Driving Safety Course.

All of the offenses and provisions in Subtitle C are considered Rules of the Road. There is much confusion about the term "Rules of the Road" and the term "moving violations." Remember that *Rules of the Road* refers to anything contained in Subtitle C (Chapters 541 to 600) of the Transportation Code, and is important for purposes of specific court costs and an adult's right to take a driving safety course. The term moving violation is defined in Section 15.89 of Title 37 of the Texas Administrative Code as an act committed in connection with the operation of a motor vehicle on a public street or highway, which constitutes a hazard to traffic and is prohibited by state law or city ordinance. Violations are identified as moving violations by the DPS in a graphic attached to Section 15.89(b).

Although most Rules of the Road offenses are considered moving violations, the two are not the same. Not every Rules of the Road offense is a moving violation and not every moving violation is in Subtitle C. For example, the offense of Driving While Intoxicated, located in the Penal Code, is a moving violation, as is the offense of Driving While License Invalid, which is in Chapter 521 of the Transportation Code. Both of these offenses, however, are outside of Subtitle C. It is important for clerks to keep these two terms separate and know the import of each term.



Practice Note

The tabs in *Fine-Only Crimes,* also known as "The Green Book," are a great way to quickly reference Rules of the Road offenses. Flip to the Rules of the Road tab to see every offense included in Chapters 541-600. The editor's notes behind that tab include important information pertaining to Rules of the Road offenses, including references to relevant statutes located elsewhere in the law.

4. Subtitle D

Subtitle D, *Motor Vehicle Safety Responsibility*, contains only Chapter 601, which provides that motor vehicle operators must maintain insurance or have some other type of financial responsibility if they cause a collision. This requirement is aimed at protecting other drivers from bearing the cost of injuries or damages when a collision is not their fault. Section 601.191 provides for the offense of failure to maintain financial responsibility.

5. Subtitle E

Subtitle E, *Vehicle Size and Weight*, regulates the size and weight of vehicles and provides special provisions for oversize and overweight vehicles, transit permits, and the size of a transport vehicle (including vehicles transporting concrete, milk, timber, power poles, or pipe). These laws are quite technical and complicated, providing tiered fines, requiring a percentage of fines collected to be remitted to the State, and limitations on what fine-only offenses can be heard in municipal courts.

6. Subtitle F

Subtitle F, *Commercial Motor Vehicles*, pertains to commercial motor vehicles and motor carriers. This subtitle contains commercial motor vehicle safety standards in Chapter 644, which regulate the trucking industry and ensure that federal highway safety regulations are followed by commercial drivers. When cases are filed under this subtitle, the authority to do so comes from Chapter 644 and such cases can only be filed by certified officers under Section 644.101.

7. Subtitle G

Subtitle G, *Protective Headgear for Motorcycle Operators and Passengers*, regulates motorcycles, off-highway vehicles, and electric bicycles. This chapter defines an offense for not wearing protective headgear while operating a motorcycle in Section 661.003. Other portions of this subtitle include motorcycle operating training and safety, sale of motorcycles without serial numbers, and standards for electric bicycles.

8. Subtitle H

Subtitle H, *Parking, Towing, and Storage of Vehicles*, provides authority for cities to regulate parking and storage of vehicles. It contains laws regarding disabled parking placards (Sec. 681.002); space designation (Sec. 681.009); privileged (handicapped) parking violations (Sec. 681.011); and exemptions from parking meter fees for vehicles sporting certain specialty plates or disabled veteran plates. Subtitle H also provides authority for certain cities to administratively adjudicate parking citations. This authorizes the cases to be heard by a hearing officer (Ch. 682). Subtitle H regulates the handling of junked or abandoned vehicles (Ch. 683).

9. Subtitle I

Subtitle I, *Enforcement of Traffic Laws*, contains various provisions that municipalities may utilize to help increase defendant compliance with court orders.

Chapter 702 permits a city to contract with the county or Texas Department of Motor Vehicles to deny renewal of vehicle registration to persons with warrants for certain traffic laws. This program is known as the "Scofflaw" program. Sec. 702.003.

Chapter 703, *Nonresident Violator Compact of 1977*, allows cities to report out-of-state residents who fail to take care of traffic citations. Its purpose is to ensure compliance with the terms of a traffic citation, even if the defendant lives in another state.

Chapter 706 permits a city to contract with DPS to deny renewal of a defendant's driver's license for failure to appear or to pay or satisfy a judgment in a manner ordered by the court for a fine-only offense. This program is known as OmniBase, the name of the vendor used by DPS to administer the program (Sec. 706.004).

Practice Note

Chapter 708 of the Transportation Code included the Texas Driver's Responsibility Program and was entirely repealed effective September 1, 2019. The program, which required surcharges to be paid every year for three years on certain convictions, was generally not popular among most Texans. Its repeal resulted in an estimated 1.4 million Texas driver's licenses being reinstated.

10. Subtitle J

Subtitle J, *Miscellaneous Provisions*, regulates the operations of automobile club services (Ch. 722); provides requirements for cities and counties to have their name on city or county vehicles (Ch. 721); contains the implied consent law, requiring motorists under certain circumstances to consent to a blood alcohol test or face driver's license suspension (Ch. 724); and other provisions dealing with master keys and the regulation of loose materials.

11. Subtitle M

Subtitle K, *Department of Motor Vehicles*, creates the Department of Motor Vehicles (DMV) as an entity separate from the Department of Transportation (TxDOT) and lays out the rules for its overall structure and governance. The DMV now oversees the registration of vehicles, issues oversize and overweight permits, regulates vehicle dealers, and credentials buses and big trucks for intrastate and interstate commerce.

1. How is the Transportation Code organized? _____
2. Most traffic law matters handled by municipal court are located in which title of the Transportation Code? _____
3. In which subtitle do you find rules on license plates? _____
4. In which subtitle do you find rules on driver's licenses? _____
5. What are the Rules of the Road? _____
6. Where are the moving violations defined? _____
7. In which subtitle do you find rules on maintaining financial responsibility? _____
8. In which subtitle do you find rules about privileged (handicap) parking? _____
9. In which subtitle do you find rules on the *Nonresident Violator Compact*? _____
10. In which chapter do you find rules on contracting with DPS to deny renewal of a driver's license to defendants who fail to appear or fail to pay or satisfy a judgment in a manner ordered by the court? _____
11. What happened to Chapter 708 of the Transportation Code, regarding surcharges and the Texas Driver's Responsibility Program? _____

PART 2
CITATION REQUIREMENTS

A. Peace Officer's Authority to Issue Citations

Peace officers may arrest persons who commit traffic violations. Specific authority for arresting persons who commit Rules of the Road violations is found in Section 543.001 of the Transportation Code, but there is also authority for a peace officer to release a person arrested for a Title 7, Subtitle C violation by issuing a written promise to appear, also known as a citation, instead. Sections 543.003 and 543.007 provide additional rules for citations issued to the operator of a commercial motor vehicle or holder of a commercial driver's license or learner's permit. Those citations must contain certain information required by DPS to comply with Chapter 522 and the Federal Commercial Motor Vehicle Safety Act of 1986. The DPS rules are in Section 16.100, Chapter 16, Title 37 of the Texas Administrative Code.

Under Chapter 543 of the Transportation Code, in order for the person to secure release from custody, he or she must sign a promise to appear. Later, if the person fails to appear in court as promised, he or she can be charged with the criminal offense of violation of promise to appear (Sec. 543.009). This is a separate crime from the underlying traffic offense and is charged by complaint.

If a person violates traffic laws outside of Subtitle C, such as failure to maintain financial responsibility (Subtitle D), no driver's license (Subtitle B), expired registration (Subtitle A), or not wearing protective headgear while riding a motorcycle (Subtitle G), the peace officer has general authority to arrest without a warrant under Article 14.01(b) of the Code of Criminal Procedure for any offense committed in his or her presence or within his or her view. Article 14.06(b) of the Code of Criminal Procedure authorizes a peace officer to release a person arrested for a Class C misdemeanor by issuing a citation in lieu of a full custodial arrest. The one exception is for the offense of public intoxication for which the peace officer may take the person to jail, release him or her to someone who will assume responsibility, or the offender may consent to attend a chemical dependency program (Art. 14.031, C.C.P.).

Article 14.06(c) provides authority for peace officers to issue citations for the following Class A and B misdemeanors if the defendant resides in the county where the offense occured (note, however, that municipal courts do not have jurisdiction over these cases):

- Possession of four ounces or less of marihuana (Sec. 481.121(b)(1)-(2), H.S.C.);
- Possession of four ounces of less of substances in Penalty Group 2-A, such as mushrooms and mescaline (Sec. 481.1161(b)(1)-(2), H.S.C.);
- Criminal mischief, where the value of damage done was $100 or more, but less than $750 (Sec. 28.03(b)(2), P.C.);
- Graffiti, where the amount of pecuniary loss is $100 or more, but less than $2,500 (Sec. 28.08(b)(2)-(3), P.C.);
- Theft, where the value of the property stolen was $100 or more, but less than $750 (Sec. 31.03(e)(2)(A), P.C.);
- Theft of service, where the value of the service stolen was $100 or more, but less than $750 (Sec. 31.04(e)(2), P.C.);
- Tampering with a temporary tag issued under Chapter 502 or 503, T.C. (Sec. 37.10, P.C.);

- Possession of contraband in a correctional facility if the offense is punishable as a Class B misdemeanor (Sec. 38.114, P.C.); or
- Driving while license invalid if charged as a Class B misdemeanor or higher (Sec. 521.457, T.C.).

General Authority to Issue Citations	Specific Authority for Class A and B Offense Citations	Specific Authority for Subtitle C, "Rules of the Road" Offense Citations
A peace officer's general authority to issue a citation for any Class C misdemeanor, except public intoxication, is found in Article 14.06(b), C.C.P.	Specific authority for a peace officer to issue citations for certain Class A and B misdemeanor offenses is found in Article 14.06(c), C.C.P.	Specific authority for a peace officer to issue a notice to appear for offenses in Subtitle C, T.C., is found in Section 543.003, T.C.

B. Information on Citations

1. Racial Profiling Information

Although the two statutes authorizing the issuance of a citation do not require information to be gathered for racial profiling data, Article 2.132/2B.0053 of the Code of Criminal Procedure requires law enforcement agencies to adopt a detailed written policy on racial profiling, including the collection of information relating to traffic stops in which a ticket, citation, or warning is issued or an arrest results. The required information includes the person's race or ethnicity, whether the officer knew the race or ethnicity before detaining the person, whether a search was conducted, and more. The entire list is found in Article 2.132(b)(6)/2B.0053(b)(6) of the Code of Criminal Procedure.

These reports must be submitted to the Texas Commission on Law Enforcement each March. Section 543.202 of the Transportation Code requires the court to report much of this same information to DPS. For most cities, the best way for both the law enforcement agency and the court to collect this information is using the citation.

Practice Note

Following the traffic stop and later death of Sandra Bland while in custody, the Legislature made a number of changes to the racial profiling and reporting statutes. This included a broader definition of when information is required to be collected. The law now requires collection of information when a ticket or warning is issued, in addition to the previously required citation. What is the difference between a ticket and citation? That is unclear. What is clear, though, is that this essentially means that racial profiling information must be collected whenever an officer comes into documented contact with a motorist.

2. Driving Safety Course Information

Article 45.0511(q)/45A.354(a) of the Code of Criminal Procedure requires that a notice to appear issued for a Subtitle C, Rules of the Road violation include the following statement:

> 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.

In its absence, the person may continue to exercise the right to the course until he or she is informed or the case is disposed. Art. 45.0511(r)/45A.354(b), C.C.P.

3. Failure to Maintain Financial Responsibility

Section 601.233 of the Transportation Code requires that a citation for failure to maintain financial responsibility contain the following statement in type larger than other type on the citation:

> A second or subsequent conviction of an offense under the Texas Motor Vehicle Safety Responsibility Act will result in the suspension of your driver's license and motor vehicle registration unless you file and maintain evidence of financial responsibility with the Department of Public Safety 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.

TexasSure

Automated vehicle insurance verification database created by agencies including the Texas Department of Insurance and the Texas Department of Motor Vehicles.

In addition to the required notice, citations must also have an affirmative indication that the officer was unable to verify insurance at the time of the stop. Sec. 601.191(e), T.C. Officers do this through a program called TexasSure, which was developed by the Texas Department of Insurance and Texas Department of Motor Vehicles following a directive from the Legislature. Officers may access TexasSure by using the Texas Law Enforcement Telecommunication System (TLETS). Municipal and justice courts may access TexasSure for the purpose of court proceedings. Sec. 601.455, T.C.

Practice Note

Individual law enforcement agencies will need to decide how the affirmative indication required by Section 601.191(e) of the Transportation Code appears on the citation. Many courts with electronic ticket writers have added a check box to the citation. The law does not provide a directive on how to practically implement this requirement. The following websites may be helpful for more information on the TexasSure program:

- www.texassure.com
- www.txdmv.gov/motorists/register-your-vehicle/texassure-insurance-verification

4. Address Obligation for Juveniles and Their Parents

Article 45.057(h)/45A.457(h) of the Code of Criminal Procedure provides that a child and parent required to appear before the court have an obligation to notify the court in writing of any change of address. Failure to do so is a Class C misdemeanor. For the obligation to become effective, notice must be provided to the child, parent, or both. This notice may be given on the citation. Art. 45.057(j)/45A.457(j)(3), C.C.P.

5. Notice of Contract with DPS or DMV

When a city contracts with DPS under the OmniBase program to deny driver's license renewal to a person who fails to appear or fails to pay a judgment in a manner ordered by the court, the citation must provide a written warning that if the violator fails to appear in court as provided by law for the prosecution of the offense or fails to pay or satisfy a judgment ordering the payment of a fine and costs in the manner ordered by the court, they may be denied renewal of their driver's license. The warning is in addition to any other warning required by law. Sec. 706.003, T.C. For a city contracting with the DMV in the Scofflaw program, the citation must include a warning that states 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 Texas. Sec. 702.004, T.C.

6. Commercial Drivers

CDL

A type of driver's license that can be identified by the words "Commercial Driver's License" on the top of the license. Allows a person to drive a commercial motor vehicle.

Operators of commercial motor vehicles have specific obligations under the law, and they must hold a commercial driver's license issued by the DPS. Requirements are found in Chapter 522 of the Transportation Code. Per Section 543.007 of the Transportation Code, the following information should be noted on a citation issued to a person holding a commercial driver's license or permit:

- the person's name, address, physical description, and date of birth;
- the person's driver's license number;
- the registration number of the vehicle involved;
- whether the vehicle was a commercial motor vehicle as defined in Chapter 522 of the Transportation Code;
- whether the vehicle was involved in the transporting of hazardous materials; and
- the date and nature of the offense, including whether the offense was a serious traffic violation as defined in Chapter 522 of the Transportation Code (i.e., excessive speeding 15 mph or more over; reckless driving; violation of state and local traffic laws other than parking; weight or vehicle defect violations arising in connection with a fatal collision; improper or erratic lane change; or following too closely). Sec. 522.003(25), T.C.

In addition, Section 543.202(b)(4) of the Transportation Code requires courts to report the social security number on citations issued to holders of a commercial driver's license or permit. Because CDL holders are not required to make an appearance in open court, and because such information

is often reported to DPS via the citation, the only way this information is guaranteed to be obtained is if it is collected by a peace officer at the time the citation is issued.

7. Family and Domestic Violence Admonishment

Article 14.06 of the Code of Criminal Procedure requires that a citation include notice of the potential consequences for conviction of a family or domestic violence offense. Typically, family violence cases heard in municipal courts involve an assault. An affirmative finding of family violence is possible following conviction for any offense within Title 5 of the Penal Code. Art. 42.013, C.C.P. The following admonishment must appear on the citation in boldfaced or underlined type or in all 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.**

8. Appearance Date

Citations issued to persons violating offenses under Subtitle C must contain a specific time and place in the citation that the person is to appear before a judge having jurisdiction over the case. This date must be at least 10 days after the date the citation was issued by the peace officer unless the person arrested demands an earlier hearing. Sec. 543.006, T.C. Article 14.06(b) of the Code of Criminal Procedure does not specify a certain number of days before requiring an appearance. It does require the officer to note the magistrate before whom the person is to appear and the citation must note the time and place for appearance.

9. Alternatives to Payment

Article 14.06(b)(4) of the Code of Criminal Procedure requires that citations contain information regarding the alternatives to full payment of the fine or costs if the person is convicted of the offense and is unable to pay the amount. The alternatives to payment of the fine or costs would be installment payments (Art. 45.041(b-2)/45A.253(a), C.C.P.) or community service (Arts. 45.049/45A.254 and 45.0492/45A.459/45A.460, C.C.P.). The statute does not specify the exact wording of what must appear on the citation.

C. General Citation Information

Article 14.06, C.C.P.	Section 543.003, T.C.
The following information is required on a citation for all eligible Class C misdemeanors: • the time and place to appear before a magistrate; • the name and address of the person charged; • the offense charged; • information regarding the alternatives to full payment of any fine or costs assessed against	The following information is specifically required on a citation for Rules of the Road offenses: • the time and place the person is to appear; • the name and address of the person charged; • the offense charged; and • the license number of the person's vehicle if applicable.

the person, if convicted of the offense and unable to pay; and • the domestic violence admonishment.	Note: The complaint and the summons or notice to appear for speeding must specify the maximum or minimum speed limits and the speed the defendant is alleged to have driven. Sec. 543.010, T.C.

12. Where do peace officers get authority to issue citations to persons violating Subtitle C, Rules of the Road offenses? _____

13. Under what authority may a peace officer issue a traffic citation for offenses outside of Subtitle C, Rules of the Road? _____

14. What is the consequence if a citation does not notify the defendant of his or her right to take a driving safety course? _____

_____

15. What must a citation contain regarding the offense of failure to maintain financial responsibility? _____

_____

16. What should a citation tell a juvenile regarding his or her address? _____

_____

17. If a city contracts with DPS to deny renewal of driver's licenses, what information should be on the citation issued to traffic violators? _____

_____

18. What additional information should be on a citation issued to a person who is a commercial driver's license holder? _____

_____

19. What general information is required to be on a citation? _____

20. When a peace officer issues a citation for an offense in Subtitle C, Rules of the Road, what is the minimum number of days for a court appearance date from the date of the citation? (circle one)

    a. At least 10 days from the date of the citation.
    b. At most 10 days from the date of the citation.
    c. At least 30 days from the date of the citation.
    d. There is no minimum number of days for this type of citation.

PART 3
CULPABLE MENTAL STATE

The culpable mental states were discussed in Chapter 4, Charging and Pre-Trial. Remember that, generally, a culpable mental state is an element of a criminal offense. The culpable mental states defined in the Penal Code are intentionally, knowingly, recklessly, and acting with criminal negligence (Sec. 6.03, P.C.). This applies to offenses defined in the Penal Code and elsewhere unless the offense clearly dispenses with the mental state requirement (Sec. 6.02, P.C.). This means that in order to be convicted of an offense such as assault, the State would need to prove that the defendant intentionally or knowingly caused offensive physical contact with the victim.

Goodwin v. State, 138 S.W. 399 (Tex. Crim. App. 1911)

"Very few people in driving a car have an evil intent; but the Texas Legislature has decreed it wise to limit the speed at which these cars may run."

Like Penal Code offenses, traffic offenses are criminal in Texas. This is different from a number of other states where traffic offenses are considered "civil violations" or "infractions" that do not carry criminal consequences. Texas traffic offenses carry criminal consequences, but often do not require a mental state to be proved by the state. Generally, a person commits an offense in the Transportation Code if the person performs a prohibited act or fails to perform a required act. This is unique and means that traffic offenses function akin to strict liability offenses. This means that the crime is committed if it is proved that the defendant did it, regardless of mental state. A defendant could be convicted of running a red light even if he or she did not intend to run the light. The crime is that the defendant did not obey the red light.

This is not to say that every offense under the Transportation Code dispenses with a mental state. Some traffic-related cases do require culpable mental states, but those are clearly outlined in the law.

21. In Texas, traffic cases are (circle one):
    a. civil violations
    b. infractions
    c. criminal offenses
    d. both a and b above are correct
22. In Texas, the state must generally prove that the traffic offense (circle one):
    a. was intentionally or knowingly committed by the defendant.
    b. was recklessly committed by the defendant.
    c. was committed by the defendant.
    d. was committed with evil intent by the defendant.
23. The culpable mental states defined in the Penal Code are (circle one):
    a. intentionally, knowingly, recklessly, and with criminal negligence.
    b. intentionally, willfully, recklessly, and with contributory negligence.
    c. intentionally, knowingly, dangerously, and with criminal negligence.
    d. Penal Code offenses are strict liability offenses.

PART 4
PENALTIES

The Penal Code defines a Class C misdemeanor as an offense punishable by a fine not to exceed $500. The Legislature may, however, specify both general and specific penalties that differ from the Penal Code definition.

A. General Penalties

If an offense in the Transportation Code does not specify a penalty, courts must use a general penalty provision, where applicable. The following chart contains examples of common general penalties.

Chapter/Subtitle	General Penalty
Chapter 502 (*Registration of Vehicles*)	Maximum fine of $200 (Section 502.471)
Chapter 504 (*License Plates*)	Minimum fine of $5, maximum fine of $200 (Section 504.948)
Chapter 521 (*Driver's Licenses and Personal Identification Cards*)	Maximum fine of $200 (Section 521.461)
Subtitle C (*Rules of the Road*)	Minimum fine of $1, maximum fine of $200 (Section 542.401)
Subtitle E (*Vehicle Size and Weight*)	Maximum fine of $200; penalty escalates for subsequent convictions (Section 621.507)

B. Specific Penalties

General penalty provisions only govern fine ranges when a more specific fine is not included in the statute. Some offenses in the Transportation Code fall outside the municipal court jurisdiction. For example, racing on a highway is punishable by a jail term not to exceed 180 days and a maximum fine of $2,000 (Sec. 545.420, T.C.). As the punishment includes jail time, this is an instant indication that municipal courts lack jurisdiction over this Class B misdemeanor.

C. Prior Convictions

In some cases, the penalty can increase each time a defendant is convicted of the same offense. The charges, however, must be filed as second or subsequent offenses in order for the higher penalties to apply. For example, a first conviction for failure to maintain financial responsibility carries a fine of $175 to $350 (Sec. 601.191, T.C.). This means that the court could not assess a fine outside that range. A second conviction, though, carries a fine of $350 to $1,000. It is typically the duty of the prosecutor, as the representative of the state, to work with law enforcement to properly charge offenses.

D. Construction or Maintenance Work Zones

For offenses that occurred in a construction or maintenance work zone when workers were present, the penalty may double. A general penalty that is not less than $1 or more than $200 would thus become not less than $2 or more than $400 in a construction or maintenance work zone (Sec. 542.404, T.C.). There are exceptions to this provision for: offenses in Chapter 548 involving inspection of vehicles; offenses in Chapter 552 involving pedestrians; and offenses in Sections 545.412 and 545.413 involving safety belts and securing children in child passenger safety seat

systems. For speeding violations, the fine range can only be doubled if the maintenance or construction work zone is marked by a sign indicating the applicable maximum lawful speed. When citations are written for offenses that occur in a construction or maintenance work zone when workers are present, the citation must contain on its face the fact that workers were present when the offense was committed before the judge can assess the higher fine (Secs. 472.022(d) and 542.404(a), T.C.).

Practice Note

Offenses that occur in construction or maintenance work zones when workers are present are not eligible for a driving safety course (Art. 45.0511(p)(3)/45A.353(3)) or deferred disposition (Art. 45.051(f)(1)/ 45A.301(1)).

E. Crash Resulting from Failure to Yield Right-of-Way

If it is shown at the trial of a Rules of the Road offense, in which an element is a vehicle operator's failure to yield the right of way to another vehicle, that a crash resulted from that failure to yield, and a person other than the defendant suffered bodily injury as a result, the offense is punishable by a fine of $500 to $2,000. If a person other than the defendant suffered serious bodily injury, the offense is punishable by a fine of $1,000 to $4,000 (Sec. 542.4045, T.C.).

True or False

24. If an offense has a specific penalty, the general penalty does not apply. _____
25. All traffic fines have a maximum fine of $200. _____
26. Municipal court has jurisdiction of racing on the highway. _____
27. The court can apply enhanced penalties to offenses charged as first-time offenses as long as there are prior convictions. _____
28. If a Subtitle C, Rules of the Road offense is committed in a construction or maintenance work zone when workers are present and that fact is alleged and proven, the minimum and maximum fine amounts are doubled. _____

PART 5
COMMONLY COMMITTED TRAFFIC OFFENSES

A. Certificates of Title and Registration of Vehicles (Subtitle A)

1. Operation of Vehicle Without Registration

One of the common offenses that municipal courts see involves a person operating an unregistered vehicle (Sec. 502.472, T.C.).

2. Operation of Vehicle Without Registration Insignia

Another offense that courts frequently adjudicate involves a person who operates a motor vehicle, motorcycle, road tractor, or trailer that does not properly display the registration insignia issued by the DMV that establishes that the vehicle has been validated for the period (Sec. 502.473, T.C.).

a. Compliance Dismissal

A court may waive a charge of failing to display a registration insignia if the defendant pays a reimbursement fee not to exceed $10 and either (1) remedies the defect before the defendant's first court appearance, or (2) shows that the motor vehicle was issued a registration insignia by the department that was attached to the motor vehicle, establishing that the vehicle was registered for the period during which the offense was committed (Sec. 502.473, T.C.). The court does not need a motion from the prosecutor to dismiss a charge if there is a statutory compliance dismissal, and the court would not assess court costs to the dismissed case.

b. Penalty

If a defendant is convicted of either of the above offenses, the fine is not to exceed $200 (Sec. 502.471(c), T.C.).

3. Expired Registration/Plate

Perhaps the most common registration-related offense that courts see involves a person who, after the fifth working day after the date the registration for the vehicle expires, operates the vehicle with the expired sticker (Sec. 502.407, T.C.).

a. Compliance Dismissal

The judge may dismiss the charge of driving with an expired vehicle registration if the defendant (1) remedies the defect not later than the 20th working day after the date of the offense or the defendant's first court appearance and (2) establishes that the late registration fee was paid to the county tax-assessor collector. The court may also assess a reimbursement fee up to $20 when the charge is dismissed (Sec. 502.407(b), T.C.).

b. Penalty

If a defendant is convicted, the fine is not more than $200 (Sec. 502.471(c), T.C.).

4. Wrong, Fictitious, Altered, or Obscured Insignia

A less-often filed registration charge involves driving with a wrong, fictitious, altered, or obscured insignia (Sec. 502.475, T.C.). This includes attaching or displaying on a motor vehicle a registration insignia that is assigned to a different motor vehicle, is assigned by any department other than the DMV, is assigned for a registration period other than the one in effect, or is fictitious.

a. Compliance Dismissal

The judge may dismiss the charge of attaching or displaying a registration insignia that is assigned for a different period if the defendant remedies the defect before his or her first court appearance and pays a reimbursement fee not to exceed $10 (Sec. 502.475(c), T.C.).

b. Penalty

If a defendant is convicted, the fine is not more than $200, unless it is shown at the trial of the offense that the owner knowingly altered or made illegible the letters, numbers, and other identification marks, in which case the offense is a Class B misdemeanor. Displaying a fictitious registration insignia is a Class B misdemeanor (Sec. 502.475. T.C.).

5. Operation of Vehicle Without License Plates

A common offense involving license plates is the operation of a vehicle without license plates. Section 504.943 of the Transportation Code provides that a person commits an offense if he or she operates on a public highway, during a registration period, a motor vehicle that does not display two license plates that have been assigned by the DMV for the period and comply with DMV rules regarding the placement of license plates. DMV rules state that the vehicle must display two license plates, one at the exterior front and one at the exterior rear of the vehicle that are securely fastened at the exterior front and rear of the vehicle in a horizontal position of not less than 12 inches from the ground, measuring from the bottom, except that a vehicle described by Section 621.2061 of the Transportation Code may place the rear plate so that it is clearly visible, readable, and legible (Title 43, Sec. 217.27(b), T.A.C.).

a. Compliance Dismissal

The judge may dismiss a charge for driving without license plates if the defendant remedies the defect before the first court appearance and pays a reimbursement fee not to exceed $10 (Sec. 504.943(d), T.C.).

b. Penalty

The penalty for this offense is a fine not to exceed $200 (Sec. 504.943(e), T.C.).

Practice Note

What happens when the Legislature accidentally removes any penalty for an offense? In 2011, the Legislature did just that for operating a vehicle without license plates. From 2011 until 2013 there appeared to be no penalty whatsoever for this offense. The Legislature then attempted to remedy the mistake two years later by amending Section 504.943 to provide a fine not to exceed $200, which was the original penalty. This did not take effect until September 1, 2013, though, and only applied to offenses committed on or after the effective date. Moreover, in separate legislation, the general penalty for Chapter 504 was set at a fine of $5 to $200. This took effect on June 14, 2013. Therefore, for license plate offenses committed between June 14, 2013 and August 31, 2013, the fine was $5 to $200. For offenses committed September 1, 2013 and after the fine is simply not to exceed $200.

6. Wrong, Fictitious, Altered, or Obscured License Plate

Section 504.945 of the Transportation Code provides that a person commits an offense if the person attaches to or displays on a motor vehicle a license plate that:

- is issued for a different motor vehicle;
- is issued for the vehicle under any other motor vehicle law other than by the DMV;
- is assigned for a registration period other than the registration period in effect;
- is fictitious;

- has blurring or reflective matter that significantly impairs the readability of the name of the state in which the vehicle is registered or the letters or numbers of the license plate number at any time;
- has attached an illuminated device or a sticker, decal, or other insignia that is not authorized by law and that interferes with the readability of the letters or numbers on the plate or the readability of the name of the state in which the vehicle is registered; or
- has a coating, covering, protective substance, or other material that distorts angular visibility or detectability, alters or obscures one-half or more of the name of the state in which the vehicle is registered, or alters or obscures the letters or numbers on the plate or the color of the plate.

a. Compliance Dismissal

A judge may dismiss this offense if the defendant: (1) remedies the defect before the defendant's first court appearance; (2) pays a reimbursement fee not to exceed $10; and (3) shows that the vehicle was issued a plate by the DMV that was attached to the vehicle, establishing that the vehicle was registered for the period during which the offense was committed (Sec. 504.945(d), T.C.).

b. Penalty

If a defendant is convicted, the fine is not more than $200, unless it is shown at the trial of the offense that the owner knowingly altered or made illegible the letters, numbers, and other identification marks, in which case the offense is a Class B misdemeanor. Displaying a fictitious license plate is also a Class B misdemeanor (Sec. 504.945(b), T.C.).

7. Deceptively Similar Registration Insignia and License Plate

It is an offense for a person to manufacture, sell, or possess a registration insignia deceptively similar to the registration insignia of the DMV, or make a copy or likeness of an insignia deceptively similar to the registration insignia of the DMV with intent to sell the copy or likeness. An insignia is deceptively similar if it is not prescribed by the DMV, but a reasonable person would presume that it was (Sec. 502.4755, T.C.).

An offense under this section is: (1) a felony of the third degree if the person manufactures or sells a deceptively similar registration insignia; (2) a Class C misdemeanor if the person possesses a deceptively similar registration insignia; or (3) a Class B misdemeanor if the person possesses a deceptively similar registration insignia and has previously been convicted of the same offense. This Class C misdemeanor carries a maximum fine of $500.

Section 504.946 of the Transportation Code creates a similar offense, with similar penalty, for the manufacture, sale, or possession of a deceptively similar license plate.

B. Driver's Licenses (Subtitle B)

1. Failure to Carry and Exhibit

A person operating a motor vehicle on a highway must hold a valid driver's license that is appropriate for the type of vehicle operated. Motor vehicle operators must display the license on the demand of a magistrate, court officer, or peace officer (Secs. 521.025 and 522.011, T.C.).

a. Defense to Prosecution

If a person is charged with failing to carry and exhibit a driver's license, it is a defense to the prosecution if the person produces in court a driver's license appropriate for the type of vehicle operated that was valid at the time the citation was issued (Sec. 521.025(d), T.C.). A defense to prosecution must be raised by the defendant and requires a prosecutor's motion to dismiss for the court to dismiss the charge. However, if the court does grant a dismissal, the court may charge a $10 administrative fee (Sec. 521.025(f), T.C.). If the person is charged with failure to display a commercial driver's license but brings in proof of such a license that was valid on the day of the offense, it is a defense to prosecution (Sec. 522.011(d), T.C.). It is also a defense to prosecution if they produce a commercial learner's permit that was valid at the time the offense was committed (Sec. 522.011(e), T.C.). If the charge is dismissed under Sec. 522.011(d), there is no authority to assess any fee. If the charge is dismissed under Sec. 522.011(e), the court may assess an administrative fee not to exceed $10 (Sec. 522.011(f), T.C.).

b. Penalty

If the person did not actually have a valid driver's license at the time he or she committed the offense or if the defendant does not bring in proof of a valid driver's license, the penalties are:

- first time offense is a fine not to exceed $200;
- second conviction within one year after the date of the first conviction is a fine of not less than $25 or more than $200; and
- third or subsequent conviction within one year after the date of the second conviction is a fine of not less than $25 or more than $500, or confinement in the county jail for not less than 72 hours or more than six months, or both the fine and confinement (a Class B misdemeanor).

If it is shown on the trial of the offense that at the time of the offense the person was (1) operating the motor vehicle without maintaining financial responsibility and (2) caused or was at fault in a motor vehicle collision that resulted in serious bodily injury to or the death of another person, the offense is a Class A misdemeanor (Sec. 521.025(c), T.C.).

Failure to possess a commercial driver's license or permit while operating a commercial motor vehicle under Section 522.011 carries a fine of up to $500 for a first offense or up to $1,000 for a second offense within a one-year period (Sec. 522.011(c), T.C.).

2. Expired Driver's License

A person who operates a vehicle on a highway in Texas is required to hold a valid driver's license. Sec. 521.021, T.C. A driver's license generally expires on the first birthday of the license holder occurring after the sixth anniversary of the date of the application (Sec. 521.271, T.C.). There are exceptions for new licensees under the age of 21.

a. Compliance Dismissal

An expired driver's license charge may be dismissed by the judge if the defendant renews the license within 20 working days from the date of the offense or by the defendant's first court appearance, whichever is later (Sec. 521.026, T.C.). If the judge dismisses the charge, the judge may assess a reimbursement fee of up to $20.

b. Penalty

If a person is convicted of the offense of operating a vehicle with an expired driver's license, the penalty is a fine not to exceed $200 (Sec. 521.461, T.C.).

3. Driving While License Invalid

The maximum penalty for driving while license invalid (DWLI) is $500. This traffic offense is a Class C Misdemeanor unless it is shown at trial that the person has been previously convicted of DWLI, the license was previously suspended for driving while intoxicated, or the person is also driving without maintaining financial responsibility, in which case the offense is a Class B misdemeanor. If, at the time of the offense, the person was operating the motor vehicle without maintaining financial responsibility and caused or was at fault in a motor vehicle crash that resulted in seriously bodily injury or death to another person, the offense is a Class A misdemeanor (Sec. 521.457, T.C.).

C. Speeding (Subtitle C)

Speeding is another common offense that municipal courts will see. Texas law provides for a "maximum speed requirement," which states that a person commits an offense if that person operates a motor vehicle on a public street or highway at a speed greater than is reasonable or prudent under the conditions then in existence (Sec. 545.351, T.C.). In addition, any speed in excess of a posted speed limit is prima facie evidence that the speed is unreasonable or imprudent and therefore unlawful (Sec. 545.352, T.C.). Speeding is punishable by a fine of not less than $1 and not more than $200. Municipalities may raise or lower a prima facie speed limit. (Sec. 545.356, T.C.). Even if this is done through a municipal ordinance, speeding remains a state law violation.

D. Safety Belts and Child Safety Seats (Subtitle C)

Seat belts are required for anyone occupying a seat in passenger vehicle that is equipped with a safety belt (Sec. 545.413, T.C.). To be charged with not wearing a seatbelt, a person must be at least 15 years old (Sec. 545.413(a)(1)(A), T.C.). If an unbelted passenger is under 17, the vehicle operator may be charged (Sec. 545.413(b)). Children under age eight, unless taller than 4'9", must be secured in a child passenger safety seat system while being transported in a passenger vehicle or else the driver may be charged (Sec. 545.412, T.C.).

1. Defenses to Prosecution

There are several defenses to prosecution for safety belt violations under Section 545.413. They include a person who:

- possesses a statement from a licensed physician stating that for a medical reason the person should not wear a safety belt;
- presents to the court within 10 days of the offense a statement from a licensed physician stating that for a medical reason the person should not wear a safety belt;
- is employed by the U.S. Postal Service and is performing a duty for that agency that requires the operator to service postal boxes from a vehicle or that requires frequent entry into and exit from a vehicle;
- is engaged in the actual delivery of newspapers from a vehicle or is performing newspaper delivery duties that require frequent entry into and exit from a vehicle;

- is employed by a public or private utility company and is engaged in the reading of meters or performing a similar duty for that company requiring the operator to frequently enter into and exit from a vehicle;
- is operating a commercial vehicle registered as a farm vehicle under the provisions of Section 502.433 that does not have a gross weight, registered weight, or gross weight rating of 48,000 pounds or more; or
- is the operator of or a passenger in a vehicle used exclusively to transport solid waste and performing duties that require frequent entry into and exit from the vehicle.

The defense to prosecution for not securing a child in a proper child passenger safety seat system requires the defendant to show that, at the time of the offense, (1) the defendant was not arrested or issued a citation for violation of any other offense, (2) the vehicle the defendant was driving was not involved in a collision, (3) the defendant did not possess a child passenger safety seat system in the vehicle, and, subsequent to the time of the offense, (4) the defendant obtained an appropriate child passenger safety seat system for each child required to be secured in such a system (Sec. 545.4121, T.C.).

2. Penalty

The penalty for a driver or passenger aged 15 or older not secured by a safety belt is a fine of not less than $25 or more than $50. If a driver is charged with not securing a passenger younger than 17 years of age, who is not required to be in a child safety seat, the fine is not less than $100 or more than $200 (Sec. 545.413(b), T.C.). If a driver is charged with not securing a child who is under eight years of age, and not over 4’9” tall, in a child passenger safety seat system, the fine is not less than $25 and not more than $250 (Sec. 545.412(b), T.C.).

3. Fines Remitted to State

The city is required to remit to the State half of the fines collected for allowing a *child* to ride and not be secured by a child passenger safety seat system or a safety belt. The city must remit the fines at the end of the city’s fiscal year on a form prescribed by the Comptroller (Sec. 545.412(h), T.C.).

E. Passing a School Bus (Subtitle C)

A vehicle operator on a highway must, when approaching from either direction a school bus stopped on the highway to receive or discharge a student, stop before reaching the bus when the bus is operating visual signals directing traffic to stop, such as stop arms and warning lamps (Sec. 545.066(a)(1), T.C.). The vehicle must remain stopped until the bus resumes motion, the bus operator signals for traffic to proceed, or the visual signals are no longer actuated (Sec. 545.066(a)(2), T.C.). An operator on a highway having separate roadways is not required to stop for a school bus that is on a different roadway; or if on a controlled-access highway for a school bus that is stopped in a loading zone that is a part of or adjacent to the highway and where pedestrians are not permitted to cross the roadway (Sec. 545.066(b), T.C.). A highway is considered to have separate roadways only if the highway has roadways separated by an intervening space on which operation of vehicles is not permitted, a physical barrier, or a clearly indicated dividing section constructed to impede vehicle traffic. A highway is not considered to have separate roadways if the highway has roadways separated only by a left turn lane.

1. Penalty

a. Fine Range

The offense of passing a school bus has one of the higher fines in the Transportation Code. For a first conviction, the minimum fine is $500 and the maximum fine is $1,250. For a second or subsequent offense, the penalty is a fine of not less than $1,000 or more than $2,000 if it is within five years of the date of the most recent preceding offense. If a defendant causes serious bodily injury when passing a school bus, the offense becomes a Class A misdemeanor. If the person is convicted a second time for causing serious bodily injury when passing a school bus, the offense becomes a state jail felony. Sec. 545.066(c), T.C.

b. Driver's License Suspension

When a defendant is convicted of a second or subsequent passing a school bus offense, the court may order the defendant's driver's license suspended for a period of time not to exceed six months. If the judge orders the driver's license suspension, the clerk reports the order to DPS. Sec. 545.066(d), T.C.

Practice Note

Clerks should pay close attention to the excluded offenses under the driving safety course and deferred disposition statutes. The two are similar, but not the same. A person charged with the offense of passing a school bus is not eligible to take a driving safety course to have the charge dismissed. Art. 45.0511(p)/45A.353, C.C.P. The person would be eligible, however, for deferred disposition. Art. 45.051/45A.302, C.C.P.

F. Using Wireless Communication Devices While Driving in School Crossing Zones and on School Property (Subtitle C)

In 2009, the Legislature made it illegal for an operator to use a wireless communication device while operating a motor vehicle within a school crossing zone unless the vehicle is stopped or the wireless communication device is used with a hands-free device. Sec. 545.425, T.C. Municipalities wanting to enforce this offense must post "warning" signs at the entrance to each school crossing zone. Some cities, however, have banned cell phone use throughout the entire municipality and are not required to post separate signs at the entrance to the school crossing zone so long as the municipality posts notice of the ban at all entrances to the city.

In 2013, the Legislature banned wireless communication device use while driving in other areas on school property, such as pick-up and drop-off lanes and parking lots. The ban covers the property of a public elementary, middle, junior high, or high school for which a local authority has designated a school crossing zone. Sec. 545.4252, T.C. It only applies during the time a reduced speed limit is in effect for the school crossing zone. This law is nearly identical to the ban on cell phone use in school crossing zones; the only difference being there are no signs required to be posted under Section 545.4252.

1. Defenses

There are several affirmative defenses to prosecution for use of a cell phone in a school crossing zone or on school property, specifically:

- the wireless communication device was used to make an emergency call to:
  - an emergency response service, including a rescue, emergency medical, or hazardous material response service;
  - a hospital;
  - a fire department;
  - a health clinic;
  - a medical doctor's office;
  - an individual to administer first aid treatment; or
  - a police department; or
- a sign required by the law was not posted at the entrance to the school crossing zone at the time of an offense committed in the school crossing zone.

2. Exceptions

These bans do not apply to: (1) an operator of an authorized emergency vehicle using a wireless communication device while acting in an official capacity, or (2) an operator who is licensed by the Federal Communications Commission while operating a radio frequency device other than a wireless communication device.

3. Penalty

The offense of using a cell phone in a school crossing zone is punishable by a fine of not less than $1 and not more than $200. The same penalty applies to the offense of using a cell phone on school property when the school zone is in effect. Sec. 542.401, T.C.

Practice Note

This offense is separate from the state texting law enacted in 2017. That offense is found in Section 545.4251 of the Transportation Code. It includes a specific penalty of $25 to $99 for a first offense.

G. Financial Responsibility (Subtitle D)

It is an offense to operate a motor vehicle in Texas without some type of financial responsibility. Sec. 601.051, T.C. This means that a person who is driving and causes a collision must be able to pay for damages or injuries to another person in the collision. When a person is involved in a collision or is stopped by a peace officer, the person is required to present proof of financial responsibility. Sec. 601.053, T.C. Peace officers may issue citations to persons who fail to present proof of financial responsibility. Most commonly this offense is called "no insurance" because liability insurance is the most common way to fulfill the requirement of financial responsibility.

Section 601.051 of the Transportation Code generally provides the requirements for persons to maintain financial responsibility for the motor vehicles that they operate. The following methods will establish financial responsibility:

- A motor vehicle liability insurance policy;
- A surety bond filed with DPS. The bond is a lien in favor of the State on the real property described in the bond. The lien exists in favor of a person who holds a final judgment against the person;
- A deposit in the amount of at least $55,000 made with the State Comptroller. It can be in cash or securities;
- A deposit in the amount of at least $55,000 made with the county judge of the county in which the motor vehicle is registered. It must be made in cash or cashier's check; or
- Self-insurance. A person in whose name more than 25 motor vehicles are registered may qualify as a self-insurer by obtaining a certificate of self-insurance issued by DPS. The person must have the ability to pay judgments obtained against him or her.

Section 601.007 of the Transportation Code provides that Chapter 601 does not apply to:

- government vehicles, provided the vehicle is owned by the United States, state, or political subdivision, operated by an officer, agent, or employee of the government, and used in the course of employment; and
- motor carriers. "Motor carrier" means an individual, association, corporation, or other legal entity that controls, operates, or directs the operation of one or more vehicles that transport persons or cargo over a road or highway in this state. Sec. 643.001(6), T.C.

Motor carriers must maintain liability insurance in an amount set by DPS that does not exceed the amount required for a motor carrier under a federal regulation adopted under 49 U.S.C. Section 13906(a)(1). Sec. 643.101, T.C.

1. Exceptions

There are exceptions to the financial responsibility law under Section 601.052 of the Transportation Code. Vehicles that do not have to be covered with some type of financial responsibility include:

- antique collectables including vehicles that are:
  - at least 25 years old or a former military vehicle;
  - used only for exhibitions, club activities, parades, and other functions of public interest and not used for regular transportation; and
  - on file with DPS stating that the vehicle is a collector's item and used only for exhibition purposes;
- certain golf carts;
- certain neighborhood electric vehicles;
- certain off-highway vehicles; and
- volunteer fire department vehicles (but the vehicle must be registered in the name of the volunteer fire department).

2. Defense/Dismissal

There are legal defenses to the financial responsibility law. The first is that the person had insurance or other proof of coverage. Sec. 601.193, T.C. The offense is for not maintaining a current form of financial responsibility, not for failure to present proof to a peace officer. Therefore, having the proper coverage at the time of the alleged violation is a defense. Purchasing insurance after the citation is issued is not a legal defense. If a court verifies that a person had valid financial responsibility at the time of the alleged offense, the court shall dismiss the charge. Sec. 601.193(b), T.C. The court may not charge a fee for this dismissal.

Practice Note

Sometimes the evidence provided by a defendant is clearly acceptable, but other times there may be a question as to its authenticity. The statute does not provide procedures for how the court verifies the document or who is to do the verification. Some courts have the clerk call the insurance company to verify the coverage. Others have the prosecutor verify the document since the evidence is a defense to the prosecution. Municipal and justice courts' new ability to access TexasSure may also help, though it is currently limited in that it only shows insurance statuses at the time the database is accessed (not necessarily when the alleged offense occurred). Clerks should work with their judge and prosecutor to establish a procedure for handling these types of cases. In a situation where a document cannot be verified, the defendant would likely be set for trial.

Another defense is if a motor vehicle is in the possession of a person for the sole purpose of maintenance or repairs on the vehicle. Sec. 601.194, T.C. This is only valid if a person is working on someone else's car. A person cannot use this defense when repairing a vehicle that he or she owns in whole or in part. Sec. 601.194(b), T.C. However, if this defense is raised, the court may not dismiss the charge without a motion from the prosecutor.

3. Penalty

The fine for a financial responsibility charge is higher than for most other traffic violations. A first offense carries a fine of $175 to $350. Sec. 601.191(b), T.C. On the first offense, however, the judge has the authority to lower the fine below the $175 minimum if the judge finds the person convicted is economically unable to pay the fine. Sec. 601.191(d), T.C. This authority to lower the fine below the minimum does not apply to subsequent offenses.

A second or subsequent offense carries a fine of $350 to $1,000. Sec. 601.191(c), T.C. On the second offense, courts must also order the sheriff to impound the defendant's vehicle if the defendant currently owns the vehicle and owned it at the time of the offense. Sec. 601.261, T.C. To charge a defendant with a second or subsequent offense, it must be filed as such. It is the prosecutor's responsibility to review the case and file it as a subsequent offense if he or she wishes.

H. Motorcycle Protective Headgear (Subtitle G)

Persons who operate or ride on a motorcycle generally must wear protective headgear or a helmet. Sec. 661.003, T.C.

1. Exceptions

There are, however, exceptions to this requirement if the person is at least 21 years of age and:

- has successfully completed a motorcycle operator training and safety course; or
- the person is covered by health insurance for injuries that may be incurred in a motorcycle collision. Sec. 661.003(c), T.C.

2. Penalty

Persons convicted of not wearing motorcycle protective headgear may be fined $10 to $50. Sec. 661.003(h), T.C.

I. Privileged (Handicapped) Parking (Subtitle H)

It is an offense to park a vehicle not bearing either the placard or tag in a space designated as privileged parking. Sec. 681.011(b), T.C. Furthermore, it is an offense to park a vehicle with a tag or placard in a disabled space if, at the time of parking, it is not being used to transport a person with a disability. Sec. 681.011(a), T.C. Parking violations may also be charged against persons who block ramps for the disabled. Sec. 681.011(c), T.C. In addition, persons who have a placard and lend it to someone who is not mobility impaired may also be charged. Sec. 681.011(d), T.C. A peace officer may seize and destroy a disabled placard from a person upon determination that the person's driver license does not match the placard of the person operating the vehicle or the person being transported. Sec. 681.012(a-1), T.C.

Eligibility

A person who is disabled must apply to the tax assessor-collector for a disabled parking permit. When approved, the person is given either two window placards or a license tag and one window placard. Sec. 681.003, T.C. These tags or placards allow parking in privileged parking spaces for an unlimited amount of time. Sec. 681.006(a), T.C. Persons with privileged parking tags or placards may also park at parking meters free of charge. Sec. 681.006(b), T.C. A governmental unit may provide by ordinance that persons parking in specially designated privileged parking spaces in a parking garage, a lot, or a space may be exempt from paying a fee or penalty imposed by the governmental unit for parking in those spaces. Sec. 681.006(e), T.C.

Three groups have authority to enforce privileged parking: peace officers, security guards of private businesses, and persons appointed by the city. Sec. 681.010(b), T.C. The person must take an oath of office and complete a training program. Sec. 681.0101, T.C. Many cities designate persons with disabilities or other citizens to assist in enforcement.

1. Dismissal

Someone convicted of a privileged parking offense does not have the right to take a driving safety course to have the offense dismissed, as the offense is not a Rules of the Road offense or a moving violation. The judge may, however, grant deferred disposition under Article 45.051/45A.302 of the Code of Criminal Procedure.

A person charged with parking in a space designated for privileged parking who has an expired handicap parking placard is entitled to a compliance dismissal if (1) the placard has been expired 60 days or less; (2) the defendant gets the placard renewed within 20 working days of the date of the offense or before the defendant's first court appearance, whichever is later; and (3) the

defendant pays a reimbursement fee not to exceed $20. If the placard has been expired more than 60 days, the court has discretion whether to permit a compliance dismissal. Sec. 681.013, T.C.

Under Section 681.011(o), which was enacted in 2023, the court shall dismiss a charge for violating Section 681.011 for an individual with a Veterans With Disabilities specialty license plate that does not contain the International Symbol of Access (ISA) if he or she: (1) has not previously been convicted of the offense, (2) has not previously received a dismissal under Section 681.011(o), and (3) submits an application for a specialty plate containing the ISA within six months of being charged.

2. Penalty

Privileged parking is taken very seriously by the Texas Legislature and the penalties are severe. A person convicted of a privileged parking offense faces high fines, which steeply increase with subsequent offenses.

Number of Violations	Minimum Fine	Maximum Fine	Additional Requirements
First offense	$500	$750	N/A
One prior conviction	$500 or $550 (there are two statutes prescribing different minimum fines)	$800	10 hours of community service
Two prior convictions	$550	$800	not less than 20 or more than 30 hours of community service or 20 hours of community service (there are competing statutes)
Three prior convictions	$800	$1,100	50 hours of community service or 30 hours of community service (there are competing statutes)
Four prior convictions	$1,250	$1,250	50 hours of community service

Individuals with a Veterans With Disabilities specialty license plate that does not contain the ISA who are convicted under Section 681.011 are subject to reduced penalties: a fine of $25-$200 and up to 10 hours of community service for a first offense, $200-$400 and 10-20 hours of community service for a second offense (including cases previously dismissed under Section 681.011(o)), and $400-$750 and 20-30 hours of community service for a third offense (with dismissals under Section 681.011(o) counting as one).

True or False

29. A judge does not need a motion to dismiss from the prosecutor to dismiss a charge for which there is a compliance dismissal. _____

30. The court does not assess court costs when a case is dismissed pursuant to a compliance dismissal. _____
31. Judges may dismiss the charge of operating a vehicle with expired registration, if the defendant purchased valid registration and paid the late fee within 10 working days and presents the evidence to the court. _____
32. The maximum fine for driving without two license plates is $500. _____
33. Peace officers may issue citations to a person driving a vehicle if a license plate holder obscures the name of the state on the license plate. _____
34. The court may charge a dismissal fee for dismissing a charge of failure to display a driver's license if the defendant had a valid driver's license on the day of the arrest. _____
35. The offense of no driver's license is always a Class C misdemeanor. _____
36. If a person charged with an expired driver's license obtains a valid driver's license within 20 working days, the court may dismiss the charge and assess a $20 fine. _____
37. It is a defense to the prosecution if a person produces in court a valid commercial driver's license that was valid when the offense occurred even though the license is not valid for the class of vehicle being driven. _____
38. The maximum fine for driving while license invalid is $500. _____
39. Speeding can be filed as a city ordinance violation. _____
40. The penalty for failure to secure a child under eight in a child passenger safety seat is a minimum fine of $25 and maximum fine of $250. _____
41. Cities must remit one-half of all safety belt fines and fines for not securing a child in a passenger safety seat system to the State at the end of the city's fiscal year. _____
42. A 15-year-old can be cited for failure to wear a safety belt and be fined not less than $25 or not more than $50. _____
43. Persons charged with passing a school bus are not eligible to take a driving safety course. _____
44. Passing a school bus carries a maximum penalty of $200. _____
45. Improperly using a cell phone in a school crossing zone is a Class C misdemeanor with a maximum fine of $500. _____
46. Only a vehicle liability insurance policy is acceptable proof of financial responsibility. _____
47. There are no exceptions to the financial responsibility law. _____
48. Courts are required to dismiss a charge of failure to maintain financial responsibility if a defendant obtains insurance before appearing in court. _____
49. When a defendant presents proof of financial responsibility to the court, the court must verify it before dismissing the case. _____
50. The court may assess a dismissal fee of up to $20 for dismissing a charge upon proof of financial responsibility. _____
51. The fine for a first conviction for failure to maintain financial responsibility is a minimum fine of $175 and a maximum of $350. _____

52. On a conviction for a second or subsequent offense of failure to maintain financial responsibility, the court is required to order the impoundment of the vehicle. _____

53. The penalty for not wearing a helmet is a maximum fine of $200. _____

54. Only peace officers can enforce privileged parking. _____

55. Persons who are disabled and have the proper documentation may park at parking meters free. _____

56. Persons convicted of a parking offense under the privileged parking law face escalating penalties depending on the number of prior convictions. _____

PART 6
QUOTAS

As discussed in Chapter 1, cities are prohibited from establishing quotas for courts. This prohibition is found in Section 720.002 of the Transportation Code. It prohibits cities from establishing or maintaining, formally or informally, a plan to evaluate, promote, compensate, or discipline peace officers according to a predetermined or specified number of any type or combination of types of traffic citations. Sec. 720.002(a)(1), T.C. This same prohibition also applies to judges. Cities may not, formally or informally, evaluate, promote, compensate, or discipline a judge according to the amount of money the judge collects from persons convicted of a traffic offense. Sec. 720.002(a)(2), T.C. Cities also may not consider the source and amount of money collected from a municipal court when evaluating the performance of the judge. Cities may obtain budgetary information, however, from the municipal court. This includes an estimate of the amount of money the court anticipates will be collected in a budget year. Sec. 720.002(d), T.C.

Sec. 720.002(e), T.C.

A violation of the prohibition on traffic offense quotas is a ground for removal from the person's office or position. For an elected official, it is misconduct.

True or False

57. Although peace officers may not be evaluated on the number of tickets that they issue, they may be evaluated on the type of tickets that they issue. _____

58. City officials are prohibited from evaluating or disciplining a judge on the amount of money they collect from persons convicted of traffic offenses and may be removed from office for doing so. _____

59. Cities may not obtain budgetary information from a municipal judge because that would require the judge to estimate the amount of money he or she anticipates will be collected in the coming budget year. _____

APPENDIX A: PASSENGER RESTRAINT LAWS

Back Seat

ADULTS (17 and over) $25 - $50 fine to offender

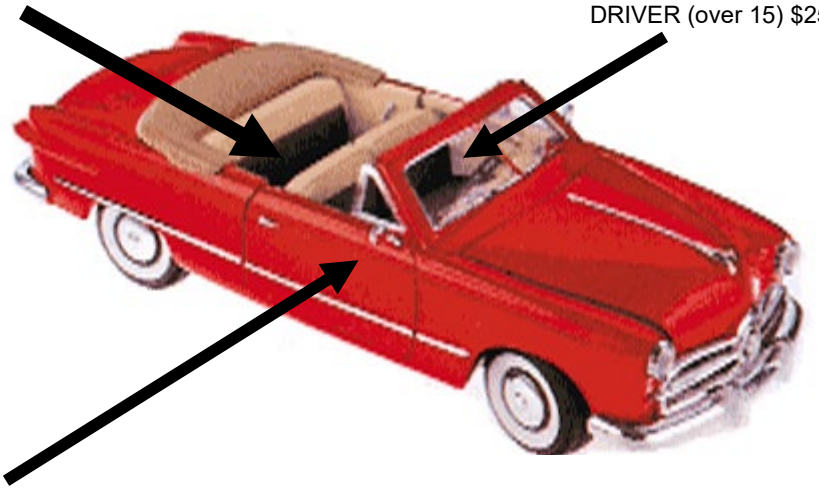
CHILDREN (15-16) $25 - $50 fine to passenger & $100 - $200 fine to driver

CHILDREN (8-15, and those under 8 but taller than 4’9”) $100 - $200 fine to driver

CHILDREN (under age 8, unless taller than 4’9”) $25 - $250 fine to driver

Driver’s Seat

DRIVER (over 15) $25 - $50 fine



Front Seat Passengers

ADULTS (17 and over) $25 - $50 to offender

CHILDREN (15-16) $25 - $50 fine to passenger & $100 - $200 fine to driver

CHILDREN (8-15, and those under 8 but taller than 4’9”) $100 - $200 fine to driver

CHILDREN (under age 8, unless taller than 4’9”) $25 - $250 fine to driver

Passenger Restraint Laws	
Safety seats	A child under 8 years old, unless the child is taller than 4 feet 9 inches (4’9”) must be restrained in a **child passenger safety seat system** in accordance with the manufacturer’s instructions.
Safety belts	Anyone aged 8 or over or taller than 4’9’’ must be restrained in a **safety belt** regardless of position in the vehicle.
Motorcycles	A child under age 5 cannot ride as a passenger on a motorcycle, unless seated in a sidecar.
Pick-up trucks and trailers	A child under age 18 cannot ride in the open bed of a pick-up or flatbed truck or open flatbed trailer on a public road.
House trailers and towed trailers	A person cannot ride in a house trailer being moved or in a trailer or semitrailer being towed.
Towed watercraft	A child under age 18 cannot ride in a boat being towed by a vehicle.

Passenger Safety Seat Systems and Safety Belts

Age	Person Responsible	Type of Restraint	Location in vehicle	Cited for	Penalty	Eligible for DSC	Eligible for Deferred Disposition
Child under age 8, unless over 4'9" tall	driver	child passenger safety seat system	front and back seats	child not in passenger safety seat system	minimum $25 maximum $250	yes	yes
Child at least age 8 and under age 17*	driver	safety belt	front and back seats	child not in safety belt	minimum $100 maximum $200 if in passenger vehicle minimum $1 maximum $200 if in passenger van	yes	yes
At least age 15	passenger	safety belt	front and back seats	passenger not wearing safety belt	minimum $25 maximum $50	yes	yes
At least age 15	driver	safety belt	front and back seats	driver not wearing safety belt	minimum $25 maximum $50	yes	yes

*Children under age 8 *that are taller than 4'9"* must wear a safety belt.

Definitions

- Child passenger safety seat system means an infant or child passenger restraint system that meets the federal standards for crash-tested restraint systems as set by the National Highway Traffic Safety Administration.
- Passenger vehicle means a passenger car, light truck, sport utility vehicle, passenger van designed to transport 15 or fewer passengers, including the driver, truck, or truck tractor. (*Passenger car* means a motor vehicle, other than a motorcycle, used to transport persons and designed to accommodate 10 or fewer passengers, including the operator. *Light truck* means a truck, including a pickup truck, panel delivery truck, or carryall truck, that has a manufacturer's carrying capacity of 2,000 pounds or less. Since *sport utility vehicle* is not specifically defined, look to the definition of passenger vehicle. *Truck* means a motor vehicle designed, used, or maintained primarily to transport property. *Truck tractor* means a motor vehicle designed and used primarily to draw another vehicle but not constructed to carry a load other than a part of the weight of the other vehicle and its load. *Motor vehicle* means a self-propelled vehicle or a vehicle that is propelled by electric power from overhead trolley wires. Section 541.201, T.C.)
- Safety belt means a lap belt and any shoulder straps included as original equipment on or added to a vehicle.
- Secured in connection with use of a safety belt means using the lap belt and any shoulder straps according to the manufacturer of the vehicle, if the safety belt is original equipment, or the manufacturer of the safety belt, if the safety belt has been added to the vehicle.

Section 545.412, T.C. (Child Passenger Safety Seat Systems) does not apply to:

- A person operating a vehicle transporting passengers for hire, excluding third-party transport service providers when transporting clients pursuant to a contract to provide nonemergency Medicaid transportation; or
- A person transporting a child in a vehicle in which all seating positions equipped with child passenger safety seat systems or safety belts are occupied.

Defenses to prosecution under Section 545.412, T.C.:

- The person was operating the vehicle in an emergency;
- The person was operating the vehicle for a law enforcement purpose; or
- The person provides satisfactory evidence to the court that, at the time of the offense:
  (1) the person was not arrested or issued a citation for violation of any other offense;
  (2) the vehicle the person was driving was not involved in a collision;
  (3) the person did not possess a child passenger safety seat system in the vehicle; and
  (4) subsequent to the time of the offense, the defendant obtained an appropriate child passenger safety seat system for each child required to be secured in such a system.

Defenses to prosecution under Section 545.413 (Safety Belts), T.C.:

- The person possesses a written statement from a licensed physician stating that for a medical reason the person should not wear a safety belt;
- The person presents to the court, not later than the 10th day after the date of the offense, a statement from a licensed physician stating that for a medical reason the person should not wear a safety belt;
- The person is employed by the United States Postal Service and performing a duty for that agency that requires the operator to service postal boxes from a vehicle or that requires frequent entry into and exit from a vehicle;
- The person is engaged in the actual delivery of newspapers from a vehicle or is performing newspaper delivery duties that require frequent entry into and exit from a vehicle;
- The person is employed by a public or private utility company and is engaged in the reading of meters or performing a similar duty for that company requiring the operator to frequently enter into and exit from a vehicle;
- The person is operating a commercial vehicle registered as a farm vehicle under the provisions of Section 502.433, T.C., that does not have a gross weight, registered weight, or gross weight rating of 48,000 pounds or more; or
- The person is the operator of or a passenger in a vehicle used exclusively to transport solid waste and performing duties that require frequent entry into and exit from the vehicle.

Amount Due to the State

- Fifty percent of the fines for convictions for not securing a child in a child passenger safety seat system (under Section 545.412(a), T.C.) or a safety belt (under Section 545.413(b), T.C.) must be remitted to the State Comptroller at the end of the city's fiscal year.

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APPENDIX B: COMPLIANCE DISMISSALS AND DEFENSES TO PROSECUTION

COMPLIANCE DISMISSALS

Offense	Statute	Mandatory or Discretionary Dismissal	Length of Time to Comply	Required Conditions	Amount of Reimbursement Fee
Expired vehicle registration	Section 502.407(b), Transportation Code	Court may dismiss	20 working days after the date of the offense or before the defendant's first court appearance, whichever is later	Defendant must remedy the defect; and Show proof of payment of late registration fee to county assessor-collector	Fee optional Not to exceed $20
Operate vehicle without valid registration insignia properly displayed	Section 502.473(d), Transportation Code	Court may dismiss	Before defendant's first court appearance	Defendant must: Remedy the defect; or Show that vehicle was issued a registration insignia that was attached to the vehicle establishing that the vehicle was registered for the period during which the offense was committed	Fee required Not to exceed $10
Attaching or displaying on a vehicle a registration insignia that is assigned for a period other than in effect	Section 502.475(c), Transportation Code	Court may dismiss	Before defendant's first court appearance	Defendant must remedy the defect	Fee required Not to exceed $10
Operate vehicle without two valid license plates	Section 504.943(d), Transportation Code	Court may dismiss	Before the defendant's first court appearance	Defendant must remedy the defect	Fee required Not to exceed $10
Attaching or displaying on a vehicle a license plate that is assigned for a period other than in effect, or has a blurring, reflective, coating, covering, or protective matter or attached illuminated device, sticker, decal, or emblem that obscures, impairs, or interferes with the plate's readability	Section 504.945(d), Transportation Code	Court may dismiss	Before the defendant's first court appearance	Defendant must: Remedy the defect; and Show that vehicle was issued a plate that was attached to the vehicle establishing that the vehicle was registered for the period during which the offense was committed	Fee required Not to exceed $10
Expired driver's license	Section 521.026(a), Transportation Code	Court may dismiss	20 working days after the date of the offense or before the defendant's first court appearance, whichever is later	Defendant must remedy the defect	Fee optional Not to exceed $20
Fail to report change of address or name on driver's license	Section 521.054(d), Transportation Code	Court may dismiss	20 working days after the date of the offense	Defendant must remedy the defect	Fee required Not to exceed $20 Court may waive in interest of justice

Offense	Statute	Mandatory or Discretionary Dismissal	Length of Time to Comply	Required Conditions	Amount of Reimbursement Fee
Violate driver's license restriction or endorsement	Section 521.221(d), Transportation Code	Court may dismiss	Before the defendant's first court appearance	Defendant must show that: Driver's license restriction or endorsement was imposed because of a physical condition that was surgically or otherwise medically corrected before the date of the offense, or in error and that is established by the defendant; and DPS removes the restriction or endorsement before the defendant's first court appearance	Fee required Not to exceed $10
Operate vehicle with defective required equipment (or in unsafe condition)	Section 547.004(c), Transportation Code	Court may dismiss	Before the defendant's first court appearance	Defendant must remedy the defect Does not apply if the offense involves a commercial motor vehicle	Fee required Not to exceed $10
Operating a vehicle without complying with inspection requirements as certified (vehicle was located in another state at the time the applicant applied for registration or renewal, Section 548.256(b) of the Transportation Code)	Section 548.605(e), Transportation Code	Court shall dismiss	Not later than the 20th working day after the date of the citation or before the defendant's first court appearance, whichever is later and Not later than the 40th working day after the applicable deadline regarding inspection requirements	Defendant must remedy the defect	Fee required Not to exceed $20
Expired disabled parking placard	Section 681.013, Transportation Code	Court shall dismiss if expired not more than 60 days Court may dismiss if expired more than 60 days	20 working days after the date of the offense or before the defendant's first court appearance, whichever is later	Defendant must remedy the defect	Fee required Not to exceed $20
Operate vessel with expired certificate of number	Section 31.127(f), Parks & Wildlife Code	Court may dismiss	10 working days after the date of the offense	Defendant must remedy the defect Certificate cannot be expired more than 60 days	Fee required Not to exceed $10

COMMON DEFENSES TO PROSECUTION

Offense	Statute	Defense	Amount of Fee Upon Dismissal
Failure to have driver's license in possession while operating a motor vehicle (Failure to display)	Section 521.025, Transportation Code	Defendant must produce in court a driver's license issued to that person appropriate for the type of vehicle operated and valid at the time of the arrest	Optional $10 fee
Failure to have commercial driver's license in possession while operating a commercial motor vehicle	Section 522.011, Transportation Code	Defendant must produce in court a commercial driver's license issued to that person appropriate for the class of vehicle being driven and valid at the time of the offense	Optional $10 fee
Failure to secure child in a child passenger safety seat system	Section 545.412, Transportation Code Defense in: Section 545.4121, Transportation Code	Defendant must provide the court with satisfactory evidence that, at the time of the offense: (1) Defendant was not arrested or cited for any other offense, (2) the vehicle was not involved in a collision, (3) the defendant did not possess a child passenger safety seat in the vehicle; and (4) subsequent to the offense, the defendant obtained an appropriate child passenger safety seat for each child required to be secured in a child passenger safety seat system	None
Failure to maintain financial responsibility	Section 601.193 or Section 601.194, Transportation Code	Two defenses available: • Defendant must provide the court satisfactory evidence of valid proof of financial responsibility under Section 601.053(a) that was valid and in effect at the time of the arrest OR • Defendant possessed the vehicle for the sole purpose or maintenance or repair and did not own the vehicle	None

ANSWERS TO QUESTIONS

PART 1

1. It is divided into titles, subtitles, chapters, subchapters, and sections.
2. Title 7.
3. Subtitle A, Chapter 504.
4. Subtitle B, Chapters 521 and 522.
5. Offenses in Subtitle C of Title 7 of the Transportation Code, Chapters 541-600.
6. Title 37, Section 15.89 of the Texas Administrative Code.
7. Subtitle D, Chapter 601.
8. Subtitle H, Chapter 681.
9. Subtitle I, Chapter 703.
10. Chapter 706.
11. Chapter 708 was repealed effective September 1, 2019 and the Texas Driver's Responsibility Program, including the assessment of surcharges, is no longer the law in Texas.

PART 2

12. Section 543.003 of the Transportation Code.
13. Article 14.06(b) of the Code of Criminal Procedure.
14. The defendant can continue to exercise his or her right to take the course until the person is informed of the right or until the case is disposed.
15. The citation must contain notice in type larger than other type on the citation about a second or subsequent conviction resulting in suspension of the defendant's driver's license and motor vehicle registration. Section 601.233 of the Transportation Code provides specific text to include for this notice.
16. The requirement to notify the court of any change of address and that the failure to do so is a Class C misdemeanor.
17. The notice should inform the violator that if he or she fails to appear or pay the fine or satisfy the judgment, he or she may be denied renewal of their driver's license.
18. The additional information that should be on a citation issued to a person who holds a commercial driver's license includes the following: (1) whether the vehicle is a commercial motor vehicle as defined in Chapter 522 of the Transportation Code; (2) whether the vehicle was transporting hazardous materials; and (3) whether the offense was a serious traffic violation as defined in Chapter 522.
19. 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.
20. a. At least 10 days from the date of the citation. Some courts set the appearance date more than 10 days, but the law provides that the number may not be less than 10.

PART 3

21. c. criminal offenses.
22. c. was committed by the defendant.
23. a. intentionally, knowingly, recklessly, and with criminal negligence.

PART 4

24. True.
25. False.
26. False (it is a Class B misdemeanor).
27. False (they must be alleged as such or enhanced by the officer or prosecutor).
28. True.

PART 5

29. True.
30. True.
31. False (the defendant has 20 working days or before first court appearance date).
32. False (the maximum fine is $200).
33. True.
34. True.
35. False (the offense can be enhanced on a third or subsequent conviction or if the defendant did not have financial responsibility and caused serious bodily injury or death to another in a crash).
36. True.
37. False (the commercial driver's license must also be valid for the class of commercial motor vehicle that was driven on the day of the offense).
38. True.
39. False (it is a state law violation, but the speed limit is set by city ordinance if it differs from that provided for under state law).
40. True.
41. False (cities must remit one-half of the fines collected upon conviction for a child not being secured in a passenger safety seat system or a safety belt, not of all safety belt fines).
42. True.
43. True.
44. False (minimum fine of $500 and a maximum fine of $1,250 for a first offense).
45. False (the maximum fine is $200).
46. False.
47. False.
48. False (the judge does not have authority to dismiss the case unless the defendant had valid insurance on the date of the arrest).
49. True.
50. False.

51. True.
52. True.
53. False (the penalty is a minimum of $10 and a maximum of $50).
54. False.
55. True.
56. True.

PART 6

57. False.
58. True.
59. False.

Quick Legal Reference: Court Terminology

Latin Court Terms

Term	What does it mean?	Legal Reference
Ad Litem: For the suit	An individual appointed by the court in a specific case. For example, an attorney may be appointed as guardian ad litem in a case to protect the interests of the child.	65.061, Family Code
Capias: That you take	A writ ordering an officer to take a person into custody.	23.01, Code of Criminal Procedure 43.015(1), Code of Criminal Procedure
Capias Pro Fine: That you take for the fine	A writ ordering an officer to take a person into custody and bring that person before the court after judgment and sentence for unpaid fines and costs.	45.045/45A.259, Code of Criminal Procedure 43.015(2), Code of Criminal Procedure
De Novo: From the new	When a court hears a case de novo, it is deciding the issues without reference to any legal conclusion, assumption, or finding of fact made by the previous court to hear the case.	44.17, Code of Criminal Procedure
Nunc Pro Tunc: Now for then	A method to correct a clerical discrepancy between what was ordered or entered and what appears in the record. For example, an order nunc pro tunc to correct the omission of the defendant's name from the judgment.	Rule 23, Texas Rules of Appellate Procedure See *Shaw v. State*, 539 S.W.2d 887 (Tex. Crim. App. 1976)
Scire Facias: You are to make known	The term used to describe a separate civil docket for bond forfeiture proceedings. A case will be set on this docket when a forfeiture has been declared and a judgment nisi entered. Cases set on the scire facias are docketed as State of Texas (plaintiff) v Defendant and/or Surety (defendant).	22.10, Code of Criminal Procedure Rule 26, Texas Rules of Civil Procedure

Quick Legal Reference: Court Terminology

Number Phrases

Term	What does the reference typically mean?	Legal Reference
12.45	On agreement with the prosecutor, a defendant may admit to other offenses during a plea to another case. Prosecution is then barred on the other offenses without adjudication.	Penal Code
27.14	Specifically 27.14(b). A request for the court to notify defendant of the amount of appeal bond that the court will approve. Often precedes a "leap frog" appeal in non-record courts.	Code of Criminal Procedure
15.17	Specifically the warnings in 15.17(a). Requirement that a magistrate inform an arrested person of the accusation and specific rights, referred to as warnings. Must be reported on the monthly OCA report.	Code of Criminal Procedure
32.02	Authority for the prosecutor, by permission of the court, to move for dismissal	Code of Criminal Procedure
404(b)	A required notice that a prosecutor must provide defendant prior to trial. Only applicable when the prosecutor intends to introduce evidence of other crimes at trial and defendant requests the notice.	Texas Rules of Evidence

Quick Legal Reference: Court Terminology

Multiple Meanings

Term	What does it mean?	Legal Reference
Citation (criminal)	Written notice to appear issued only by a peace officer in a criminal case.	543.003, TC 14.06(b), CCP 27.14(d), CCP
Citation (civil)	Formal notification to appear and show cause why a judgment of forfeiture should not be made final. Attachments include a copy of the judgment of forfeiture, copy of the bond, and copy of any power of attorney.	22.04, CCP
Complaint (Class C)	Sworn allegation charging a Class C or fine-only misdemeanor. Required to substantially satisfy seven requisites.	45.018/45A.002(1), CCP 45.019/45A.101, CCP
Complaint (Class C Non-traffic School Offense)	Sworn allegation charging the commission of a school offense. Required to substantially conform to 45.019/45A.101 plus be sworn to by a person with personal knowledge, include a statement whether accused is eligible for special services, and whether graduated sanctions were imposed (if required).	37.141, EC 37.146, EC
Complaint (Class A or B)	Sworn allegation that a Class A or Class B misdemeanor has been committed. Signed and sworn to by the complainant. Forms the basis for an information to be filed.	2.04, PC 2.05, PC 15.04, CCP 15.05, CCP
Petition (criminal)	Method by which a person who is entitled to expunction under Chapter 55/55A, CCP may file for this expunction in municipal court.	55.02/55A.201, CCP
Petition (civil)	Initiates an action by the state against a child who has allegedly engaged in truant conduct. Based on information and belief.	65.054, FC

APPENDIX B: TERMS

Acquittal: The legal and formal certification of the innocence of a person charged with a crime; a finding of not guilty.

Act: An alternative name for statutory law. When introduced into the Legislature, a piece of proposed legislation is known as a bill. When passed by the first house and sent to the other, it may be referred to as an act. After enactment, the terms law and act may be used interchangeably.

Adjudication: The determination and formal pronouncement of the judgment.

Adjudicative Proceeding: A proceeding where a person is entitled to due process of law, that is, the person is entitled to notice and an opportunity to be heard.

Administrative Records: Records that are created to help the court accomplish its current administrative functions.

Advance Sheets: Current publications that contain the most recently reported opinions of the courts. These copies of court decisions are sent in advance of the bound volumes.

Adversarial System: In common law countries such as the United States, this is a system in which opposing sides each represent their own interest before an impartial judge. In a criminal case, the two opposing sides are the prosecution and the defense.

Affidavit: A sworn statement.

Affinity: The relation that one's spouse has to the other spouse's blood relatives because of their marriage.

Affirm: On an appeal from a court of record, the manner in which the appeals court decides that the trial court is correct.

Agreed Judgment: In a civil case, a judgment entered on the agreement of the parties, which receives the sanction of the court.

Allocation: The process of distributing in equal or proportionate parts.

Alphabetic Filing: A filing arrangement of names, subjects, or geographic locations in alphabetical order.

Alphanumeric Filing: Arrangement of files using a combination of alphabetic and numeric characters.

Annotations: 1) Statutory: brief summaries of the law and facts of cases interpreting statutes passed by Congress or state legislatures which are included in codes; 2) Textual: expository essays of varying length on significant legal topics chosen from selected cases published in essays.

Answer: A pleading filed in response to a motion or complaint. In civil cases such as a bond forfeiture, a formal pleading filed by the defendant in response to the plaintiff's complaint.

Appeal: The process of having a higher court conduct a new trial or review the facts and law or just questions of law from a proceeding held in a lower court. In municipal court of record, the appellate court reviews the transcript of the trial. In municipal courts of non-record there is a new trial in the appellate

court. An appeal is perfected when the appeal bond has been filed with the court. All defendants have the right to appeal their cases.

Appeal Bond: The bond presented to the court by a defendant who desires to appeal the case to a higher court. The bond may be surety cash, or the court may allow a personal bond.

Appearance: The formal proceeding in which a defendant submits himself or herself to the jurisdiction of the court. Other than the defendant, only an attorney hired to represent the defendant may appear for the defendant.

Appellant: The party who requests that a higher court review the actions of a lower court.

Appellate Court: A court having jurisdiction to hear appeals and review a trial court's procedure.

Appellee: The party against whom an appeal is taken. Sometimes called a respondent.

Arbiter: A person chosen to decide a controversy.

Archiving: For data processing usage, archiving generally means creating backup computer files - especially for long-term storage. It can also be used to mean transfer of records to an archive for permanent preservation.

Arraignment: The process in which the court identifies the defendant and asks for a plea. There is no formal term for this in municipal court. In the higher courts, there are statutory requirements for arraignment.

Array: The group of prospective jurors summoned to attend a court for jury duty as they are arranged on the panel. Also refers to the membership of the jury panel.

Attest: To certify as being true or genuine.

Attorney General Opinions: Opinions issued by the Texas Attorney General interpreting the law for the requestor in the same manner as a private attorney would for his or her client. The opinions are not binding on the courts, but they are usually considered persuasive.

Audit: A formal or official examination and verification of funds collected and disbursed.

Authority: That which can bind or influence a court. Examples: case law, legislation, and constitutions.

Bail: The security given by the accused that he or she will appear and answer before the proper court.

Bail Bond: A written agreement entered into by the defendant and sureties that assures the appearance of the defendant before the court to answer a criminal charge. If the defendant fails to appear when required, the court can forfeit the bond and use the proceeds to defray the cost of returning the defendant to court to answer the charges.

Bail Bond Surety: A person who executes a bail bond as a surety or co-surety for another person for compensation.

Bench Trial: A trial before the judge in which there is no jury, and the judge makes the finding of guilty or not guilty.

Beyond a Reasonable Doubt: The standard used in a criminal trial to determine whether the defendant is guilty of the offense charged.

Bias: An inclination or pre-conceived opinion.

Bicameral: Having two chambers or houses in the Legislature.

Bifurcated Appellate System: A court structure in which two separate courts are considered to be the highest appellate court. Texas and Oklahoma have bifurcated appellate systems. In Texas, the two courts are the Texas Court of Criminal Appeals for criminal cases and the Texas Supreme Court for civil cases.

Bill: A legislative proposal introduced in the Legislature.

Bill of Review: A proceeding brought for the purpose of reversing or correcting a prior judgment.

Bill of Rights: The first 10 amendments to the U.S. Constitution.

Bluebook: A popular name for *A Uniform System of Citation*, which is published and distributed by Harvard Law Review Association and bound with a blue cover.

Bond: A type of bail required to ensure the presence of a defendant in a criminal case.

Brief: A written statement prepared by the counsel arguing a case in court. It contains a summary of the facts of the case, the pertinent laws, and an argument of how the law applies to the facts supporting the counsel's position.

Budget: A plan for the coordination of resources and expenditures in a given time period.

Canon: Standards of ethical conduct for members of the judiciary.

Capias: A writ (order) issued by a court with jurisdiction over a defendant when a defendant is not in custody ordering a peace officer to bring the defendant before the court. Required to be issued when a forfeiture is declared.

Capias Pro Fine: A written order issued by a judge when a defendant is absent at a time judgment is rendered or when a defendant defaults in payment of fine. It is a written order from a court directed to a peace officer commanding the officer to arrest a person and to bring the person before the court, or place that person in jail until he or she can be brought before the court. See 43.015(2), C.C.P.

Case Law: The law of reported judicial opinions, as distinguished from statutes or administrative law.

Caseflow Management: The process of evaluating, monitoring, and accounting for case files in municipal court.

Caption: Also see *style of case*. The heading on a legal document listing the parties, the court, the case number, and related information.

Cause of Action: The facts that give rise to a lawsuit or a legal claim.

Central Files: The files of several offices or organizational units physically and/or functionally centralized and supervised in one location.

Certified Court Interpreter: An individual who is a qualified interpreter as defined in Article 38.31, C.C.P., or Section 21.003, Civil Practice Remedies Code or certified under Subchapter B by the Department of Assistive and Rehabilitative Services to interpret court proceedings for a hearing-impaired individual. Sec. 57.001(1), G.C.

Challenge for Cause: An objection to a particular juror during jury selection that requires a legal reason to be shown. There may be an unlimited number of strikes for cause.

Charging Instrument: The formal accusation that a person committed a criminal offense. In municipal courts, it may be a sworn complaint filed with the court charging a criminal offense.

Charter: Governing document of a home rule city. The charter outlines a home rule city's structure and powers.

Citation: In a criminal case, written notice to appear issued only by a peace officer. Under certain procedural circumstances, it may be used as the charging instrument in municipal court.

Citators: A set of books that provide, through letter-form abbreviations or words, the subsequent judicial history and interpretation of reported decisions and lists of cases and legislative enactments constructing, applying, or affecting statutes. Example: *Shepard's Citations*.

Civil Law: 1) Roman law embodied in the Code of Justinian or the Napoleonic Code, which prevails in most European countries other than England; 2) the law concerning non-criminal matters in a common law jurisdiction, for example, a personal injury lawsuit or a divorce.

Code: A compilation of statutes.

Codify: Organize as a written code or statute.

Coding: The act of applying file designations on records for the purpose of classifying or condensing.

Color of Office: Pretense of an official right to do an act made by one who has no such right. An act under color of office is an act of an officer who claims authority to do the act by reason of his or her office when the office does not confer on him or her any such authority.

Commercial Driver's License: A type of driver's license that can be identified by the words "Commercial Driver's License" on the top of the license. Allows a person to drive a commercial motor vehicle.

Common Law: The body of law derived from judicial decisions and based on precedent. A common law court will generally look to case law for its decisions in similar cases. It is the basis for legal systems in both the United States and England.

Complainant: A person who brings a legal complaint against another.

Complaint: In municipal court, a sworn allegation charging the accused with commission of an offense.

Concurrent Jurisdiction: Indicates that cases may be filed in any of the courts that have authority of the offense.

Conduct in Need of Supervision/Conduct Indicating a Need for Supervision: Juvenile conduct that is a lower grade of penal offense, such as running away. These offenses are filed in juvenile court.

Conflict of Interest: A relationship that suggests disqualification of a public official from performing his or her sworn duty; a clash between public interest and the private pecuniary interest or other interest of the individual concerned.

Consanguinity: Blood relationship; the connection of persons descended from the same stock or common ancestor.

Constitution: A written document that establishes the fundamental rights and principles by which a nation or state governs itself.

Constitutional Courts: Courts established by the Texas Constitution, including the Supreme Court, Court of Criminal Appeals, courts of appeals, district courts, county courts, and justice of the peace courts.

Contempt: Any act calculated to embarrass, hinder, or obstruct a court in the administration of justice or calculated to lessen its authority or dignity. There are two kinds of contempt: direct and indirect. Direct contempt is committed in the immediate presence of the court; indirect is the term chiefly used with reference to the failure or refusal to obey a lawful court order.

Continuance: The adjournment or postponement of a case pending in court to a later date and time.

Controlling Authority: A case decided by the highest appropriate court in Texas or the Fifth Circuit Court of Appeals, a federal district court within the Fifth Circuit, or the U.S. Supreme Court.

Corporation Court: An old name for municipal courts. A reference in state law to a corporation court means a municipal court. The Corporation Court Law of 1899 created corporation courts in each municipality in Texas and was later codified in Chapter 29 of the Texas Government Code.

Cost-First Allocation Rule: Defined by the Texas Attorney General as when a defendant pays only part of the required fines and costs, the money collected should go first to the payment of the costs and the balance, if any, to the amount of the fine.

Count: An allegation of a separate offense. A criminal indictment or complaint in higher courts may contain several counts.

County Courts: Courts having exclusive original jurisdiction over misdemeanors punishable by incarceration in jail up to one year and fines up to $4000. These courts also have appellate jurisdiction over cases appealed from municipal and justice court.

Court of Criminal Appeals: Court of last resort that has jurisdiction over criminal case appeals. The Court of Criminal Appeals is also authorized by the state legislature to promulgate rules of evidence and appellate procedure in criminal cases.

Cross-Examination: The examination of a witness upon a trial or hearing by the party who did not produce the witness.

Cross Reference: A notation in a file or on a list showing that a record has been stored elsewhere.

Cubic Foot: The volume of paper records that fills a space one foot high by one foot wide by one foot long. The basic measurement for records volume.

Culpable Mental State: The defendant's state of mind at the time a crime is committed. A culpable mental state is required for most criminal offenses. The different mental states are defined in the Texas Penal Code.

Custodian of the Records: Anyone who has charge or custody of property or records. Municipal court clerks are responsible for the care, control, maintenance, and archival of municipal court records.

Database: An electronically stored collection of related records containing frequently used information.

Decentralized Files: Files stored throughout an organization; not centralized in one office or area.

Decree: A determination by a court of the rights and duties of the parties before it.

Default Judgment: In civil cases, a judgment that is rendered when a defendant fails to appear or answer.

Defendant: The person against whom a civil or criminal action is brought.

Deferred Disposition: A process where the judge may defer the proceedings in a case without entering an adjudication of guilt and place the defendant on probation not to exceed 180 days.

Delinquent Conduct: Juvenile conduct that generally involves violations of the penal laws punishable by imprisonment or jail. These types of offenses are filed in juvenile court.

Denial: In a civil case, the pleading of an allegation of fact or defense. In a bond forfeiture, for example, the answer is the pleading denying the allegation of the facts which caused the forfeiture.

DIC-81: Form submitted by the court to the Department of Public Safety giving notice of the municipal court's order to DPS to either suspend the driver's license or keep a minor from obtaining a driver's license for failing to appear or failing to pay a fine.

Dicta: Language in an opinion that is not necessarily essential to the holding of the decision and is usually written in a dissenting opinion and does not embody the determination of the court; thus, it is not binding on the courts.

Digest: An index to reported cases that provides brief, unconnected statements of court holdings on points of law, arranged by subject and subdivided by jurisdiction and courts.

Diligence: The attention and care legally expected or required of a person.

Direct Access Filing: A method of filing in which no code is needed to reference a file.

Directed Verdict: When the state rests and has failed to present evidence of an element of the offense, the defense may ask the court for a directed verdict. If granted, the court orders a verdict of "not guilty." See 45.032/45A.162, C.C.P. This is different from a Judgment Notwithstanding the Verdict (JNOV), which does not exist in criminal cases.

Disbarment: A form of discipline of a lawyer, resulting in the loss (often permanently) of that lawyer's right to practice law.

Disbursement: The act of paying out funds.

Discovery: A pre-trial device that can be used to obtain certain information about the case. In criminal cases, discovery procedures are outlined in Chapter 39 of the Code of Criminal Procedure. Prosecutors are also under a pre-existing duty to disclose exculpatory evidence, known as *Brady* Material, to the defendant.

District Courts: Courts having original jurisdiction over issues including felony offenses, misdemeanors involving official misconduct, and all civil matters where the amount in controversy is $200 or more.

Diversion: An intervention strategy that redirects a child from formal criminal prosecution and holds the child accountable for the child's actions. The term includes diversion under Article 45.309 or 45.310 of the Code of Criminal Procedure.

DL-115: Form submitted by the court to the Department of Public Safety for certain offenses under Chapter 106 of the Texas Alcoholic Beverage Code, including (1) giving notice of the municipal court's order to suspend or deny issuance of a minor's driver's license upon conviction; (2) giving notice of an order of deferred disposition; (3) upon a defendant's failure to take an alcohol awareness program. Formerly known as the DIC-15.

Docket: A formal record required to be kept on cases filed in the court. Maintaining the docket is a ministerial duty that the judge may delegate to the clerk.

Docket Number: A number sequentially assigned to the case by the clerk.

Double Jeopardy: A prohibition against a second prosecution after an original trial for the same offense.

Due Process of Law: Broad legal concept embodied in the 5th and 14th Amendments to the U.S. Constitution. Due Process requires states to use fair procedures when depriving a person of life, liberty, or property and requires the state to have adequate justification for such deprivation.

Duplex-Numeric Filing: Arrangement of files using two or more sets of code numbers, with the sets separated by dashes, commas, periods, or spaces.

Electronic Filing: Transmission and filing of court documents via electronic means. Also known as "paperless filing."

En Banc: A session in which the entire bench of the court will participate in the decision rather than the regular quorum. The federal circuit courts of appeal usually sit in groups of three judges, except for important cases when they sit as a full court of nine members. When all nine members are present, they are said to be sitting en banc.

Endorse: To sign one's name on a document.

Entrapment: An act of law enforcement officers to induce a person to commit a crime not contemplated by the person and for the sole purpose of instituting a criminal prosecution against the person.

Equal Protection of the Law: The legal concept that no person or class of person shall be denied the same protection of the laws, pursuant to the 5th and 14th Amendments to the U.S. Constitution.

Essential Record: Any record necessary for the resumption or continuation of government operations in an emergency or disaster, for the recreation of the legal and financial status of the government, or for the protection and fulfillment of obligations to the people of the State.

Ethics: Relates to moral action, conduct, motive, or character; conforming to professional standards of conduct; the discipline dealing with what is good and bad and with moral duty and obligation; a set of moral principles or values.

Evidence: Any type of proof legally admitted at a trial, including witnesses, records, documents, or objects, for the purpose of proving or disproving elements of a criminal case. The Texas Rules of Evidence govern the admission of evidence at trial.

Ex Officio: Literally "from the office." Powers resulting from the holding of a particular office. These powers are not specifically conferred upon an officer, but the officer may exercise them by right of holding the office.

Ex Parte: Literally "from one party." Communication with a judge by one party without the other present. Ex parte communications between the judge and opposing parties are generally prohibited.

Exclusive Original Jurisdiction: A court having sole jurisdiction over a case because no other court has jurisdiction to hear and decide the case.

Execution: The process of enforcing a judgment, usually by seizing and selling property of the debtor.

Exonerate: To free from obligation.

Expunction: The process by which the record of a criminal conviction or arrest is destroyed or sealed.

Felony: A classification of criminal offense in the Texas Penal Code generally punishable by incarceration in prison. District courts have jurisdiction over felony offenses.

Finding: A legal determination made in a case based on certain facts. On conviction for certain Penal Code offenses, the court is required to enter an affirmative finding after considering the evidence. In municipal court, this typically involves a Finding of Family Violence in Title 5 offenses or a Finding of Motor Fuel Theft.

Fine: The penalty assessed by a judge or a jury upon the conviction of a defendant in a criminal case.

Forfeiture: A civil process that occurs when a defendant posts bond and then fails to appear. Failure to perform a condition of the bond causes the forfeiture of the bail to be declared or forfeited for the fine and costs.

General Jurisdiction: Authority to hear any criminal and/or civil cases, although judgments remain subject to appellate review.

General Law City: A city that is subject to the general laws of the state. A general law city looks to the state legislature and state statutes for its authority and may not act unless state law authorizes the action.

Guilty: A plea by which a defendant confesses to the crime with which the defendant is charged, or the verdict by which a defendant is convicted.

Headnote: A brief summary of the legal rule or significant fact in a case that often precedes the printed opinion of the case.

Holding: The main legal principle in the case; the declaration of the conclusion of law reached by the court as to the legal effect of the facts of the case.

Home-Rule City: A city that is governed by a charter that gives the city a measure of self-government. A home-rule city generally looks to its charter for its authority and may act unless state or federal law prohibits the action.

Hornbook: Refers to a series of treatises published by West that reviews various fields of law in a summarized, textual form as opposed to a casebook, which contains reprints of court opinions.

Inactive Records: Records that have a reference rate of less than one search per month. Records that are not needed to be readily available, but which must be kept for administrative, fiscal, legal, historical, or governmental purposes.

Index: An organized aid to find the contents of a document, database, or filing system that is arranged in a logical order, giving document or data location in storage. Usually a list or file that is arranged alphabetically or numerically for the purpose of facilitating references to topics, names, numbers, or captions within a body of information.

Indexing: The action of specifying or determining the pre-designed topic, name, number, or caption under which a document is to be filed.

Indictment: A formal accusation of a crime made by a grand jury at the request of a prosecuting attorney. In Texas, indictments are required in felony cases.

Indigent: One who does not have sufficient financial ability to hire legal counsel or pay a fine and court costs. Texas law defines indigency as not earning more than 125 percent of the income standard established by federal poverty guidelines.

Indirect Access Filing: A system in which reference to the code under which material is filed must be made before the file can be located.

Information: Written statement based on a complaint charging the defendant with a Class A or B misdemeanor. Filed and presented by a county or district attorney.

Jail-Time Credit: Credit on a defendant's fine required to be given when a defendant has been confined in jail before or after being convicted of a crime by the court or jury.

Judgment: In a criminal case, the written declaration of the court signed by the trial judge and entered in the record showing the conviction or acquittal of a defendant. In a civil case, the final decision of the court resolving the dispute and determining the rights and obligations of the parties.

Judgment Nisi: A temporary order that will become final unless the defendant or surety shows good cause as to why the judgment should be set aside.

Judicial Council Monthly Court Activity Report: The monthly report that all Texas courts must submit to the Office of Court Administration (OCA). Commonly known as "The OCA Report."

Judicial Discretion: The exercise of judgment by a judge based on both what is fair under the circumstances and what is within the established principles of the law.

Judicial Duties: Duties that require an exercise of judgment or decision on a question of law or fact or choice of alternatives. Only judges may perform judicial duties.

Jurisdiction: The power given to the court by a constitution or legislative body to hear and decide cases.

Jury Charge: An instrument which contains the law that applies to a case and is read to jurors before argument commences in a trial.

Jury Shuffle: On motion by the defense or prosecutor, a shuffle of the order in which jurors are seated. No practical method is prescribed in the code to accomplish this, but a common method is to mix up juror names and individually draw them to reseat the jury order.

Jury Summons: A notice sent to prospective jurors notifying them to appear for jury duty. Usually, this act is performed by the court clerk.

Justice of the Peace Court: Courts with original jurisdiction in criminal cases where punishment upon conviction may be by fine only. Justice courts generally have concurrent jurisdiction with municipal courts.

Juvenile: Generally, a person who is at least 10 years of age and under the age of 17.

Key Number: A building block of the West indexing system. The key number is a permanent number given to a specific point of law.

Law Review or Law Journal: A legal periodical that usually describes a scholarly publication edited by law students.

Legal Advice: A statement that interprets some aspect of the law, recommends some course of conduct, or applies the law to specific facts.

Legislative History: The information embodied in legislative documents that provides the meanings and interpretations (intent) of statutes.

LexisNexis: A corporation that provides a computerized legal research system used by attorneys and court personnel. Its database provides the full text of court decisions, statutes, administrative materials, annotations, law review articles, reporter services, Supreme Court briefs, and other items.

Licensed Court Interpreter: An individual licensed under Chapter 157 of the Government Code by the commission to interpret court proceedings for an individual who can hear but who does not comprehend English or communicate in English**.** Sec. 157.001(2), G.C.

Life Cycle of Records: The management concept that records pass through four stages: creation, maintenance, use, and disposition.

Limited Jurisdiction: Authority to hear only certain types of matters. Municipal courts are courts of limited jurisdiction.

Linear Foot: A unit of measurement used to determine the quantity of records in terms of length of space occupied without regard to height and width.

Litigant: Broad term describing a party to a lawsuit.

Loose-Leaf Services and Reporters: Contain federal and state administrative regulations and decisions or subject treatment of a legal topic. They consist of separate leaves to be placed in a binder that allows for frequent substitutions and updates.

Magistrate: A judicial officer whose duty it is to preserve the peace within a certain territorial jurisdiction through all lawful means; to issue all process intended to aid in preventing and suppressing crime; and to cause the arrest of all offenders in order that they may be brought to trial or, after trial, to punishment.

Magistration: The process where a magistrate explains to a defendant his or her rights under the law and constitution.

Mandatory Authority: Authority that a court is to follow and includes constitutional provisions, legislation, and court decisions.

May: Denotes permissible discretion or, depending on the context, refers to action that is not covered by specific proscriptions.

Microfilm: A film containing photographic records or images considerably reduced in size from the original material filmed.

Microfilming: The process of photographic reproduction of a document, usually on 16mm or 35mm film. The original may be reduced from one-eighth to one-fiftieth of its original size, with such clarity that it can be enlarged to its original size without loss of detail.

Microform: Roll microfilm, microfiche, computer output microfilm, and all other formats produced by any method of microphotography or other means of miniaturization on film.

Ministerial Duties: A duty in which there is nothing left to discretion, or a duty imposed by law.

Minor: In the Transportation Code, a person who is younger than 17 years of age. In the Alcoholic Beverage Code, a person who is under 21 years of age.

Misdemeanors: A classification of criminal offense in the Texas Penal Code punishable by incarceration in jail or a fine. County courts, justice courts, and municipal courts generally have jurisdiction over misdemeanors. Municipal courts and justice courts, however, only have jurisdiction over fine-only, Class C misdemeanors.

Mitigating Circumstances: Circumstances that do not constitute a justification or excuse of the offense in question, but which, in fairness and mercy, may be considered as extenuating or reducing the degree of moral culpability.

Motion: A formal request made to a judge pertaining to any issue arising in a case.

Municipal Court of Non-Record: A municipal court that does not keep a record of its proceedings. The appeal is de novo to the county court.

Municipal Court of Record: A municipal court that is required to keep a record of its proceedings. Established either by state legislation or city election.

Must: Creates or recognizes a condition precedent.

No Contest/Nolo Contendere: A plea in which the defendant does not contest the charge. Nolo contendere has the same legal effect as a guilty plea; however, it may not be used against the defendant as an admission of guilt in a civil suit based upon or growing out of the act upon which the criminal prosecution is based.

Nonessential Record: A record that is not vital to the continued operation of the court.

Nonsecure Custody: An unlocked multipurpose area where juveniles may be detained for up to six hours. While the juvenile is in the custodial area, they cannot be handcuffed to a chair, railing, or any object, and they must be under continuous visual observation by a law enforcement officer or a member of the facility staff.

Not Guilty Plea: A plea in which the defendant denies guilt in a criminal case and contests the charge. Defendants are presumed innocent, and guilt must be proved by the prosecution. Consequently, if a defendant refuses to enter any plea, a plea of not guilty may be entered by the judge.

Numeric Filing: Arrangement of numeric characters in various combinations.

Opinion: An expression of the reasons a certain decision was reached in a case and includes the following:

- A **majority opinion** is usually written by one judge and represents the principles of law that the majority of the court deemed operative in a given decision. It has the greatest precedential value.
- A **separate opinion** may be written by one or more judges in which he or she concurs with or dissents from the majority.
- A **concurring opinion** agrees with the results reached by the majority, but it disagrees with the precise reasoning of the majority opinion.
- A **dissenting opinion** disagrees with the result and the reasoning of the majority.
- A **plurality opinion** (called a judgment by the Supreme Court) is agreed to by less than a majority as to the reasoning of the decision, but it is agreed to by a majority as to the result.
- A **per curiam opinion** is an opinion by the court which expresses its decision in the case but whose author is not identified.
- A **memorandum opinion** is a holding of the whole court in which the opinion is very concise.

Oral Argument: An opportunity for lawyers to summarize their position before the court and to answer the judges' questions.

Ordinance: The equivalent of a municipal statute, passed by the city council and governing matters not covered by state or federal law.

Out-Card: A card filled out showing the date, description of the record, agency, person requesting the record, and other pertinent information. This card replaces the record that is pulled and is removed when the record is refiled.

Party: A person, business, or government agency actively involved in a legal proceeding.

Payee: A person to whom a check, money, etc., is payable.

Payor: A person who pays. A person named in a bill who has to pay the holder.

Peremptory Challenge: An objection made to a particular juror during jury selection that does not require cause be shown. The stricken juror is removed from consideration for the jury in that case. In municipal court, the prosecution and defense are each permitted three peremptory strikes.

Perfect: To take all legal steps needed to complete or secure. In court, often used in reference to whether appeal bond requirements have been completed.

Permanent Record: A record considered to be so valuable or unique that it is to be permanently preserved.

Personal Bond: A bond that is granted in the court's discretion that releases the defendant on his or her word or promise to appear, without sureties or other security, to appear in court to answer criminal charges.

Persuasive Authority: Reasoning which a given court may, but is not bound to, follow. For example, decisions from one jurisdiction may be persuasive authority in the courts of another jurisdiction, although they are not binding.

Plaintiff: In a civil case, the person who complains or brings the lawsuit and seeks relief for an injury.

Plea: In criminal cases, there are four possible pleas: guilty, not guilty, nolo contendere (no contest), or the special plea of double jeopardy.

Pleadings: The written statements of fact and law filed by the parties. In municipal and justice court, pleadings may be oral or in writing as the court may direct.

Pocket Part: A paperback supplement inserted in a book through a slit in its back cover. Usually includes textual, case, or statutory references keyed to the original publication.

Precedent: A previously decided case that guides the decision of future cases.

Preponderance of the Evidence: Evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not.

Presumption of Innocence: A principle of criminal law that the government has the burden of proving every element of a crime beyond a reasonable doubt, and the defendant has no burden to prove his or her innocence.

Pre-Trial Hearing: A court setting to address preliminary matters, including plea discussions, prior to the trial of an offense. The court may set any criminal case for a pre-trial hearing under Section 28.01 of the Code of Criminal Procedure.

Primary Authority: Statutes, constitutions, and administrative regulations issued pursuant to enabling legislation and case law. Primary authority may be either mandatory or persuasive. All other legal writings are secondary and are never binding on the courts.

Privileged Information: Information that is protected from disclosure.

Procedural Law: The law that governs the operation of the legal system, including court rules and procedures, as distinguished from substantive law.

Process: Written orders such as a warrant, capias, capias pro fine, and summons issued by the municipal judge.

Public Information: Information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business by a governmental body or for the governmental body and the governmental body owns the information or has a right of access to it, pursuant to the Public Information Act (PIA).

Ratio Decidendi: The point in a case that determines the result; the basis of the decision. This is more commonly referred to as the holding of the case.

Reasonable Doubt: All persons are presumed innocent, and no person may be convicted of an offense unless each element of the offense is proven beyond a reasonable doubt. The fact that a person has been arrested, confined, or indicted for, or otherwise charged with the offense gives rise to no inference of guilt at his or her trial. The law does not require a defendant to prove his or her innocence or to produce any evidence at all. The presumption of innocence alone is sufficient to acquit the defendant unless the jurors are satisfied beyond a reasonable doubt of the defendant's guilt after careful and impartial consideration of all the evidence in the case.

Reconciliation: The act of harmonizing records.

Record: A document containing data or information of any kind and in any form generated or received by an organization and containing information necessary for the operation of that organization's business.

Record Copy: A record that is designated to be kept for the full retention period; not a reference, working, or convenience copy.

Records Control: The management of documents generated or received by an organization.

Records Creation: The process of production or reproduction of records.

Records Disposition: The final processing of records for destruction, permanent retention, or archival preservation.

Records Inventory: The physical listing of all records series created and maintained by an agency conducted prior to the development of retention schedules. Includes data such as records series titles, inclusive date, use, location, quantity, arrangement, duplication, and other pertinent information.

Records Management: (1) The systematic control of recorded information required in the operation of an organization's business from creation and active maintenance and use, through inactive storage, to final disposition; (2) The application of management techniques for the purpose of reducing the cost and

improving the efficiency of recordkeeping. Statutorily defined in the Local Government Records Act (Sec. 201.003, L.G.C.).

Records Preservation: The maintenance of documents in usable form.

Records Protection: Safeguarding documents against unintentional destruction.

Records Retention Schedule: A document that identifies the length of time a records series must be retained in active and inactive storage before its final disposition to permanent storage, archival preservation, or destruction.

Records Series: A group of identical or related records that is normally used and filed as a unit and that permits evaluation as a unit for retention scheduling purposes.

Records Storage: The systematic assembling of documents in containers or depositories for possible future use.

Recusal: The process by which a judge is disqualified from hearing a charge filed in his or her court.

Reference Copy: A copy of an official record that serves as a substitute for reference purposes. Also called convenience or working copy.

Remand: To send back; the sending by the appellate court of the case back to the same court out of which it came for the purpose of having some further action taken on it there.

Remit: To pay back money.

Remittitur: To put back into the previous position and may include the return of all or part of the amount of the bond.

Rendering Judgment: The judicial act of pronouncing the decision (judgment) of the court.

Retention Period: The period of time during which a record must be kept before final disposition.

Riding Dirty: A term used by bikers for operating a motorcycle without a driver's license or without a Class M endorsement on the license.

Rules of Evidence: Rules that govern the admissibility of evidence at trials and hearings.

Rules of the Road: Subtitle C of Title 7, Transportation Code. This includes Chapters 541 to 600. These are important for determining certain court costs and also an adult's right to take a driving safety course.

Rule of Law: The principle that laws should govern a nation state, and every person should be subject to those laws.

Scire Facias: A special docket required by law to handle all cases and proceedings involved in the forfeiture of bail bonds. The process of issuing a citation (notice) to the parties of a temporary judgment (judgment nisi) that they need to come to court or lose the bond money to the State.

Sealing of Records: The process whereby a juvenile's court records are closed, and the matter is treated for all purposes as if it never occurred. The records will not be opened except by order of the juvenile

court brought about by a petition of the person whose records were sealed. After September 1, 2001, municipal courts are no longer required to seal juvenile records. Juvenile cases filed with municipal courts before September 1, 2001, are subject to the sealing provisions.

Sentence: Punishment imposed on a defendant who has been found guilty. In municipal court, the amount of the fine and costs ordered to be paid to the State.

Server: A computer that shares its resources, such a printers and files, with other computers on the network. An example of this is a Network Files System (NFS) Server which shares its disk space with a workstation that does not have a disk drive of its own.

Session Laws: Laws of a state enacted that are published in bound or pamphlet volumes after the adjournment of each regular or special session.

Shall and Shall Not: Imposes a duty to either act or refrain from acting.

Shepardizing: To check whether a certain case is still good law. Specifically refers to the use of *Shepard's Citations* to accomplish this.

Should or Should Not: Relates to aspirational goals and is a statement of what is or is not appropriate conduct but is not a binding rule under which a judge may be disciplined.

Slip Opinion: An individual court decision published separately soon after it is rendered.

Stare Decisis: Latin term meaning "to stand by things decided." The doctrine that courts will follow precedent, or previous judicial decisions, with similar issues or facts.

Statute: An act of a legislature. Depending upon its context in usage, a statute that may mean a single act of a legislature or a body of acts that are collected and arranged according to a scheme or for a session of a legislature.

Statute of Limitations: The time within which a legal process must be taken. There are different statutes of limitations for different kinds of lawsuits or crimes. In criminal cases, the time within which a prosecutor must formally present charges and file a complaint against a defendant. The statute of limitations for misdemeanor cases heard in municipal courts is two years.

Statutory Construction: A process by which a court seeks to interpret the meaning and scope of legislation.

Statutory Courts: Courts created by the State Legislature under authority granted by the Texas Constitution. These include municipal courts, county courts at law, and special courts such as probate courts.

Statutory Law: Law enacted by the legislative branch of government as distinguished from case law or common law.

Strike: A common name for a challenge that seeks to remove a particular juror from consideration during the jury selection portion of trial.

Style of Case: The parties to a lawsuit as they are written in the heading at the beginning of the case. Also known as the caption of the case.

Subject Matter Jurisdiction: Refers to the types of cases over which a court has jurisdiction.

Subpoena: A command from a court to appear at a certain time and place to give testimony upon a certain matter.

Subpoena Duces Tecum: Latin term meaning "under penalty you will bring with you." A command from the court for a witness to appear and bring books, papers, or other tangible items as evidence.

Subsidiary Dockets: Listings of cases set for a particular date for trial and are also called trial dockets.

Substantive Law: That law which establishes rights and obligations, as distinguished from procedural law, which is concerned with rules for establishing their judicial enforcement.

Summary Judgment: In a civil case, a judgment made when there is no genuine issue of material fact, and the party is entitled to prevail as a matter of law.

Summons: A writ of the court directing that a person appear at a stated time and place. In municipal court, the judge can issue a summons for a defendant or for the parents of a juvenile.

Suppress: To keep evidence from being presented during a trial. A motion to suppress evidence is typically heard prior to trial and outside the presence of the jury.

Surcharge: Surcharges were fees assessed against an individual following certain convictions under the Texas Driver Responsibility Program. The program was repealed, effective September 1, 2019.

Surety: One who bonds and obligates himself or herself to guarantee the appearance of the defendant in court at times ordered to answer the charges. Should the defendant fail to appear, the surety is liable on the bond.

Table of Cases: A list of cases arranged alphabetically by case names with citations and references to the body of the publication where the cases are treated.

Table of Statutes: A list of statutes with references to the body of the publication where the statutes are treated or construed.

Terminal-Digit Filing: The arrangement of files using the last digit or set of digits as the primary filing unit.

TexasSure: An automated vehicle insurance verification database created by state agencies including the Texas Department of Insurance, Texas Department of Motor Vehicles, and Texas Department of Public Safety.

The Rule: Rule 614 of the Texas Rules of Evidence, requiring witnesses to remain outside the courtroom while testimony is being heard, except when testifying or until discharged.

Time Payment Fee: A $25 fee that is required to be collected on conviction if the person pays any part of the fine or costs more than 30 days after the judgment imposing the fine or costs.

Transcript: A written, word-for-word record of what was said while in a proceeding such as a trial or during some other conversation, as in a transcript of a hearing or oral disposition.

Transferring: Moving inactive records to a records center or storage area on a regular schedule.

Treatise: An exposition, which may be critical, evaluative, interpretative, or informative on case law or legislation and is usually quite detailed and often critical.

Trial Courts: Those courts in which trials are held, witnesses are heard, testimony is received, and exhibits are offered into evidence.

Trial De Novo: A new trial on a case, where both questions of fact and issues of law are determined as if no decision had been previously rendered.

Trial Dockets: Listings of cases set for a particular trial date and are commonly called subsidiary dockets.

Truancy: The unexcused voluntary absence of a child on 10 or more days or parts of days within a six-month period or three or more days or parts of days within a four-week period from a school without the consent of the child's parents. Prior to September 1, 2015, the act of truancy, or failing to attend school, was a crime in Texas punishable by a fine up to $500. The 84th Texas Legislature overhauled the process of juvenile justice for municipal and justice courts, eliminating this criminal offense.

Truancy Courts: Specialized courts which exercise jurisdiction over cases involving allegations of truant conduct. Municipal and justice courts are designated as truancy courts and may hear civil truancy cases. This is distinct from their authority and jurisdiction as a municipal court.

Venire: Latin term meaning "to come." The panel summoned by the court from among whom jurors in a particular case are chosen.

Venue: The particular geographical area in which a court with jurisdiction may hear and determine a case.

Verdict: The final decision on the trial of a criminal case: either guilty or not guilty.

Voir Dire: Literally, "to speak the truth." (1) Trial process by which the defense and prosecution question and select jurors; (2) The preliminary examination that the court, prosecution, or defense may make of a person presented as a witness where the person's qualifications to testify as an expert may be examined. Opposing counsel may ask the court to "take the witness on voir dire" out of the jury's presence.

Waiver: In municipal court, the process in which the court removes the obligation of the defendant to pay a fine or costs within parameters specifically outlined in the law. Waiver is possible if the defendant is a child or if the judge determines that the defendant is either indigent or does not have sufficient resources or income to pay the fines or costs.

Warrant of Arrest: A written order issued by a magistrate or judge directed to a peace officer commanding him or her take the body of the person accused of an offense, to be dealt with according to the law.

Westlaw: The computerized legal research system of The West Group / Thomson Reuters corporation used by attorneys and court personnel. It is a database providing full text of court decisions, statutes, administrative materials, law review articles, reporter services, and other items.

Witness: One who personally sees, observes, or is an expert concerning something and later testifies to what was seen, perceived, or known; a person whose declaration under oath or affirmation is received as evidence.

Writ: A written order of which there are many types, issued by a court and directed to an official or party, commanding the performance of some act.

Writ of Execution: A written order commanding an officer to take the property of the defendant in satisfaction of the debt (judgment of forfeiture on the bail bond) containing evidence of the debt of the defendant (surety) to the plaintiff (city prosecutor).

Writ of Habeas Corpus: A written order commanding that a person is brought before a court to determine if the person is lawfully imprisoned. Literally, "you have the body."

Writ of Procedendo: A written order by which the county court declares its lack of jurisdiction over an appeal and returns the case to municipal court, which may then proceed to collect judgment.

Writ of Venire: A written order from the judge commanding the proper officer (usually the court clerk) to summon immediately a list of prospective jurors to serve for a particular term of the court.

APPENDIX C: CODE ABBREVIATIONS

Agriculture Code.....AG
Alcoholic Beverage Code ..... ABC
Business and Commerce Code..... BCC
Code of Criminal Procedure .....CCP
Education Code..... EC
Election Code..... Elec
Family Code.....FC
Finance Code ..... Fin
Government Code .....GC
Health and Safety Code .....HSC
Human Resources Code..... HRC
Insurance Code IC
Labor Code LC
Local Government Code ..... LGC
Natural Resources Code..... NRC
Occupations Code .....OC
Parks and Wildlife Code .....PWC
Penal Code .....PC
Probate Code.....PBC
Property Code .....PRC
Tax Code..... Tax
Texas Administrative Code..... TAC
Transportation Code..... TC
Utilities Code .....UC
Water Code ..... WC
Vernon's Civil Statutes..... VTCS

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