

Municipal Court: The Basics

**TEXAS CITY ATTORNEYS ASSOCIATION
SOUTH PADRE ISLAND, TEXAS
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I. Introduction:

City attorneys have a uniquely expansive role with respect to municipal courts. It is broader than with courts at the county or state level. Obviously, city attorneys prosecute in municipal courts. In addition, especially with smaller courts and courts with non-attorney judges, the city attorney will often be the municipal court's sole legal adviser. City attorneys also play a critical role in establishing court procedures that ensure that due process is respected, protect victims rights, ensure witnesses are notified of court dates and times, and further the mission of the city as a whole. Also, municipal courts generate more revenue than any other courts, and they are the courts with which ordinary citizens are most likely to be in contact, either as defendants, jurors or as victims. Bad experiences with unknowledgeable, rude or inefficient clerks, judges, or prosecutors are often reported to the city's leaders, who will see the City Attorney as the justice system's component they control that makes the system fair and efficient, or not.

II. Jurisdiction of Municipal Courts:

A. Criminal Jurisdiction:

- Exclusive subject matter jurisdiction over City ordinance violations in the City limits.
- Concurrent subject matter jurisdiction (with JP courts) over state Class C offenses punishable by fines of up to \$500, but jurisdiction also exists for fines of up to \$2,000 for Class C violations relating to fire safety, zoning, public health, and sanitation.
- Magistration of other offenses. In magistration capacity, a municipal court judge has authority to issue warrants for the apprehension and arrest of persons charged with the commission of an offense. As a magistrate, the municipal judge may issue search warrants, arrest warrants, and emergency protection orders; hold preliminary hearings; discharge an accused; or set bail, when applicable.

B. Civil Jurisdiction:

- Dangerous dog cases under Tex. Health & Safety Code § 822.001, et. seq.
- Parking related civil offenses (if civil administrative adjudication system has been approved by ordinance). Tex. Transp. Code § 682.001, et. seq.
- Building demolition & securing, if the municipality chooses to have its hearings before a "civil municipal court". Texas Local Gov't Code § 214.001(p).

C. Geographic Limitations on Jurisdiction:

Municipal Court jurisdiction applies to all areas within the City limits and City-owned properties in their extra-territorial jurisdiction. Municipal courts of home rule municipalities have additional jurisdiction over defined nuisances occurring within 5,000 feet of the City limits. Texas Local Gov't Code § 217.042. Also see Texas Attorney General Opinion No. JC-0025 (1999).

Municipal courts of record have additional geographic jurisdiction over dairies, slaughterhouses, or slaughter pens which produce meat or milk for consumption in the City limits (Tex. Local Gov't Code § 215.072), nuisances within 5,000 feet of the City limits (Tex. Local Gov't Code § 217.042), City-owned parks, grounds, lakes, lands contiguous to lakes, speedways, and boulevards outside the City limits (Tex. Local Gov't Code § 341.903), and groundwater protection outside the City-limits of a 750,000+ City (Tex. Local Gov't Code § 401.002)

MUNICIPAL COURT JURISDICTION

Effective September 1, 2007

City Ordinance		Cite
	Territorial limits (exclusive jurisdiction)	Art. 4.14, C.C.P. Sec. 29.003, G.C.
	Property owned in extraterritorial limits (exclusive jurisdiction)	Sec. 29.003, G.C.
	Extraterritorial limits: nuisance ordinances adopted under Sec. 217.042, L.G.C. (exclusive jurisdiction)	A.G. Op. No. JC-0025
	Extraterritorial limits: concurrent jurisdiction with justice and county court under Section 216.906, L.G.C. (regulation of outdoor signs)	Sec. 26.045, G.C. Art. 4.11, C.C.P.
	Appeals red light civil penalties: A municipal court, including a municipal court of record, shall have exclusive appellate jurisdiction within the municipality's territorial limits in cases arising from Ch. 707, T.C. (Photo Traffic Signal Enforcement)	Sec. 29.003(g), G.C.
	Municipal Court of Record Only: Criminal cases arising under ordinances adopted by home-rule cities authorized by Secs. 215.072, 217.042, 341.903, 401.002, L.G.C. (exclusive jurisdiction): <ul style="list-style-type: none"> • Cases arising from the inspection of dairies, slaughterhouses, or pens in or outside the city limits from which milk or meat is furnished to the residents of the city. (Sec. 215.072) • Nuisances within 5,000 feet outside the city limits. (Sec. 217.042) • Cases from the following areas owned by and located outside a home-rule city: Parks and grounds; lakes and land contiguous to and used in connection with a lake; and speedways and boulevards. (Sec. 341.903, L.G.C.) • Watersheds if population greater than 750,000 and groundwater constitutes more than 75 percent of city's source of water supply. (Sec. 401.002) 	Sec. 30.00005, G.C.
	Municipal Court of Record Only: By ordinance, the governing body can provide for concurrent civil jurisdiction with county courts to enforce nuisance abatement and junk vehicle provisions of Chapters 54 and 214, L.G.C., and Chapter 683, T.C.	Sec. 30.00005(d), G.C.
Joint Board Operating an Airport	Territorial limits: resolution, rule, or order (exclusive jurisdiction) Property owned by city in extraterritorial limits (exclusive jurisdiction)	Sec. 29.003, G.C. Sec. 29.003, G.C.
State Law	Territorial limits Fine-only offenses (concurrent jurisdiction with justice court)	Art. 4.14, C.C.P. Sec. 29.003, G.C.
	Property owned by city in extraterritorial limits (concurrent jurisdiction with justice court)	Sec. 29.003, G.C.
	Territorial limits and property owned by the city in extraterritorial limits (concurrent jurisdiction with the justice court, county court, and county court at law for enforcement of Chapter 503, T.C.)	Sec. 503.092(b), T.C.

Abbreviations:

C.C.P. = Code of Criminal Procedure
 A.G. Op. No. = Attorney General Opinion
 G.C. = Government Code
 T.C. = Transportation Code
 L.G.C. = Local Government Code

Rev. 07/07

III. Municipal Judges:

A. Selection & Qualifications.

Judges in municipal courts are selected pursuant to Charter for home rule cities. Texas Gov't Code § 29.004. In general law cities, the Mayor Is the Municipal Court Judge unless the City Council has established another method of selecting a judge. Texas Gov't Code § 29.004(b). Municipal Court judges serve a two-year term unless a longer term (up to 4 years) is established by ordinance or charter.

Education Requirements: Many home rule charters require their municipal judges to be attorneys. State law does not require such licensure for municipal courts that are not of-record courts. Judges in municipal courts of record must be attorneys unless exempted by their court-of-record statute. Tex. Gov't Code § 30.0006.

State law does require municipal court judges to successfully complete a:

32-hour course if not a licensed attorney in 1st year of appointment, or

12-hour course if licensed attorney in 1st year of appointment & all years thereafter regardless of license

B. Oaths of Office:

Municipal court judges and clerks must swear to and sign a statement of officer and an oath of office upon each appointment or election and upon reappointment or reelection.

I, _____, do solemnly swear (or affirm) that I have not directly or indirectly paid, offered, of value 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. Tex. Const. Art. XVI, Sec. 1.

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.
Tex. Const. Art. XVI, Sec. 1(a).

The oath is usually filed with the city secretary.

IV. Complaints

The charging instrument in municipal court is a complaint. The complaint is a sworn allegation charging an accused with the commission of an offense. Art. 45.018, Tex. Code Crim. Proc. The filing of the complaint vests the municipal court with jurisdiction of the court. *Ex parte Greenwood*, 307 S.W.2d 586 (Tex.Crim.App. 1957).

A written notice to appear for fine-only misdemeanor offenses may serve as a complaint only for defendants to plead guilty, not guilty, or nolo contendere. A legible duplicate copy must have been given to the defendant. Art. 27.14(d), Tex. Code Crim. Proc; Tex. Atty. Gen. Op. JM-869 (1988) and Tex. Atty. Gen. Op. JM-876 (1988). The citation filed with the court may be electronic. Tex. Transp. Code § 543.005.

If the defendant pleads not guilty, a sworn complaint must be filed unless the defense and prosecution agree in writing to go to trial on the citation and file the agreement with the court. Also, when a defendant fails to appear, the court must file a complaint. Art. 45.014, Tex. Code Crim. Proc.

The complaint must:

1. show 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 against the law of this state. Art. 45.019(a)(4), Tex. Code Crim. Proc. The complaint must say that the affiant “does believe” the allegations in the complaint, not just merely that the affiant “has reason to believe.” *Ex Parte Luehr*, 266 S.W.2d 375 (Tex. Crim. App. 1954) and *Barnes v. State*, 363 S.W.2d 471 (Tex.Crim.App. 1963). The affiant is not required to have personal knowledge of the facts. Any credible person acquainted with the facts of the alleged offense either by personal knowledge or hearsay may be an affiant on a complaint. (*Cisco v. State*, 411 S.W.2d 547 (Tex. Crim. App. 1968). In determining the validity of a complaint, a court does not need to ask about the nature of knowledge on which an affiant bases his or her statements. *Naff v. State*, 946 S.W.2d 529 (Tex. App.—Fort Worth 1997).

2. notify the defendant of the alleged offense. A charging instrument must notify a person of the offense so that he or she may prepare a defense. *Kindley v. State*, 879 S.W.2d 261 (Tex.App.—Austin 1982). Defendants are entitled to notice of the charges filed against them not later than the day before any proceeding of the prosecution of the case. Defendants may waive this right to notice. Art. 45.018, Tex. Code Crim. Proc.

3. begin with the words, “In the name and by the authority of the State of Texas” and end with the words, “Against the peace and dignity of the State.” If the offense is a violation of an ordinance, the complaint may also conclude with the words “Contrary to the said ordinance.” Art. 45.019(a)(7), Tex. Code Crim. Proc.

4. allege all of the elements necessary to constitute an offense. *Villareal v. State*, 729 S.W.2d 348 (Tex.App.—El Paso 1987). It is usually, but not always, sufficient to list in the complaint all the elements required by statute to constitute a crime. If there is an exception in the statute which the State must negate, the complaint must also negate the exception. *Bird v. State*, 927 S.W.2d 136 (Tex.App.—Houston [1st Dist.] 1996).

5. plead with sufficient particularity to allow the defendant to plead the judgment as a bar to a second prosecution for the same offense. *Kirk v. State*, 643 S.W.2d 190 (Tex.App.—Austin 1982).

6. allege that the violation occurred within the territorial limits of the city. Art. 45.019(c), Tex. Code Crim. Proc. The complaint must allege the location at which the violation occurred, if the violation is has location as one of its elements. The location need not be specified if the violation is one that could occur at any place within the municipality’s jurisdiction. *Bedwell v. State*, 155 S.W.2d 930 (Tex. 1941). For example, the offense of assault by threat does not require that it only be charged if it occurs in a certain place such as a public place. Speeding, on the other hand, can only occur on a public street. Therefore, speeding is an offense in which the specific location needs to be stated in the complaint. The complaint should state that the defendant violated a certain speed limit on a particular street. Please note, in *State v. Lang*, 916 S.W.2d 63 (Tex.App.—Houston [1st Dist.]), the court held that if a defendant had received a ticket that specified the location of the offense, it was not error to deny a motion to set aside the complaint for failure to state the location.

7. allege a culpable mental state, if offense is not a strict liability offense. The states of mind that a complaint could allege are:

- intentional;
- knowing;
- reckless; and
- with criminal negligence.

If the definition of an offense does not prescribe a culpable mental state, a culpable mental state is nevertheless required unless the definition plainly dispenses with any mental element. Texas Penal Code § 6.02. If a statute (or ordinance) does not say which culpable mental state is required, it must be one of the first three and proof of one establishes criminal responsibility. Texas Penal Code § 6.02.

There are some offenses, such as many Transportation Code offenses, that do not require a culpable mental state. Tex. Att’y Gen’l Op. No. JC-0451 (2002); *Zulauf v. State*, 591 S.W.2d 869 (Tex. Crim. App. 1979). Also, many city codes will contain provisions eliminating the need for a culpable mental state or establishing criminal negligence as the culpable mental state for violations of their provisions. However, a city ordinance may not remove the requirement for a culpable mental state for violation of a city ordinance punishable by a fine exceeding \$500. Texas Penal Code § 6.02. When charging a city ordinance offense, the prosecution may not create new culpable mental states. *Honeycutt v. State*, 627 S.W.2d 417 (Tex. Crim. App. 1982).

8. be signed. A complaint that is not signed by the affiant is defective. *State v. Bender*, 353 S.W.2d 39 (Tex. Crim. App. 1962). A signature on the complaint may be rubber-stamped. *Parsons v. State*, 429 S.W.2d 476 (Tex. Crim. App. 1968); *Murray v. State*, 438 S.W.2d 916 (Tex. Crim. App. 1969). A complaint may also contain an electronic signature. Art. 45.021, Tex. Code Crim. Proc. The name of the affiant need not appear in the body of the complaint. *Parsons v. State*, 429 S.W.2d 476 (Tex. Crim. App. 1968).

9. be sworn. Article 45.019, Tex. Code Crim. Proc, provides that a complaint in municipal court may be sworn to before: (1) the municipal judge; (2) the clerk of the court or a deputy clerk; (3) the city secretary; or (4) the city attorney or a deputy city attorney. If a complaint does not contain a jurat, it is insufficient to constitute a basis for a valid conviction. If the jurat shows that the affidavit was sworn before someone who had no authority to administer the oath, the complaint is invalid. If the jurat is not signed, the complaint is invalid. [*State v. Pierce*, 816 S.W.2d 824 (Tex.App.—Austin 1991)]. An undated jurat renders a complaint defective. *Shackelford v. State*, 516 S.W.2d 180 (Tex. Crim. App. 1974). Where a jurat stated “Sworn to before or about” instead of a specific date, the complaint is defective. *Brown v. State*, 294 S.W.2d 722 (Tex. Crim. App. 1956).

10. be sealed. Article 45.012(g), Tex. Code Crim. Proc, 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 must review Texas Gov’t Code § 30.000125 regarding their seal. These two statutes both require the seal to be impressed on all documents, except subpoenas, and to authenticate the acts of the judge and clerk. However, Article 45.012 does not specify the wording of the seal for non-record courts.

11. allege the manner and means of committing the offense. *Haecker v. State*, 571 S.W.2d 920 (Tex. Crim. App. 1978) and *State v. Jackson*, 571 S.W.2d (Tex. Crim. App. 1978). “Manner” is the method of doing. “Means” is how the end is achieved. For example, in assault cases, the complaint must allege “striking” the victim with his or her hands.

12. if the crime has a victim, name the victim. The complaint is defective if the victim is not named. *Ex Parte Lewis*, 544 S.W.2d 430 (Tex. Crim. App. 1976). A name need only consist of a surname and one or more initials of names other than a surname. Art. 21.07, Tex. Code Crim. Proc. If the name of the victim is incorrect in the complaint, the evidence is insufficient unless the names sound the same. This is the doctrine of idem sonans. Two names are idem sonans if they can be sounded the same despite a variance in spelling. *Grant v. State*, 568 S.W.2d 353 (Tex. Crim. App. 1978) and *McDonald v. State*, 699 S.W. 2d 325 (Tex.App.—San Antonio 1985, no pet.).

13. state the date that the offense was committed as definitely as possible and show that the offense was committed within two years of the date of the complaint. Art 45.019(a)(5) & 12.02, Tex. Code Crim. Proc.

14. in property crimes, such as criminal mischief, trespass, or theft,:

a. indicate who owns the property. *Talamantez v. State*, 59 S.W.2d 1084 (Tex. Crim. App. 1933). If the victim of such a property crime is an entity such as a trust, corporation, or partnership, the better practice is to allege a natural person who is an agent or employee of the entity. *Eaton v. State*, 533 S.W.2d 33 (Tex. Crim. App. 1976). This is often a store manager or security person employed by the victim entity.

b. identify personal property, if known, by the name, kind, number, and ownership of the property. Art. 21.09, Tex. Code Crim. Proc. Failure to fully describe property does not give adequate notice to the defendant, making the complaint defective. *Rhodes v. State*, 560 S.W.2d 665 (Tex. Crim. App. 1978). Also see *Willis v. State*, 544 S.W.2d 151 (Tex. Crim. App. 1976).

c. plead the value of the property with enough sufficiency to show that the amount falls within the jurisdiction of the court. *McKnight v. State*, 387 S.W.2d 662 (Tex. Crim. App. 1965).

Other issues with complaints:

1. Abbreviations. A well-defined and well-understood abbreviation can be used in a charging instrument without rendering it defective. *Andrade v. State*, 622 S.W.2d 446 (Tex. App.—Corpus Christi 1983, pet. ref'd.) and *Barron v. State*, 760 S.W.2d 763 (Tex.App.—Beaumont 1988, no pet.).

2. Errors in Grammar. Mere errors in grammar do not make an otherwise valid complaint invalid. *Butler v. State*, 551 S.W.2d 412 (Tex. Crim. App. 1977).

3. Objections to Complaints. If a defendant does not object to a defect, error, or irregularity of form or substance in a charging instrument before the date of the trial on the merits of the case, the defendant waives and forfeits the right to object to the defect, error, or irregularity. The court may require an objection to the charging instrument be made at an earlier time. Art. 45.019(f), Tex. Code Crim. Proc. If the court has set a pre-trial hearing pursuant to Article 28.01, Tex. Code Crim. Proc., the motion to set aside must be filed at least 7 days before the date of the hearing or it is waived except by permission of the court for good cause.

4. Motions to Quash Complaints. A motion to set aside the complaint, commonly called a motion to quash, is a defendant's challenge to a complaint and a request of the court to enter an order setting aside the complaint because of defects in the complaint or an exception to the complaint. A motion to set aside may be in writing or may be oral. Art. 45.021, Tex. Code Crim. Proc. If a complaint is quashed, the State can refile the charge by a new complaint.

5. Amendments to Complaints. If a complaint is amended, the affiant must "re-swear" to the amended complaint. *Cannon v. State*, 925 S.W.2d 126 (Tex.App.—Amarillo 1996, pet. ref'd).

6. Trial de novo in County Court. A county court conducting a trial de novo on an appeal from a non-record municipal court may dismiss the case because of a defect in the complaint only if the defendant objected to the defect before the trial began in the municipal court. Art. 44.181(a), Tex. Code Crim. Proc. The attorney representing the State may move to amend a defective complaint before the trial de novo begins. Art. 44.181(b), Tex. Code Crim. Proc.

V. Pleas:

A defendant may personally appear or attorney may appear on his/her behalf. Art. 27.14. Tex. Code of Crim. Proc.

A defendant may mail a plea of guilty or nolo contendere to the court with a waiver of jury trial. Art. 27.14 Tex. Code of Crim. Proc. In that case, the Court may dispose of the case without requiring the defendant's personal appearance.

VI. Dismissing Cases

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, Tex. Code Crim. Proc provides that dismissal requires judicial consent or approval for a case to be dismissed, also known as, the judicial veto. If the prosecutor decides not to prosecute a case, the prosecutor must provide a reason in writing for the dismissal, and the judge must approve the reason and agree to dismiss the case.

Courts may not dismiss without the prosecutor's consent. *State v. Johnson*, 821 S.W.2d 609 (Tex. Crim. App. 1991); *Flores v. State*, 487 S.W.2d. (Tex. Crim. App. 1972).

VII. Punishment:

A. Fines

Class C violations are punishable by a maximum fine of \$500, except that zoning, fire safety, and health violations may have fines of up to \$2000 per offense.

Most traffic related state offenses have a fine max of \$200. There are many exceptions:

- ex. Failure to Maintain Financial Responsibility (no insurance) -- \$175 to \$350 fine for first offense
- ex. Failure to comply with warning sign in construction or maintenance zone (when workers are present) Tex Transp Code § 472.022(d)-- \$2 to \$400 fine
- ex. -- 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 operator suffered bodily injury as a result, the offense is punishable by a fine of \$500 to \$2,000. Texas Transportation Code § 542.4045. If a person other than the operator suffered serious bodily injury, the offense is punishable by a fine of \$1,000 to \$4,000.

Prior Convictions---To enhance a penalty for a prior offense, the complaint must allege it is second or subsequent offense.

B. Deferred Disposition:

1. Defendants may be placed by judge on plea of guilt or nolo contendere on deferred disposition for up to 180 days. Art. 45.051, Tex. Code Crim. Proc.

2. Ineligible for Deferred:

- a. Moving violation in a construction work zone. Art. 45.051(f), Tex. Code Crim. Proc.
- b. Violation of law or ordinance related to control of a motor vehicle by a holder of a commercial drivers license (CDL). Art. 45.051(f) Tex. Code Crim. Proc.

- c. Under 25 years of age for moving violation UNLESS defendant takes DDC. Art. 45.051(f) Code of Crim. Proc.
- d. Holder of a provisional license UNLESS judge requires defendant to be examined by DPS under Tex. Transp. Code 521.161(b)(2) and pay DPS a \$10 fee.
- e. Under 21 & charged with specified alcoholic beverage violations UNLESS judge requires alcohol awareness course & community service.

3. Judge may require defendant to:

- a. Post bond to secure payment of the fine (or to secure payment of special expense if defendant agrees on bond form);
- b. Pay restitution to the victim of the offense in an amount not to exceed the fine assessed;
- c. Submit to professional counseling;
- d. Submit to diagnostic testing for alcohol or controlled substance or drug;
- e. Submit to psychosocial assessment;
- f. Participate in an alcohol or drug abuse treatment or education program;
- g. Pay the costs of any diagnostic testing, psychosocial assessment, or participation in a treatment or education program either directly or through the court as court costs;
- h. Complete drivers safety course (DSC) or other course as directed by the judge;
- i. Present to the court satisfactory evidence of compliance with the terms imposed by the judge; and
- j. Comply with any other reasonable condition.

C. Court Costs:

See Texas Municipal Courts Education Center Chart for 2010 at:

[http://www.tmcec.com/tmcec/public/files/File/Resources/Charts/CCCHART%20January%201,%202010%20\(rev.%203-10\).pdf](http://www.tmcec.com/tmcec/public/files/File/Resources/Charts/CCCHART%20January%201,%202010%20(rev.%203-10).pdf)

Effective January 1, 2010



COURT COSTS
For Conviction of Offenses Committed on or after January 1, 2010

OFFENSE/DESCRIPTION	State CF	Local TFC	Local CS	State STF	State SJRF	State IDF	State JSF	Total ^{*2}
MUNICIPAL ORDINANCES								
■ Parking (authorized by Sections 542.202-542.203, Transportation Code)	N/A	N/A	*1	N/A	N/A	N/A	N/A	*1
■ Pedestrian	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
■ Other Municipal Ordinances	40.00	N/A	N/A	N/A	4.00	2.00	6.00	52.00
STATE LAW								
■ Transportation Code, Subtitle C, Rules of the Road								
• Parking & Pedestrian (in school crossing zone)	N/A	3.00	25.00	30.00	N/A	N/A	N/A	58.00
• Parking & Pedestrian (outside school crossing zone)	N/A	3.00	N/A	30.00	N/A	N/A	N/A	33.00
• Overtaking & Passing a School Bus, Section 545.066	40.00	3.00	25.00	30.00	4.00	2.00	6.00	110.00 ^{*2}
• Child Passenger Safety Seat System Offense, Section 545.412 (in school crossing zone)	40.00	3.00	25.00	30.00	4.00	2.00	6.00	110.25 ^{*2,3}
• Child Passenger Safety Seat System Offense, Section 545.412 (outside school crossing zone)	40.00	3.00	N/A	30.00	4.00	2.00	6.00	85.25 ^{*2,3}
• Other (in school crossing zone)	40.00	3.00	25.00	30.00	4.00	2.00	6.00	110.00 ^{*2}
• Other (outside school crossing zone)	40.00	3.00	N/A	30.00	4.00	2.00	6.00	85.00 ^{*2}
■ Transportation Code, Section 601.192, Failure to Maintain Financial Responsibility								
• First conviction	40.00	N/A	N/A	N/A	4.00	2.00	6.00	52.00
• Subsequent convictions	40.00	N/A	N/A	N/A	4.00	2.00	6.00	52.00
■ Parking and Pedestrian (Outside Rules of the Road)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
■ Education Code								
• Parent Contributing to Nonattendance, Section 25.093	40.00	N/A	20.00	N/A	4.00	2.00	6.00	72.00
• Failure to Attend School, Section 25.094	40.00	N/A	20.00	N/A	4.00	2.00	6.00	72.00
■ All other misdemeanors	40.00	N/A	N/A	N/A	4.00	2.00	6.00	52.00 ^{*2}

Add applicable fees and other costs whenever they apply. See next page of chart for additional costs and fees.

For the purpose of assessing, imposing, and collecting *most* court costs and fees, a person is considered to have been convicted if - pursuant to Section 133.101, L.G.C., or other specific statutes authorizing court costs - a judgment, a sentence or both a judgment and a sentence are imposed on the person; or the person receives DSC or some form of deferred disposition (see Articles 45.051-45.053, C.C.P.). This expanded definition of "conviction" does not appear in the Child Passenger Safety Seat statute or the statute establishing the Juror Reimbursement Fee.

*1 ■ \$2-5 court cost for cities with population greater than 850,000 that have adopted appropriate ordinance, regulation, or order (mandatory).

*1 ■ Up to \$5 court cost for cities with population less than 850,000 that have adopted appropriate ordinance, regulation, or order (optional).

*2 ■ **MVF: New 10 cent court cost on all moving violations.** Article 102.022, Code of Criminal Procedure. **Moving violations are found in 37 TAC § 15.89(b).** Note that some moving violations are in codes other than the Transportation Code.

*3 ■ **CSS: New 15 cent court cost.** Section 102.122, G.C. For conviction of Child Passenger Safety Seat System Offense. This fee is to be sent to the Comptroller monthly.

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FEES (Add the following fees whenever they apply):

- **Administrative Fee:** A court may assess up to a \$10 fee when a defendant elects to take a driving safety course (DSC) on or before the answer date on the citation (Art. 45.0511(f)(1), C.C.P.). When the court elects to obtain the defendant's driving record, rather than have defendant obtain it, the court may require defendant to pay \$10 plus the amount of the TexasOnline fee for the certified Texas DL record from DPS. The court may order an administrative fee to be paid when the court grants DSC under Article 45.0511(d), C.C.P. – court's discretionary authority. The fee may not exceed the maximum amount of the possible fine for the particular offense charged (Art. 45.0511(f)(2), C.C.P.).
- **Applicable fees for services of peace officers under Article 102.011, C.C.P.:**
 - **Arrest Fee:** \$5 for issuing a written notice to appear in court following the defendant's violation of a traffic law, municipal ordinance, penal law, or for making an arrest without a warrant. When service is performed by a peace officer employed by the State, 20% (\$1) is sent to the State.
 - **Warrant Fee:** \$50 for executing or processing an issued arrest warrant, capias, or capias pro fine. When service is performed by a peace officer employed by the State, 20% (\$10) is sent to the State.
 - **Summoning a Witness:** \$5 for serving a subpoena.
 - **Summoning a Jury:** \$5 for summoning a jury.
 - **Service of any other writ** (includes summons for a defendant or a child's parents): \$35.
 - **Other costs:** Costs for peace officer's time testifying while off duty.
- **Fees Created by City Ordinance:**
 - **Juvenile Case Manager Fee:** Up to \$5 fee for every fine-only misdemeanor offense if governing body has passed required ordinance establishing a juvenile case manager fund (Art. 102.0174, C.C.P.).
 - **Municipal Court Building Security Fee:** \$3 on every conviction if governing body has passed required ordinance establishing building security fund (Art. 102.017, C.C.P.).
 - **Municipal Court Technology Fee:** Up to \$4 on every conviction if governing body has passed required ordinance establishing the municipal court technology fund (Art. 102.0172, C.C.P.).
- **Jury Fee:** \$3 fee collected upon conviction when case tried before a jury. \$3 fee collected upon conviction if defendant had requested a jury trial and then withdrew the request not earlier than 24 hours before the time of trial; fee to be paid even if case is deferred (Art. 102.004, C.C.P.).
- **Restitution Fee:** \$12 optional fee for defendants paying restitution in installments (Art. 42.037, C.C.P.).
- **Special Expense Fees:** 1) Under Article 45.051, C.C.P., the court may assess a special expense fee not to exceed the amount of fine that could be imposed. (Art. 45.051(c), C.C.P.); and 2) An amount not to exceed \$25 that may be collected for execution of a warrant for *failure to appear* or *violate promise to appear*. City ordinance required to authorize collection (Art. 45.203, C.C.P.).
- **Time Payment Fee:** The court shall collect a fee of \$25 from a person who has been convicted and pays any part of the fine, court costs, or restitution on or after the 31st day after the date on which the judgment is entered. One-half (\$12.50) is sent to the State. One-tenth (\$2.50) is retained locally for judicial efficiency. Four-tenths (\$10) are retained locally with no restrictions (Sec. 133.103, L.G.C.).
- **Traffic Law Failure to Appear (FTA):** \$30 for failure to appear or failure to pay or satisfy a judgment for violation of any fine-only offense if city has contracted with the Department of Public Safety to deny renewal of driver's licenses. (Two-thirds (\$20) are sent to the State. One-third (\$10) is retained locally.) Applies to any violation that municipal court has jurisdiction of under Article 4.14, C.C.P. See Chapter 706, T.C.

Safety Belts & Child Safety Seat Systems: City must remit to the State 50 percent of the fines collected for failing to secure a child in a child passenger safety system or to secure a child in a safety belt (Secs. 545.412 & 545.413(b), T.C.). Remittance must be done at the end of the city's fiscal year.

Excess Fines: Cities with population less than 5,000 must remit all but one dollar of fines and special expenses under Article 45.051, C.C.P., for Title 7, T.C., offenses when the fines and special expenses for such offenses reach 30 percent of the city's budget less any federal money (Section 542.402(b), T.C.).

Name of Cost/Fee	Legal Reference	Abbreviation
Consolidated Fee	Local Government Code, Section 133.102	CF
Traffic Fund	Transportation Code, Section 542.403	TFC
Child Safety Fund	Code of Criminal Procedure, Article 102.014	CS
State Traffic Fee	Transportation Code, Section 542.4031	STF
State Juror Reimbursement Fee	Code of Criminal Procedure, Article 102.0045	SJRF
Indigent Defense Fee	Local Government Code, Section 133.107	IDF
Judicial Support Fee	Local Government Code, Section 133.105	JSF
Moving Violation Fee	Code of Criminal Procedure, Article 102.022	MVF
Child Passenger Safety Seat Fee	Transportation Code, Section 545.412	CSS

D. Community Service

1. Fines and costs imposed by municipal courts, regardless of whether the defendant is an adult or a juvenile, may be discharged by performing community service. Art. 45.049, Tex. Code Crim. Proc. A judge may require a defendant who fails to pay a previously assessed fine or costs, or who is 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. An adult defendant may, at any time, discharge an obligation to perform community service by paying the fines and costs assessed.

2. A judge is required to specify in an order requiring community service the number of hours the defendant is required to work. Community service work must be for a governmental entity or a nonprofit organization that provides services to the public that enhances social welfare and the general well being of the community. The governmental entity or nonprofit organization that accepts a defendant ordered to perform community service must agree to supervise the defendant in the performance of the defendant's work and report on the defendant's work to the judge. A judge may not order more than 16 hours per week of community service unless he or she determines that requiring the defendant to work additional hours does not create a hardship on the defendant or the defendant's dependents.

3. A defendant is considered to have discharged not less than \$50 of fines or costs for each eight hours of community service performed.

4. The municipal judge or officer or employee of the city is not liable for damages arising from an act or failure to act in connection with manual labor performed by a defendant if the act or failure to act was:

- performed pursuant to court order; and
- not intentionally, willfully, or wantonly negligent, or performed with conscious indifference or reckless disregard for the safety of others.

5. Generally, court clerks are responsible for coordinating community service. This includes developing a method of keeping track of defendant's community service orders and completion of services and making certain defendants submit the proper documentation of completion of community service.

VIII. Appeals:

The majority of municipal courts are not courts of record, and appeals from non-record courts go to the county court, the county court at law, or the district court for trials de novo.

Under the authority of Chapter 30 of the Texas Government Code, a municipal court may become a court of record. 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, but the Legislature has authorized both the City of El Paso and the City of 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.

IX. Anti-Speedtrap Law:

Municipalities with a population of less than 5,000 may retain fines for violations of highway laws only in an amount up to 30% of the municipality's revenue from all sources other than federal funds and bond proceeds for the preceding year. After collecting the 30% maximum, the sub-5,000 city must send the State Treasurer the part of any fine exceeding \$1.00. Texas Transportation Code § 542.402. There are reports that the City of Kendleton faced bankruptcy after ignoring this law.

X. Prohibition on Quotas for Peace Officers & Judges:

Texas Transportation Code § 720.002 prohibits cities from establishing or maintaining 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 (quotas). This same prohibition also applies to judges. Cities may not evaluate, promote, compensate, or discipline a judge according to the amount of money the judge collects from persons convicted of a traffic offense. Texas Transportation Code § 720.002(a)(2).

XI. Children in Municipal Courts:

A. Jurisdiction over Children:

Municipal courts have jurisdiction over children over the age of 10 who are charged with most fine-only criminal offenses. See Texas Penal Code § 8.07 and Texas Family Code § 51.03(f). However, municipal judges **may** enter an "order of waiver of jurisdiction" and transfer a pending juvenile defendant's complaint to juvenile court for any fine-only offense other than a traffic or tobacco-related offense. Additionally, Texas Family Code 51.08(b)(1), states that a municipal court **shall** waive jurisdiction and transfer a child's case to the juvenile court if the child has been previously convicted of:

- two or more prior fine-only offenses other than traffic or public intoxication;
- two or more violations of a penal ordinance of a political subdivision other than a traffic offense; or
- one or more of each of the types of misdemeanors described above.

Waiving jurisdiction does not necessarily resolve a matter. A juvenile court may refuse jurisdiction over a case. Therefore, before waiving jurisdiction, the court should coordinate waiver procedures with the juvenile court. The

exception to discretionary waiver is failure to attend school cases. Texas Family Code § 51.08(e) provides that a juvenile court may not refuse a failure to attend school case transferred from a municipal or justice court, as long as the case is legally sufficient.

When a person under the age of 17 is charged with a traffic offense under the Transportation Code, the punishment is the same penalty that is applicable to adults. Texas Transportation Code § 729.001(c).

In a case involving a person under the age of 17, the court is required to summon the parent, managing conservator, or custodian and have him or her present during all proceedings relating to the case filed against his or her child. Art. 45.0215, Tex. Code Crim. Proc. The court may waive the requirement of the presence of the parent or guardian only if after issuance of a summons, the court is unable to secure the presence of the parent or guardian. Art. 45.0215(b), Tex. Code Crim. Proc.

B. Taking Children into Custody:

Children under age 17 may not be ordered to jail by a municipal court. Article 45.058, Tex. Code Crim. Proc. provides procedures for handling a child who is at least 10 years of age and younger than 17 years of age and is charged with or convicted of an offense that municipal courts have jurisdiction of under Article 4.14, Tex. Code Crim. Proc.

A child taken into custody must be:

- released to a parent, guardian, custodian, or other responsible adult;
- taken before a municipal or justice court; or
- taken to a place of nonsecure custody.

“Place of nonsecure custody” is defined as an unlocked multipurpose area. A lobby, office, or interrogation room is suitable if the area is not designated, set aside, or used as a secure detention area and is not part of a secure detention area. A juvenile processing office may be used as a nonsecure custody as long as it is not locked when being used as a nonsecure custody area. While in the custodial area, the child cannot be handcuffed to a chair, rail, or any object and he or she must be under continuous visual observation by a law enforcement officer or a member of the facility staff. The child cannot be held in the facility for longer than is necessary to take the child before a judge or to release the child to the parents. If the child is being held on charges other than municipal court matters, he or she may be held long enough to be identified, investigated, processed, and for transportation to be arranged to a juvenile detention facility. Under no circumstances is the child to be held for more than 6 hours.

C. Juvenile Failure to Appear:

Article 45.060, Tex. Code Crim. Proc, provides that a justice or municipal court may not order the confinement of a person who is a child. Article 45.058(h) defines “child” as a person who is at least 10 years of age and younger than 17 years of age and charged with a fine-only offense. Courts may, however, order persons under the age of 17 to be taken into nonsecure custody (an unlocked multipurpose area). Article 45.058, Tex. Code Crim. Proc, provides procedures for handling these offenders.

Procedures before 17th Birthday: The Court should:

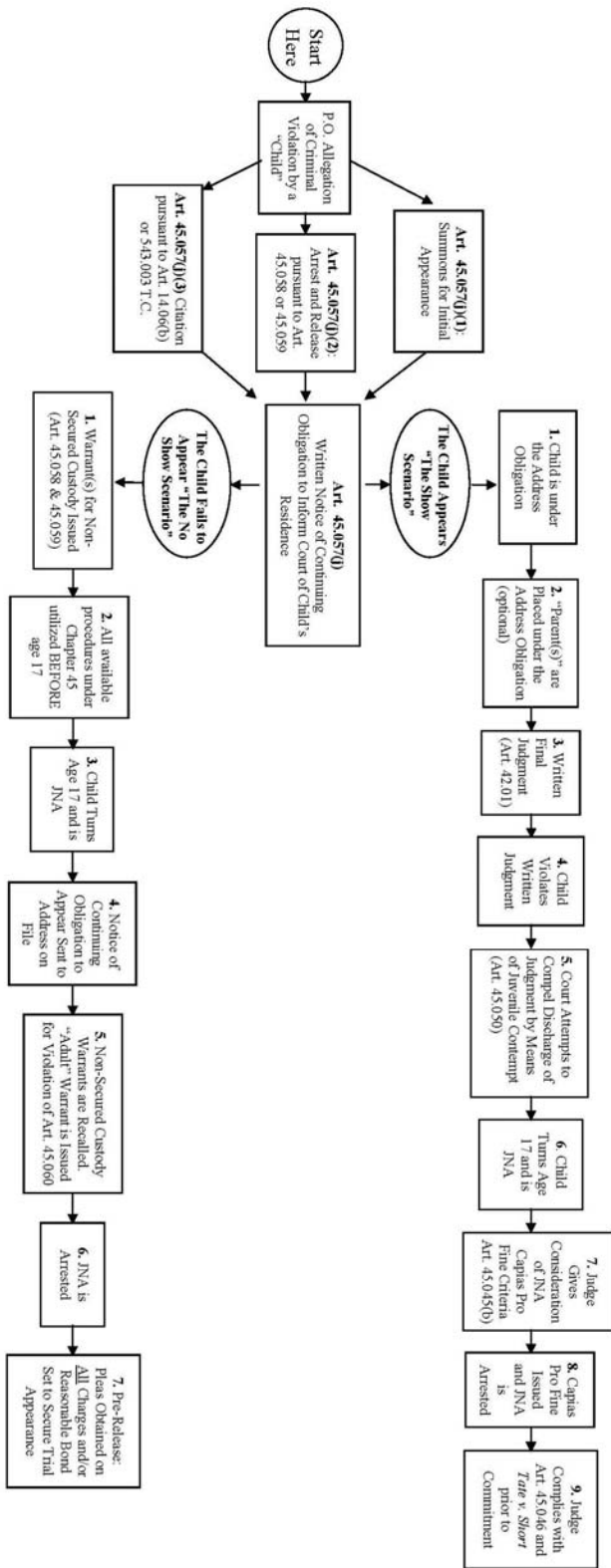
- provide notice to the juvenile and the juvenile’s parents of their continuing obligation to provide the court notice of change of address within seven days of moving Article 45.057, Tex. Code Crim. Proc;
- summon the parents of the juvenile to appear in open court with their child. Articles 45.0215 and 45.057, Tex. Code Crim. Proc;
- order the DPS to suspend or deny issuance of the juvenile’s driver’s license; and
- order the juvenile to be taken into nonsecure custody under Article 45.058, Tex. Code Crim. Proc.

Procedures after 17th Birthday: Article 45.060, Tex. Code Crim. Proc provides procedures for handling a person who committed a crime while under the age of 17 and is now age 17 or older. After the non-appearing child turns 17, the court may issue an order to the juvenile who is now an adult a notice of continuing obligation to appear. The notice may be served by personal service or by mail to the last known address and residence of the individual. The notice to appear must contain the following statement in bold-faced type or capital letters:

“WARNING: COURT RECORDS REVEAL THAT BEFORE YOUR 17TH BIRTHDAY YOU WERE ACCUSED OF A CRIMINAL OFFENSE AND HAVE FAILED TO MAKE AN APPEARANCE OR ENTER A PLEA IN THIS MATTER. AS AN ADULT, YOU ARE NOTIFIED THAT YOU HAVE A CONTINUING OBLIGATION TO APPEAR IN THIS CASE. FAILURE TO APPEAR AS REQUIRED BY THIS NOTICE MAY BE AN ADDITIONAL CRIMINAL OFFENSE AND RESULT IN A WARRANT BEING ISSUED FOR YOUR ARREST.”

If the now-17+ year old defendant fails to appear after being served this notice, the prosecutor may file a charge of violation of continuing obligation to appear. The court may issue an arrest warrant for this charge. When the person is arrested, the court may also handle all of the unadjudicated charges committed by this person as a juvenile.

Juvenile Now Adult (JNA) Flowchart V.3.0
 TMCEC 2003-2004



Note: Unless noted otherwise, all references are to the Code of Criminal Procedure

D. Juvenile Failure to Pay Fine:

Article 45.045, Tex. Code Crim. Proc., provides that a *capias pro fine* may not be issued for an individual convicted of an offense committed before the individual's 17th birthday unless:

- the individual is 17 years of age or older;
- the court proceeded against the individual under Article 45.050, C.C.P; and
- the court finds that the issuance of the *capias pro fine* is justified after considering:
 - the sophistication and maturity of the individual;
 - the criminal record and history of the individual; and
 - the reasonable likelihood of bringing about the discharge of the judgment through the use of procedures and services currently available to the court.

E. Juvenile Failure to Comply with Court Order:

A municipal court may not order a child confined for contempt of an order of the court. Instead, if a child fails to obey an order of the court, the court must give the child notice of a hearing. The court conducts the hearing to give the child an opportunity to tell why he or she violated the court order. If the court determines that the child's conduct constitutes contempt, the court may refer the child to juvenile court for delinquent conduct or retain jurisdiction. If the court decides to refer the child to juvenile court, the court will do an order referring the child to juvenile court. If the court retains jurisdiction, it may hold the child in contempt and impose a fine not to exceed \$500 and/or order the DPS to suspend or deny issuance of the child's driver's license or permit until the child fully complies with the orders of the court.

F. Optional Rehabilitative Sanctions:

Under Article 45.057, Tex. Code Crim. Proc., when a child is convicted of a fine-only offense, the court may enter an order requiring additional rehabilitative sanctions including:

- referring the child or the child's parents, managing conservators, or guardians for services under Texas Family Code § 264.302, which provides for early youth intervention services;
- requiring the child to attend a special program that the court determines to be in the best interest of the child; or
- requiring the child's parent, managing conservator, or guardian, if the court finds the parent, managing conservator, or guardian, by act or omission, contributed to, caused, or encouraged the child's conduct, to do any act or refrain from doing any act that the court determines will increase the likelihood that the child will comply with the orders of the court and that is reasonable and necessary for the welfare of the child, including:
 - attend a parenting class or parental responsibility program; and
 - attend the child's school classes or function.
- requiring the parent, managing conservator, or guardian of a child to attend one of the above mentioned programs and to pay an amount not greater than \$100 for the costs of the program.

Article 45.057(f) of the Tex. Code Crim. Proc provides that an order for a child to attend any special programs is enforceable under Article 45.050, Tex. Code Crim. Proc. Article 45.050 provides that the municipal court may not order a child confined for failure to pay all or any part of a fine or costs or for contempt of another order of the court. If a child fails to obey an order of the court under circumstances that would constitute contempt of court, the court must give the child notice of a hearing. The court conducts the hearing to give the child an opportunity to tell why he or she had violated the court order. If the court determines that the child's conduct constitutes contempt, the court makes a decision whether to refer the child to the juvenile court for delinquent conduct or whether to retain jurisdiction. If the court retains jurisdiction, it may hold the child in contempt and impose a fine not to exceed \$500, and/or order DPS to suspend or deny issuance of the child's driver's license or permit until the child fully complies with the orders of the court.

If a parent fails to comply with a municipal court order, the order is enforceable by contempt. Art. 45.057(h), Tex. Code Crim. Proc.

G. Teen Court:

Teen court is a type of alternative sentencing in which the defendant is sent to a program where he or she is sentenced by other juveniles. Article 45.052, Tex. Code Crim. Proc., provides authority for municipal and justice courts to defer cases and send defendants to a teen court program. The defendant must complete the teen court program not later than the 90th day after the date of the teen court hearing to determine punishment or the last day of the deferral period, whichever date is earlier. The teen court program must be approved by the court. To be eligible, the defendant must:

- enter a plea of guilty or no contest in open court in the presence of a parent, managing conservator, or custodian and request, either in writing or orally, the teen court program;
- be under the age of 18 or enrolled full-time in an accredited secondary school in a program leading toward a high school diploma for 90 days;
- be charged with a misdemeanor punishable by fine-only or a violation of a penal ordinance of a political subdivision, including a traffic offense punishable by fine-only; and
- not have successfully completed a teen court program in the two years preceding the date that the alleged offense occurred.

The judge must dismiss the charge at the conclusion of the deferral period if the defendant presents satisfactory evidence that he or she has successfully completed the teen court program. A charge that is dismissed may not be part of the defendant's criminal record or driving record or used for any purpose. However, if the charge was for a traffic offense, the court shall report to DPS that the defendant successfully completed the teen court program and the date of completion for inclusion in the defendant's driving record. Art. 45.052(d), Tex. Code Crim. Proc.

The judge may assess an optional fee not to exceed \$10 when a defendant requests to participate in a teen court program. This fee is retained by the city. Art. 45.052, Tex. Code Crim. Proc. The court may also assess another \$10 fee to cover the cost of the teen court for performing its duties. This fee is paid to the teen court program, but the program must account to the court for the receipt and disbursement of the fee.

A justice or municipal court may exempt a defendant from the requirement to pay court costs or other fees that are imposed by another statute. Article 45.052(g), Tex. Code Crim. Proc. Thus, judges have authority to waive court costs and fees when granting a defendant the right to participate in a teen court program. Article 45.052(i).

H. Driving Safety Course for Children:

Persons under the age of 17 must make a personal appearance with a parent or guardian in open court to request to take a driving safety course (DSC) or a motorcycle operator course (MOC) on or before the answer date on the citation. The same requirements for taking the course that apply to adults apply to children. Children must pay the court costs when requesting the course the same as adults. If the child does not complete the driving safety course or does not submit all the required evidence, the court is required to notify the child defendant of a show cause hearing.

I. Deferred Disposition for Children:

An alternative to a fine is placing the child on deferred disposition. Art. 45.051, Tex. Code Crim. Proc. Deferred disposition is available for most offenses. A judge may **not** grant deferred disposition for:

- Traffic offenses committed in a construction maintenance zone when workers are present are not eligible for deferred disposition. Texas Transp. Code §§ 472.022 & 543.117; Article 45.051 (f)(1).
- Alcoholic Beverage Code offenses committed by a minor who is not a child and who has been previously convicted at least twice of an offense to which Section 106.071 applies is not eligible to receive a deferral of final disposition of a subsequent offense. Texas Alc. Bev'g Code § 106.071(i).

- A minor who commits the offense of driving under the influence of alcohol and has been previously convicted twice or more of that offense is not eligible for deferred disposition. Texas Alc. Bev'g Code § 106.041(f).
- A minor charged with consuming an alcoholic beverage is not eligible for deferred disposition if he or she has been previously convicted twice or more of consuming an alcoholic beverage. Texas Alc. Bev'g Code § 106.04(d)

If the offense charged is an alcohol offense including public intoxication, the court must require the minor to attend an alcohol awareness program approved by the Texas Commission on Alcohol and Drug Abuse when granting deferred. Texas Alc. Bev'g Code § 106.115.

The judge **shall** require a defendant under the age of 25 charged with a moving traffic violation to complete a driving safety course as a term of deferred disposition. If the defendant has a provisional license, which is a person under the age of 18, and is charged with a moving traffic violation, the judge shall require, as a term of deferred disposition, the defendant to be retested by the DPS for his or her driver's license.

XII. Fine Enforcement and Collection:

Unpaid fines may be collected through:

- capias pro fine
- execution of judgment
- contract with Texas Department of Public Safety for denial of drivers license for traffic offense violations
- contract with County Tax Assessor or TxDOT for denial of vehicle registration for traffic offense violations
- contract for collection of judgment with private vendor

A. Capias Pro Fine

A capias pro fine may be issued when an adult defendant fails to satisfy the terms of a judgment, including when a defendant has made arrangements to pay and does not pay, when a defendant fails to perform community service, or when a defendant pays a judgment with a check that does not have sufficient funds in the bank. The capias pro fine for a defendant's arrest must state the amount of the judgment and sentence and command a peace officer to bring the defendant before the court or place the defendant in jail until the business day following the date of the defendant's arrest if the defendant cannot be brought before the court immediately. Art. 45.045, Tex. Code Crim. Proc.

The court may order the defendant to be confined in jail until the judgment is discharged if the judge determines that the defendant intentionally failed to make a good faith effort to discharge the judgment and the defendant is not indigent. A certified copy of the judgment, sentence, and order is sufficient to authorize such confinement. Art. 45.046, Tex. Code Crim. Proc. In *Jones v. State*, 119 S.W.3d 766 (Tex. Crim. App. 2003) the Court stated that judgments on traffic violations are based on a finding "beyond a reasonable doubt." The Court added, "[t]hus, a judgment for a traffic violation, together with a finding by the court that the defendant has failed to satisfy its terms, will comprise sufficient probable cause to support issuance of the capias pro fine."

Indigency Hearings

If a defendant is indigent, the court may not jail the defendant but must allow the defendant to discharge the fine by community service or through a time payment plan. The court has a duty to inquire into reasons for non-payment to avoid jailing indigent defendants who are unable to pay. See *Garcia v. City of Abilene*, 890 F.2d 773 (5th Cir. 1989), *Doe v. Angelina County*, 733 F. Supp. 245 (E.D. Tex. 1990), *Tate v. Short*, 401 U.S. 395, 91 S.Ct. 668, 28 L.Ed.2d 130 (1971), and *Bearden v. Georgia*, 461 U.S. 660, 103 S.Ct. 2064, 76 L.Ed.2d 221 (1983). If a defendant is indigent, the court may not jail the defendant. Instead, the court must allow the defendant to discharge the fine by community service or on a time payment plan.

B. Execution of Judgment:

Article 45.047, Tex. Code Crim. Proc., 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.

C. Contracts with the Department of Public Safety:

A city may contract with the Texas Department of Public Safety (DPS) to deny renewal of the driver's license of a person who fails to appear for the prosecution of an offense or fails to pay or satisfy a judgment ordering the payment of a fine or costs. Texas Transportation Code § 706.002. 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 a violator 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 driver's license renewal. The warning is in addition to any other warning required by law and may be printed on the citation.

If a case is referred to DPS, it must be "cleared" before a person may get his/her drivers' license renewed. Before a court can send a clearance report to DPS, defendants must pay a \$30 administrative fee (unless acquitted) and do one of the following:

- perfect (complete) an appeal of the case for which the warrant of arrest was issued or judgment arose;
- obtain a dismissal of the charge;
- post bond or give other security to reinstate the charge for which the warrant was issued;
- pay or discharge the fine and costs owed on the outstanding judgment; or
- make suitable arrangements to pay the fine and costs within the court's discretion.

If the case is dismissed, the defendant must still pay the \$30 fee before the court can submit a clearance report. If the defendant is acquitted at trial, or provides proof of financial responsibility or a valid driver's license in response to those violations, no fee is required.

Two additional grounds for discharge without payment of the \$30 fee include a report by the court that the original submission was made in error or that the file was destroyed in accordance with a records retention policy. Texas Transp. Code § 706.005

The \$30 fee is accounted for in the following manner:

- the fee shall be deposited into the city treasury;
- the account may be interest-bearing (city may keep the interest);
- the city must report yearly to the Comptroller and to DPS the amount of funds received and disbursed;
- the city must remit \$20 to the Comptroller on or before the last day of the calendar quarter; and
- the city must retain \$10 locally, \$6 of which is remitted to OmniBase Services, Inc.

D. Contract with County Tax Assessor or Texas Department of Transportation to deny Vehicle Registration for Traffic Offenders:

A home-rule city may contract with the county assessor-collector or the Texas Department of Transportation (TxDOT) 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. Texas Transp. Code § 702.003. Cities that contract for vehicle registration denial must give a statutorily mandated warning to traffic offenders. Tex. Transp. Code § 702.004.

E. Contract for Collection with Private Vendors:

Article 103.0031, Tex. Code Crim. Proc., provides for contracts for collection services. A 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 (Note: Bonds filed by commercial bail bondsman 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;
- 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. (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.)

XIII. Prosecuting in Municipal Court:

A. Prosecutor Ethics

It is the primary duty of the municipal prosecutor not to convict, but to see that justice is done. Article 45.021, Tex. Code Crim. Proc. (CCP)

1. Ethical Duties

The TEXAS RULES OF PROFESSIONAL CONDUCT set out the special responsibilities of a prosecutor. The prosecutor in a criminal case shall:

- a. refrain from prosecuting or threatening to prosecute a charge that the prosecutor knows is not supported by probable cause,
- b. refrain from conducting or assisting in a custodial interrogation of an accused unless the prosecutor has made reasonable efforts to be assured that the accused has been advised of any right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel,
- c. not initiate or encourage efforts to obtain from an unrepresented accused a waiver of important pre-trial, trial, or post-trial rights,
- d. make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connections with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal, and
- e. exercise reasonable care to prevent persons employed or controlled by the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.07.

2. Ethical Issues

Prosecutors will routinely encounter ethical issues in the performance of their duties, such as the following:

- a. Suppression of exculpatory evidence. See rule 3.09(d); *Brady v. Maryland*, 373 U.S. 83 (1963). Note that mitigating evidence must be disclosed as well. The evidence need not establish innocence to be "exculpatory."

- b. Improper statements to the press. See rule 3.07. This includes public criticism of judges controlled by rule 8.02. Prosecutors enjoy prosecutorial immunity for statements made in the courtroom [*Marrero v. City of Hialeah* 625 F.2d 499 (5th Cir. 1980)], but only qualified immunity for other public statements within the scope of their duties. See *Marrero*. There is no immunity for statements not within the scope of duties, and none for incorrect out-of-court statements motivated by bad faith or malice. See *Wyse v. Dept. Of Public Safety*, 733 S.W.2d (Tex. App.- Waco 1986 writ ref. N.R.E.).
- c. *Ex parte* communication with the trial court. Rule 3.05(b); and cannons 3(A)(5) and 8(K), Code of Judicial Conduct.
- d. Prosecution of or threats to prosecute a case unsupported by probable cause. Rule 3.09(a).
- e. Knowing use of false evidence. Rule 3.03(5).
- f. Communications with a party represented by counsel concerning the subject of that representation. Rule 4.02(a). In juvenile court, “parents, spouses, guardians, and guardians ad litem” are parties under the definition in FAMILY CODE §51.02(10).
- g. False statements of material fact. Rules 3.03 (concerning statements made to the court) and 4.01(a) concerning statements made to anyone else.
- h. Threats of criminal prosecution or grievance proceeding, intended to discourage a person’s service as a witness. Rule 4.04.
- i. Comments made to harass, or embarrass or influence the future jury service of a juror who has made the wrong decision. Rule 3.06(d).
- j. Eagerness to win, or anger over not winning, overriding the responsibility to ensure that justice is done, and done properly.

B. Trials

The right to a jury trial is one of the fundamental guarantees of the United States Constitution and the State of Texas Constitution. All people, regardless of race, religion, sex, national origin, or economic status, have the right to trial by a fair and impartial jury.

There are two types of trials that may be held at municipal court: (1) bench trials held before a judge (without a jury); and (2) jury trials held before a petit (6-person) jury.

1. Voir Dire

a. Purpose of Voir Dire

- (1) to enable the parties to intelligently exercise peremptory challenges. *Emanus v. State*, 526 S.W.2d 806 (Cr. App 1975)
- (2) to convene a competent, fair, impartial, and unprejudiced jury to judge facts of the case. *Bowser v. State*, 865 S.W.2d 482 (App. 13 Dist. 1993)
- (3) to expose bias or interest of prospective jurors which might prevent full consideration of evidence presented at trial and to test the qualifications of jurors. *Tobar v. State*, 874 S.W.2d 87 (App. 13 Dist. 1994)

Each party gets three strikes. Art. 35.17, TEX. CODE CRIM. PROC. When the court in its discretion so directs, the State and Defendant shall conduct the voir dire examination of prospective jurors in the presences of the entire panel. The purpose of voir dire is to expose and remove the other sides jurors while keeping your jurors on the panel.

b. Regulation of Voir Dire

Voir Dire examination rests within the sound discretion of the trial court, and only abuse of discretion will call for reversal on appeal; the trial court may, therefore, impose reasonable restrictions on the exercise of voir dire examination. *Brumley v. State*, 804 S.W.2d 659 (App. 7 Dist. 1991).

The trial court, in its discretion may place reasonable time limits on the length of voir dire examination, and within such limits defendant may examine each prospective juror individually and pose questions upon any proper area of inquiry; the right to impose such questions is part of the right to counsel under the U.S. Constitution article 1, section 10, in order that peremptory challenges may be exercised intelligently. *Florio v. State*, 568 S.W.2d 132 (Cr. App. 1978).

2. Opening Statement

The opening statement is a contest for the imagination of the jury. It is the single best method to explain your case to the jurors. Your goal is to find the narrative and tell the story (that you can support with competent testimony and admissible evidence). Enthusiastically acquaint the jurors with the plot, the place, and the people involved in the case. It is a good opportunity to attribute favorable human qualities to your client, face and neutralize frailties in your case, and establish a harmonious presence with the jurors. The ideal opening statement paves the road to the verdict you seek.

Tips for Opening statements

- (1) Look and sound good from the beginning. Put your best foot forward.
- (2) Be enthusiastic about your message and story.
- (3) Make sure your verbal and visual story paints mental pictures for the jurors.
- (4) Begin your opening statement with a strong attention-getting "hook" that grabs the jurors' attention
- (5) Remember the principle of *primacy* that states that, all other things being equal, jurors are more attentive and receptive to information at the beginning of the opening statement.
- (6) Be *succinct* and *substantive* in your opening.
- (7) Prosecutors are at a storytelling disadvantage in opening that will often leave them open to objection. The rules require the prosecution to open first. In opening statement, due to the burden of proof and the presumption of innocence, prosecutors are typically not allowed to anticipate defense testimony. You cannot talk about any evidence that may be presented by the defense.
- (8) Don't overstate your case. Don't make promises in opening that you will not be able to keep.
- (9) Be careful in opening statement not to expand the admissibility of otherwise excludable evidence. Don't open the door!
- (10) Never read the opening statement to the jury. It's more persuasive to work without notes.

3. Case-in-Chief/Direct Examination

It's been said that a good lawyer turns evidence into fact and fact into truth. Because they bear the burden of proving the case beyond a reasonable doubt, prosecutors must call witnesses in every trial. Direct examination is the keystone of the prosecution's case. Your job is to use the direct persuasively and in a manner that establishes the foundation for your jury argument.

Direct Examination presents evidence in a form that is:

- (1) legally sufficient to meet the burden of proof,
- (2) understood and remembered,
- (3) convincing,
- (4) able to withstand cross-examination, and
- (5) anticipatory and contradictory of evidence that the opposition will present.

Legal requirements for a direct examination:

- (1) Competency of your witness. The first legal requirement is that your witness must be *competent* to testify. To qualify as competent, a witness must have:
 - (a) Understanding of the nature and obligation of the oath or affirmation to tell the truth,
 - (b) Perception (knowledge) of the relevant event,
 - (c) Recollection (memory) of the relevant event, and
 - (d) Ability to communicate with the fact-finders (the jury or judge in a bench trial) in the common language of the court. (English or through a certified translator into English).
- (2) Relevance of your witness' testimony. The second legal requirement for your direct examination is that your witness' testimony must be relevant. Relevant evidence has some tendency, however small, to make the existence of a fact of consequence to the case more or less probable than it would be without it. Even when the witness' direct examination testimony is relevant, the probative value of the witness' evidence must not be substantially outweighed by its unfairly prejudicial influence or by considerations of undue delay or needless presentation of cumulative evidence.
- (3) Authenticity of matters of evidence to show that the item in question is what its proponent claims. The third requirement for your direct examination is that matters of evidence must be authenticated. You authenticate an item of evidence by making a prima facie showing that it is genuine.
- (4) Proper evidentiary foundation or predicate for the admissibility of the evidence. Certain items of evidence require special foundations to establish admissibility.

4. Cross Examination

Cross Examination affords a prosecutor the opportunity to tell the rest of the story (in a supportive cross), and to cast doubt on the witness' credibility (in a discrediting cross). During your cross you want to tell certain aspects of your side of the story and have the witness agree with you or concede the accuracy of your points. You do this without getting into an argument with the witness you are crossing, maintaining a calm demeanor and requesting

appropriate court instructions when necessary, especially against an ever more agitated hostile witness earns points with the jury.

5. Closing

- (1) Prosecutors get the first and final word. Tell the jury what the evidence means.
- (2) Open your argument with an attention-getting sentence or two. Say something that fixes the jurors' full attention on what you have to say next.
- (3) After you have gained their attention, tell your jurors what is yet to come. Give them a brief verbal outline (forecast or preview) of where you are going with your argument.
- (4) Prosecutors should listen closely to the defense argument. Prosecutors have the opportunity to reply to the defense argument in the prosecution's closing (rebuttal) argument. To reply effectively to what has been said, you must know what has been said.
- (5) Recognize that you won't be able to change the juror's basic life view or way of thinking. Try to present your argument in a way that caters to the jurors' world view, not yours.
- (6) Try to answer the questions that you think the jurors would ask if they were allowed to do so.
- (7) Don't ask your jurors to assume too much. Explain why any assumption you make is logical.
- (8) Don't ask your jurors to presume the existence of facts that don't flow logically, either by deductive or inductive reasoning, from other facts proven by evidence.
- (9) Give the jurors reasons to trust the accuracy and credibility of the sources of your evidence.
- (10) Identify the major problems with your opponent's argument. Challenge its weaknesses point by point.
- (11) Discuss your main points in plain English; talk about the evidence and explain what it means in light of the allegations and defenses; respond to opposition's theory of the case.
- (12) As you complete the body of your argument, summarize your points. Connect the dots.
- (13) End your argument on a strong note. You may want to tie your case together with a closure that restates the theme that you used in your opening statement.
- (14) What you say at the beginning and conclusion of your argument will resonate more loudly and stick longer than what you say in the body of the argument.
- (15) The only parts of the argument that you memorize are the beginning and ending. All the rest is extemporaneous (well planned and prepared, but without the exact wording being determined in advance).
- (16) Victory comes when your jury argument helps you persuade, convince and influence the jury to think something you want them to think and do something you want them to do.

C. Mistrials

1. Although the prosecutor should "prosecute with earnestness and vigor," he may not use "improper methods calculated to produce a wrongful conviction." Generally, the use of such methods is grounds for mistrial or reversal of a conviction if it results in an unfair trial which violates the Due Process Clause. If the prosecutorial misconduct is intended to cause a mistrial, the Double Jeopardy Clause may bar further prosecution.
2. To justify reversal of a conviction, it is not enough that the prosecutor's remarks or conduct were improper: The relevant question is whether the prosecutor's comments so infected the trial with unfairness as to make the resulting conviction a denial of due process.'
3. Generally, a court will not reverse a conviction because of improper comments by the prosecutor if evidence of the defendant's guilt is overwhelming, if the trial court offers curative instructions to the jury, if the misconduct has little cumulative effect on the jury, or if a combination of these three factors ensures no violation of due process.

Things a prosecutor can say that may result in a mistrial

1. A prosecutor should avoid making unfair or improper remarks about the defendant, defense counsel, or a defense witness.

U.S. v. Crutchfield, 26 F.3d 1098, 1101-02 (11th Cir. 1994) (prosecutor's irrelevant questions insinuating that defense witness involved in major drug operations and other misconduct reversible error).
2. She may not express personal opinions about the defendant's guilt or credibility or about matters requiring expert knowledge.
3. The prosecutor may not comment on the defendant's failure to testify at trial.
4. A prosecutor may not refer to previous convictions, current guilty pleas, or other bad acts of the defendant, codefendants, or co-conspirators.

U.S. v. Mitchell, 1 F.3d 235, 240 (4th Cir. 1993) (prosecutor's argument that defendant's brother's testimony should be disbelieved by jury because defendant's brother's own jury had disbelieved him reversible error).
5. The prosecutor may not vouch for the credibility of government witnesses or allude to her own oath of office to bolster the government's case
6. The prosecutor also may not appeal to jurors to act as a conscience for the community or make other remarks likely to inflame the passions of the jurors, if intended to lead them to convict for an improper reason.

U.S. v. Cannon, 88 F.3d 1495, 1502-03 (8th Cir. 1996) (prosecutor's improper reference to African-American defendants as "bad people" and calling attention to fact that defendants not locals reversible error).

U.S. v. Payne, 2 F.3d 706, 711-15 (6th Cir. 1993) (per curiam) (prosecutor's repeated references to Christmastime, poor, pregnant women, and major employee layoffs reversible error where "part of a calculated effort to evoke strong sympathetic emotions" for victims and against defendants).
7. Prosecutors may not make material misstatements of law or fact.

U.S. v. Murrah, 888 F.2d 24, 27-28 (5th Cir. 1989) (prosecutor's repeated references to evidence not in record in both opening and closing argument and attacks on integrity of defense counsel reversible error).

8. The prosecutor should confine her opening statement to evidence she intends to offer that she believes will be admissible, and limit her closing argument to evidence on the record and permissible inferences therefrom. Repeated misstatements that go uncorrected may be grounds for ordering a new trial or reversal on appeal.

U.S. v. Teffera, 985 F.2d 1082, 1089 n.6 (D.C. Cir. 1993) (dictum) (prosecutor's improper references during closing argument to alleged eye contact between co-defendants at time of arrest reversible error where comments not supported by evidence, "phantom evidence" key part of government's closing remarks).

State v. Daugherty (1987), 41 Ohio App. 3d 91 -- Mistrial should have been declared where prosecutor improperly implied that defendant's employment records would contradict her testimony, then failed to produce those records. On later examination, records in fact corroborated defendant's testimony.

9. The prosecutor may not suggest that the defendant's retention of counsel indicates guilt.

Additional Information on Municipal Court Operations:

The best source of information on Texas municipal courts is the Texas Municipal Courts Education Center (TMCEC), which is available at <http://www.tmcec.com>. It was largely funded by a grant from the Texas Court of Criminal Appeals and provides training and publications for municipal court judges, prosecutors, and clerks. When advising the court, a City Attorney should become familiar with all available publications, regardless of whether they were prepared for prosecutors or one of the other groups served by the TMCEC. Much of the substantive information for this paper came from and many answers to Municipal Court prosecution questions will be found in the:

TMCEC Forms Book at http://www.tmcec.com/tmcec/Resources/Books/Forms_Book

TMCEC Bench Book at http://www.tmcec.com/tmcec/Resources/Books/Bench_Book

TMCEC Pamphlets at <http://www.tmcec.com/tmcec/Resources/Pamphlets/>

TMCEC Study Guides at http://www.tmcec.com/tmcec/Resources/Clerk_Study_Guides

TMCEC Charts at <http://www.tmcec.com/tmcec/Resources/Charts/>