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CENTER

VERSION 4

BENCH BOOK

FUNDED BY A GRANT FROM THE TEXAS COURT OF CRIMINAL APPEALS

MESSAGE FROM THE DIRECTOR

The *TMCEC Bench Book* project is designed as a quick reference for judges serving in the Texas municipal courts. This is the 4th edition of this publication. The original version was printed in 1996 and made possible through the contributions of the following volunteers:

Mr. W. Clay Abbott, Assistant District Attorney, Lubbock
The Honorable Sam Alfano, Municipal Court Judge, City of Houston
The Honorable Toni Baggett, Presiding Judge, City of Plano
The Honorable Robert Beasley, Presiding Judge, City of Garland
Mr. James Bethke - Special Counsel to Trial Courts, Office of Court Administration, Austin
Mr. Charles Bubany, George Herman Mahon Professor, Texas Tech University School of Law
Professor Robert O. Dawson, Professor of Law, University of Texas
Mr. Robert Flowers, Executive Director, Texas Commission on Judicial Conduct (Retired)
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The Honorable Allen Gilbert, Presiding Judge, City of San Angelo
Mr. Nigel Gusdorf, Attorney at Law, Austin
Ms. Rosie Hernandez, Secretary, City of Houston
The Honorable Vonciel Jones Hill, Municipal Court Judge, City of Dallas
The Honorable Don Higginbotham, Former Presiding Judge, City of Georgetown
Mr. Ken Johnson, Assistant City Attorney, City of Odessa
Ms. Joan Kennerly, Assistant City Attorney, City of Irving
Ms. Hope Lochridge, Executive Director, TMCEC
The Honorable Kevin Madison, Presiding Judge, Cities of Cedar Park and Lakeway, Villages of Briarcliff and Bee Cave
The Honorable Mike McCormick, Presiding Judge, Court of Criminal Appeals

Ms. Jade Meeker, Attorney at Law, Austin
Mr. Mark Muellerweiss, Assistant Attorney, City of Houston
Ms. Stella Ortiz Kyle, Former Presiding Judge, City of San Antonio
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The Honorable Robert Richter, Jr., Municipal Court Judge, City of Missouri City
Ms. Margaret Robbins, Program Director, TMCEC
The Honorable Phil Sanders, Former Municipal Court Judge, City of Austin
Mr. Marshall Shelsy, Staff Attorney, Harris County Criminal Courts at Law, City of Houston
Mr. Jean Shotts, Assistant City Attorney, City of Garland
The Honorable John Smith, Municipal Court Judge, City of San Antonio
The Honorable Robin Smith, Presiding Judge, City of Midland
The Honorable Charles Thorn, Presiding Judge, City of North Richland Hills
The Honorable John Wildenthal, Municipal Court Judge, City of Houston
The Honorable Steven Williamson, Municipal Court Judge, City of Fort Worth

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Austin, Texas
Fall 2001

Hope Lochridge, Executive Director
Texas Municipal Courts Education Center

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ABBREVIATIONS

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

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4-3	<i>Williams v. State</i> , 549 S.W.2d 183, 187 (Tex. Crim. App. 1977)
8-18	<i>Williams v. State</i> , 719 S.W.2d 573 (Tex. Crim. App. 1986)
8-38	<i>Williams v. State</i> , 767 S.W.2d 872 (Tex. App.—Dallas 1989, pet. ref'd)
3-10	<i>Wood v. State</i> , 573 S.W.2d 207 (Tex. Crim. App. 1978)

CHAPTER 1 JUDICIAL CONDUCT

A. Preamble

Code of Judicial Conduct	Notes
<p>(Amended June 21, 1999)</p> <p>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.</p> <p>The Code of Judicial Conduct is not intended as an exhaustive guide for the conduct of judges. They should also be governed in their judicial and personal conduct by general ethical standards. The Code is intended, however, to state basic standards which govern the conduct of all judges and to provide guidance to assist judges in establishing and maintaining high standards of judicial and personal conduct.</p> <p>The examples of opinions and sanctions are not exhaustive and are included to provide direction. For a more complete collection of materials, please see Texas Code of Judicial Conduct Annotated; College of Advanced Judicial Studies, First Edition; or www.courts.state.tx.us/judethics; or www.courts.state.tx.us/links/scojc.asp.</p>	<p>The Judicial Ethics Committee of the State Bar of Texas issues opinions based upon written questions about the Code of Judicial Conduct. Opinions are included when relevant. To request an opinion, pose the issue in the form of a question and submit to: The Honorable Suzanne Stovall 221st District Court Montgomery County Courthouse Conroe, Texas 77301</p> <p>A request may be faxed to Judge Stovall at 409/788-8364.</p> <p>The Judicial Ethics Committee of the State Bar of Texas is independent and should not be confused with the State Commission on Judicial Conduct.</p>

CHAPTER 1 JUDICIAL CONDUCT

B. Canon 1 - Upholding the Integrity and Independence of the Judiciary

Code of Judicial Conduct	Notes
<p>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.</p>	<p><i>OPINION 260 (2000)</i></p> <p>□ Annotation: Canon 2(A) says that 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. Furthermore, Canon 1 states that 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. A county court at law judge presiding over cases where the county judge acts as an attorney would violate these two canons. The county judge has administrative authority (<i>i.e.</i>, budget approval, etc.) over all county departments and divisions, including the county courts at law. Canon 6B(3) authorizes the county judge to practice law in this court. The county court at law judge should be mindful of the appearance of impropriety. The practice of law by the county judge in this judicial forum may create the appearance of partiality and may call into question the integrity and independence of the</p>

judiciary.

OPINION 225 (1998)

☐ Annotation:

A judge may not allow his or her name, or the court's name to be included in any general law enforcement program material, such as a "a war on hot checks" decal. Such action may imply that the judge is biased in favor of the state or law enforcement and raise issues concerning the separation of the judicial branch of government from the executive branch (which includes prosecutors and law enforcement).

OPINION 198 (1996)

☐ Annotation:

A judge should not be the subject of a fundraising "roast." While it is permissible to be a speaker or guest of honor at a fundraiser, it might undermine the integrity of the judiciary for a judge to be the subject of a public "roast."

OPINION 173 (1994)

☐ Annotation:

A municipal court judge may not serve simultaneously as city attorney for the same city.

CHAPTER 1 JUDICIAL CONDUCT

C. Canon 2 - Avoiding Impropriety and the Appearance of Impropriety in All of the Judge's Activities

Code of Judicial Conduct	Notes
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.	<p><i>Public Reprimand and Order of Additional Education (2001)</i></p> <p>A judge was publicly reprimanded for operating a motor vehicle while intoxicated thereby casting public discredit to the judiciary. DWI charges were dismissed by the local prosecutor. The judge made contributions to law enforcement charities and pled guilty to public intoxication.</p> <p><i>Public Warning (2001)</i></p> <p>A judge was publicly warned for conduct resulting in the judge's arrest for disorderly conduct. The judge resigned his position as a municipal judge. The case remained pending at the time of the warning.</p> <p><i>Public Admonition (2001)</i></p> <p>A judge was admonished for holding court at a local high school and conducting 23 contempt proceedings without prior notice or notice to minor students' parents. He was also admonished for failing to give the defendants an opportunity to obtain counsel.</p>

Public Censure (1999)

The judge imposed or attempted to impose local county rules in his own deposition conducted in a lawsuit in a neighboring county; he ordered armed bailiffs present at the deposition to confiscate the videographer's videotape; and directed that the videotape and audiotape of the deposition be sent to the judge of a specific district.

Public Censure (2000)

The judge set appearance bonds totaling \$690,000, which he knew or should have known were excessive. Additionally, in issuing arrest warrants, the judge relied on officers' representations rather than the judge's own independent judgment as a magistrate to issue arrest warrants.

Public Warning (1999)

The judge conducted hearings on motions to enforce child support orders after acting as counsel of record in a prior proceeding in the same case.

Public Admonition (1999)

The judge assessed fines in water district ordinance cases after the statute authorizing such penalties had been repealed, and wrongly held hearings on an

“instanter” basis.

*Private Order of Education
(1999)*

The judge permitted the court staff to telephone a traffic defendant to attempt to persuade the defendant to waive the right to a trial. In a separate case, the judge negotiated a plea bargain agreement and the “instanter” payment of the fine and costs imposed on a traffic defendant.

*Private Order of Education
(1999)*

The judge improperly ordered a young man to remove his earring or leave the premises of the courthouse.

*Opinion of the Special Court of
Review (2000)*

A judge was publicly admonished and ordered to obtain additional education because he improperly: (1) issued writs of attachment in lieu of the appropriate summons or arrest warrants in peace bond proceedings; (2) issued writs of attachment on the basis of oral testimony; and (3) ordered the defendant and victim to mediation as part of the peace bond process, although he had no authority to order, suggest, or refer criminal cases to

mediation. [Violation of 2A and 3B(2).]

Public Admonition (2000)

A judge required membership in a particular voluntary organization, *i.e.*, the Houston Bar Association, as a prerequisite for judicial appointments. Additionally, the judge had an impermissible *ex parte* conversation with a defendant regarding the merits of the defendant's criminal case. Following the *ex parte* conversation, the judge announced from the bench that he desired to revise the sentence that he had imposed moments before. [Violation of Canons 2A, 2B, 3B(8), and 3C(4).]

Public Reprimand (2000)

A judge made offensive racial statements to city police officers in the presence of citizens, and conveyed that he had the power to influence other judges in advancing the private interests of his grandson who was issued a traffic citation. [Violation of Canons 2A, 2B, 3B(4), and 4A.]

Public Reprimand (2000)

Without a hearing or notice to the prosecutor, the judge unilaterally changed a bond that was set by another magistrate. The judge changed the bond as a personal favor to the

defendant's brother, who was a long-time personal acquaintance of the judge. Additionally, the judge voluntarily appeared as a character witness at a sentencing hearing on behalf of a criminal defendant. [Violation of Canons 2A, 2B, 3B(2), and 3B(8).]

Public Order of Additional Education (2000)

A judge ordered a mother to ensure that her daughter complied with court-ordered community service. When the daughter did not comply, the judge acted without legal authority by: (1) issuing an arrest warrant against the mother based on a legally defective affidavit/complaint; (2) requiring the mother to obtain a cash-only bond to the exclusion of a surety bond; (3) failing to conduct an indigency hearing before committing the mother to jail to pay off the time he had imposed against her; (4) failing to offer the mother the options of paying the time in installments or performing community service in lieu of jail; and (5) ordering the mother to be confined in jail for her "disrespect" rather than finding her in contempt of court. [Violation of Canons 2A, 3B(2), and 3B(4).]

Public Reprimand (2000)

A judge ordered a traffic defendant, who had damaged

the judge's car in an auto accident, to pay restitution directly to the judge. The judge, as the injured party, should have known she was disqualified to hear the matter. Even though the defendant had not entered a plea, the judge assumed the defendant's guilt, assessed the defendant's punishment and fines, and ordered the defendant to pay restitution directly to the judge without providing the defendant with the full range of options available to the defendant. The judge acted in a discourteous and intemperate manner during the proceedings. [Violation of Canons 2A, 2B, 3B(1), 3B(4), and 3B(5).]

Public Reprimand (2000)

A judge telephoned juvenile girls who were on probation in his court for truancy and engaged in explicit sexual conversations. Additionally, the judge pled no contest to the charge of official oppression. [Violation of Canons 2A, 2B, and 3B(4).]

Private Warning and Order of Additional Education (2000)

After a judge's court had lost jurisdiction over the civil case, the judge assisted the plaintiff in collecting on the judgment. Without holding a hearing, the judge held the defendant in contempt for failure to pay the judgment and issued a warrant for the defendant's arrest. In a separate criminal case, the judge

issued an arrest warrant for an unnamed defendant based upon a sworn complaint, which was devoid of specifics. [Violation of Canons 2A, 2B, and 3B(2).]

Private Reprimand (2000)

The judge, whose court has jurisdiction over alcohol-related offenses, pled guilty to the charge of driving while intoxicated. [Violation of Canons 2A and 4A(1)].

Private Admonition and Order of Additional Education (2000)

A judge improperly conducted "informal" peace bond hearings. After some of the "informal" hearings, the judge granted the peace bonds without requiring the defendants to post cash or surety bonds. In a separate case, the judge engaged in improper *ex parte* communications with another judge and wrote a letter to the other judge on behalf of a private citizen. [Violation of Canons 2A, 2B, and 6C(2).]

Private Order of Additional Education (2000)

Prior to the expiration of the 30 additional days allowed by law for a traffic defendant to present a certificate of completion of a driving safety course, the judge issued a show cause order requiring the defendant to appear and explain why the

defendant had not submitted the certificate of completion, rendered a judgment against the defendant, and issued a capias pro fine for the arrest of the defendant for failure to submit the certificate of completion. [Violation of Canons 2A and 3B(2).]

Private Order of Additional Education (2000)

A judge held a litigant in contempt of court when court was not in session and committed the litigant to jail. In addition, the judge failed to maintain professional competence in the law. [Violation of Canons 2A and 3B(2).]

Private Warning and Order of Additional Education (2000)

A judge sought information on a juvenile from the police to help a friend and former employee, and the judge admonished the juvenile when no case was pending before the judge's court. [Violation of Canons 2A, 2B, and 3B(10).]

Private Order of Additional Education (2000)

A judge refused to allow the public to view court records, which by law are open to the public. [Violation of Canon 2A.]

Private Order of Additional

Education (2000)

A judge presided over a hearing in an attempt to settle a dispute between parties when no case was pending in the judge's court. [Violation of Canon 2A.]

Private Warning (2001)

A judge failed to obtain the mandatory judicial education hours during fiscal year 1999. [Violation of Canons 2A and 3B(2).] (Private warnings were made to five judges in 2000 and four judges in 1999.)

Private Order of Additional Education (2000)

When a defendant failed to appear, a judge entered a default judgment in favor of the plaintiff for \$62 in court costs only. The judgment was not signed by the judge and did not have the court seal in place. The plaintiff later obtained from court personnel a copy of a document appearing to be a final judgment awarding the plaintiff \$5,000, which was stamped with the judge's official seal and signed with a stamped signature. The judge did not review the document nor did he direct his court personnel to stamp the document with the judge's signature in the judge's presence. Instead, the judge allowed court personnel to have access to the stamp and official seal, and in the judge's absence,

use the judge's signature stamp on documents and letters. This practice resulted in an incorrect judgment being provided to the plaintiff. [Violation of Canon 2A.]

OPINION 242 (1999)

A municipal court judge may not be employed as a certified peace officer/bailiff. If the judge is a certified peace officer, he or she must be completely on inactive status as a peace officer. A judge handling criminal cases who is actively employed as a peace officer would create an appearance of impropriety.

Public Statement (2000)

The State Commission on Judicial Conduct concluded that any judge who attempted to serve as both a peace officer and a judge irrevocably undermines the public's confidence in the judiciary.

Public Reprimand (2001)

A judge continued to serve as both a judge and a law enforcement officer after the Public Statement (above) was issued. The commission reprimanded the judge for violations of Canon 2A and Canons 4A(1) and 4D(1) of the Texas Code of Judicial Conduct.

Public Reprimand (1999)

A judge, whose court has jurisdiction over alcohol-related

misdemeanor offenses, on his own behalf entered a plea of *nolo contendere* in municipal court to the charge of public intoxication. [Violation of Canon 2A.]

Public Admonition (1999)

A judge appointed his son to represent litigants in his court and ordered his son paid from county funds. [Violation of Canon 2A and 3C(4).]

Public Reprimand (1999)

A judge appointed his long-time friend and former bailiff as a member, and as the foreman, of the grand jury. The judge also appointed a second grand jury without discharging the first grand jury. [Violation of Canons 2A and 3C(4).]

Private Warning (1999)

A judge limited an attorney's ability to practice law in the judge's court and advised the attorney that the judge intended to treat the attorney differently than other attorneys appearing in the judge's court. [Violation of Canons 2A, 3B(5), and 3B(8).]

Private Admonition (1999)

A judge's son-in-law and the son-in-law's acquaintance approached the judge about filing criminal charges against a person who allegedly assaulted the son-in-law and the

acquaintance in the same incident. The judge accepted criminal charges from the acquaintance only, issued an arrest warrant for the person who allegedly assaulted him and recommended an appearance bond on charges arising from an altercation in which his son-in-law participated. [Violation of Canons 2A and 2B.]

Private Admonition and Order of Additional Education (1999)

The judge inappropriately refused a defendant's request to contact an attorney when the defendant was brought before the judge for magistration in a criminal proceeding. Instead, the judge asked if the defendant wanted to enter a plea. In a separate civil case, the judge entered a default judgment in favor of the judge's bailiff. In addition, the judge refused to accept a pauper's affidavit for filing and denied a party's access to the court's file in the matter. [Violation of Canons 2A, 2B, and 3B(4).]

Private Order of Additional Education (1999)

Although no case was pending in a judge's court, the judge telephoned and personally met with a landlord to encourage the landlord to resolve the dispute with a tenant, and issued to the landlord a letter on official stationery. The judge presided over an action filed later by the

tenant against the landlord, after engaging in numerous *ex parte* communications with each party. Instead of scheduling the hearing in accordance with the time frames set forth in the Texas Property Code, the judge conducted the hearing on the same day the landlord was served with the citation. [Violation of Canons 2A, 2B, and 6C(2).]

Private Warning and Order of Additional Education (1999)

The judge accepted personal property from a criminal defendant in lieu of payment of court costs. [Violation of Canon 2A.]

Private Admonition (1999)

A judge magistered and secured the release of the judge's son. [Violation of Canon 2A.]

Private Warning (1999)

A judge made improper comments to an attorney, including a threat to take retaliatory action against the attorney. [Violation of Canons 2A, 3B(4), and 3B(5).]

Private Order of Additional Education (1999)

A judge permitted the court staff to telephone a traffic defendant to attempt to persuade the defendant to waive the right to a

trial. In a separate case, the judge negotiated a plea bargain agreement and the "instant" payment of the fine and costs imposed on a traffic defendant. [Violation of Canons 2A and 6C(2).]

Private Order of Additional Education (1999)

A judge improperly ordered a young man to remove his earring or leave the premises of the courthouse. [Violation of Canon 2A.]

Order of Public Censure (1999)

A judge imposed or attempted to impose local county rules in his own deposition conducted in a lawsuit; he ordered armed bailiffs present at the deposition to confiscate the videographer's videotape; and directed that the videotape and audiotape of the deposition be sent to the judge of a specific district court. [Violation of Canon 2A.]

Public Reprimand (1999)

After being cited for criminal trespass by an on-campus university police officer for attempting to sell varsity football tickets on school property, the judge was arrested when he attempted to sell the tickets a second time. He was charged with criminal trespass and released on his own recognizance. The incident received extensive media

coverage.

Private Reprimand (1999)

A judge released a letter, which a fellow judge had written to the media, and made numerous comments in the newspaper regarding the other judge and the letter. The Commission characterized the judge's comments as non-constructive, intemperate and calculated to impugn the basic character and competence of his fellow judge.

Public Censure (1999)

A judge willfully violated an order of a U.S. Bankruptcy Court, which prohibited him from incurring additional debt without the prior consent of the court or the trustee.

Private Warning (1999)

A judge presided over a case in which the plaintiff was related to his court clerk. Although he previously had recused himself, he granted the plaintiff's motion for a new trial.

OPINION 244 (1999)

☐ Annotation:

A group of judges may not give an award to an outstanding lawyer who practices before them.

Public Admonition (1996)

A judge was publicly admonished for sending "courtesy letters" to defendants telling them they needed to pay a fine but failing to inform them that they could plead not guilty and request a trial.

The judge also issued an arrest warrant and attempted to hear a Class B misdemeanor that had erroneously been filed as a Class C. The judge did not check the law or otherwise discover he had no jurisdiction.

OPINION 173 (1994)

☐ Annotation:

A municipal court judge who is a practicing attorney should not preside over a case when one of his or her clients is a party.

Public Warning (1999)

A judge routinely dismissed traffic cases in exchange for defendants paying a specified amount in "donation" to his local law enforcement charity.

Private Warning (1999)

A judge exceeded his lawful authority on two occasions: (1) when he issued a letter ordering an individual to cease and desist from further activities as constable; and (2) when he signed as surety for the individual following a dispute

- 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.

between the individual and a local justice of the peace, although it should have been foreseeable that the individual might come before his court as a defendant.

OPINION 267 (2000)

☐ Annotation:

A judge may not hire a staff member who is a candidate for judicial office.

OPINION 262 (2000)

☐ Annotation:

A judge may not present a legal overview of a particular type of case that is handled by the judge's court to an in-house law firm seminar, regardless of whether the firm has a case pending before the judge.

☐ Annotation:

A judge may not attend a law firm function attended only by attorneys from that firm, invited clients, and legal recruits, or participate in a law firm's recruitment program.

OPINION 248 (1999)

☐ Annotation:

A court may not use a local law firm's web site to post their dockets.

OPINION 257 (2000)

☐ Annotation:

A judge or his or her staff may not provide information about court cases to a commercial web site that publishes data about civil litigation, even if they receive no payment. The judge would be using his or her office to advance the private interests of the commercial web site, and transmission of information to one site but not to others could foster the impression that the site was in a special position to influence the judge.

Public Admonition (2001)

A judge was admonished for her efforts to influence other judges' decisions and obtain favorable treatment for her daughter and a friend of her daughter in speeding cases. The judge, a justice of the peace, called the judge and requested a reduction of charges and deferred disposition of the cases.

Public Admonition (2001)

A judge was reprimanded for writing a letter of support on behalf of a criminal defendant on court letterhead as a municipal judge.

Public Statement (2000)

Political endorsements by judges reflect adversely on the integrity and impartiality of the judiciary. It is immaterial to the issue of misconduct that a judge does not use his judicial title or refer to his judicial position in a public endorsement of a candidate for public office. When interpreting the term "authorize" in Canon

5(3), the Commission makes no distinction between acting on one's own behalf and empowering another to act on one's behalf. [Violation of Canons 2B and 5(3).]

Public Admonition (2000)

A judge allowed his name, judicial position, likeness, and supportive statements to be used in a political advertisement for a candidate's re-election campaign. [Violation of Canons 2B and 5(3).]

Public Reprimand (2000)

A judge made offensive racial statements to city police officers in the presence of citizens, and conveyed that he had the power to influence other judges in advancing the private interests of his grandson who was issued a traffic citation. [Violation of Canons 2A, 2B, 3B(4), and 4A.]

Public Reprimand (2000)

Without a hearing or notice to the prosecutor, the judge unilaterally changed a bond that was set by another magistrate. The judge changed the bond as a personal favor to the defendant's brother, who was a long-time, personal acquaintance of the judge. Additionally, the judge voluntarily appeared as a character witness at a sentencing hearing on behalf of a criminal defendant. [Violation of Canons 2A, 2B, 3B(2), and 3B(8).]

Public Reprimand (2000)

A judge disassembled and reassembled two revolvers during voir dire in a capital murder case. Additionally, the judge allowed bailiffs to read magazines during court proceedings, jeopardizing the court's security and placing persons in the courtroom at risk. Further, the judge distributed cards that contained the seal of the State of Texas, described the judge as "Judge H. Lon Harper," and stated that the judge is a "State District Judge Sitting by Assignment" and is a "State Qualified Mediator." [Violations of Canons 2B, 3B(3), and 3B(4).]

Private Reprimand and Order of Additional Education (2000)

A judge attempted to mediate a private dispute, even though no case was pending in the judge's court. Additionally, the judge engaged in *ex parte* communications with a law enforcement officer about the merits of a criminal case, and issued a fine without giving the defendant the opportunity to enter a plea and without holding a hearing. [Violation of Canons 2B, 3B(8), and 6C(2).]

Private Warning (2000)

A judge prepared a newspaper advertisement in which the judge urged local residents to vote for a specific candidate for a local

public office. [Violation of Canons 2B and 5(3).]

Private Warning (2000)

A judge mailed postcards urging voters to support the judge's son's election campaign. [Violation of Canons 2B and 5(3).]

Private Reprimand (2000)

A judge used demeaning, profane, and unprofessional language to parents who were before the judge's court in custody cases. [Violation of Canons 2B, 3B(3) and 3B(4).]

Private Admonition and Order of Additional Education (2000)

Judge A telephoned and wrote letters to Judge B on behalf of a traffic defendant who had a case pending in Judge B's court. [Violation of Canon 2B.]

Private Admonition (2000)

A judge told a city manager that the judge would bring the manager before a grand jury if the manager further threatened certain police officers with termination from their jobs. Additionally, during an election in which the judge's father was a candidate, the judge talked to a voter within the prohibited electioneering area and disputed the time that the polls closed with the election judge. [Violation of Canon 2B.]

Public Reprimand (1999)

A man became romantically involved with a woman who had matters pending in the judge's court. [Violation of Canons 2B and 4A.]

Public Admonition (1999)

A judge initiated *ex parte* contact with two female divorce/custody litigants whose cases were pending before his court. Because he socialized with both, he conveyed the impression that these women were in a special position to influence him.

Public Admonition (1999)

While serving as a visiting judge for a district court, a judge distributed invitations for an upcoming campaign fundraiser from the bench and through the court coordinator's office.

Private Admonition (1999)

A judge improperly allowed his name to be used in a radio commercial for his businesses during the holiday season.

OPINION 241 (1999)

☐ Annotation:

A judge may not require charitable contributions from defendants to specific groups as a condition of probation (or deferred adjudication).

OPINION 230 (1998)

☐ Annotation:

A judge may not serve as special assistant to the county party chair responsible for appointments because such a position publicly places the judge in a power broker position.

OPINION 222 (1998)

☐ Annotation:

A judge may write a letter of recommendation for an office secretary or fellow judge who is applying for another judicial position as long as the letter is based on the judge's personal knowledge and is sent with regard to a specific person. A judge may also be listed as a reference for a prospective employer, judicial selection committee, law school admissions office, sentencing judge, or probation or parole officer. "To whom it may concern" salutations should not be included in such letters; rather, letters should be directed to a specific entity.

OPINION 218 (1998)

☐ Annotation:

A judge who is also a licensed mental health professional may not provide clinical and technical consultation to other licensed mental health professionals who are in the preparation of a court ordered social study. This activity would lend the prestige of the

judicial office to advance the private interest of others. The judge should restrict his private clinical practice to non-court related activities while serving as a county judge to promote confidence in the impartiality of the judiciary.

OPINION 207 (1997)

☐ Annotation:

A judge may not file a “character affidavit” on behalf of a person seeking a pardon from the President. Such an affidavit would violate the prohibition against testifying voluntarily as a character witness.

OPINION 205 (1997)

☐ Annotation:

Judges may not donate items to charity or political fundraiser auctions if those items are attributable to the judge. Doing so would lend the prestige of judicial office to the event and could create the appearance that the high bidder is in a special position to influence the judge. Examples include golf or dinner with the judge.

OPINION 197 (1996)

☐ Annotation:

A member of the court staff who, at their own expense, became a notary public may not charge a fee for notarizing documents for the public while on duty at the court. It is a violation of Canon 2B

to conduct a private business from the judge's office.

Public Admonition (1996)

A judge improperly used the prestige of his office by holding a political meeting in the court after hours in order to announce his candidacy for another office.

OPINION 118 (1988)

☐ Annotation:

A judge may not designate a specific agency and driving safety course for a defendant. By so designating, a judge would be lending the prestige of his or her office to advance the private interests of others.

OPINION 64 (1982)

☐ Annotation:

A judge may not actively support a bond election to raise funds to develop a city water project. Elections often are contested, and to actively engage in a bond election could interfere with judicial responsibilities. Active support also could be construed as using the prestige of office to help raise funds. A judge's involvement in an election other than his or her own casts doubts on the judge's impartiality. See Opinions [82](#) and [163](#).

- C. A judge shall not knowingly hold membership in any organization that practices discrimination prohibited by law.

CHAPTER 1 JUDICIAL CONDUCT

D. Canon 3 - Performing the Duties of Judicial Office Impartially and Diligently

Code of Judicial Conduct	Notes
<p>A. Judicial Duties in General.</p> <p>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.</p> <p>B. Adjudicative Responsibilities.</p> <p>(1) A judge shall hear and decide matters assigned to the judge except those in which disqualification is required or recusal is appropriate.</p>	<p><i>OPINION 154 (1993)</i></p> <p>A judge shall not permit or consider improper <i>ex parte</i> or other private communication such as a letter from a litigant regarding the merits of a case that is or has been pending.</p> <p><i>Public Reprimand (2000)</i></p> <p>A judge ordered a traffic defendant, who had damaged the judge's car in an auto accident, to pay restitution directly to the judge. The judge, as the injured party, should have known she was disqualified to hear the matter. Even though the defendant had not entered a plea, the judge assumed the defendant's guilt, assessed the defendant's punishment and fines, and ordered the defendant to pay restitution directly to the judge without providing the defendant with the full range of options available to the defendant. The judge acted in a discourteous and intemperate manner during the proceedings. [Violation of Canons 2A, 2B, 3B(1), 3B(4), and 3B(5).]</p> <p><i>OPINION 225 (1998)</i></p> <p><input type="checkbox"/> Annotation:</p>

A judge may not permit his or her name, or the court's name to appear on a decal or written material containing any generic reference to a general law enforcement program, such as a "war on hot checks" decal. Such action may imply that the judge is partial to the state or law enforcement and raise issues of impartiality.

OPINION 172 (1994)

□ Annotation:

A judge of a municipal court should recuse himself or herself from presiding over trial of case in which a defendant has civil actions pending against the judge in state and federal courts.

Private Admonition (2000)

The judge was willful in his conduct and inconsistent with his duties when he was unavailable to perform magistrate's duties and failed to advise his office of where or whether he could be found or contacted. He did not at any time contact his office to advise it of his illness and availability.

Public Admonition (1994)

A judge was admonished for refusing to accept filings of truancy cases and certain civil cases which were properly within his court's jurisdiction.

Private Order of Education (1999)

(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.

The judge failed to accept take-home video driving safety instruction as a valid prerequisite for dismissing traffic citations. The judge required qualified traffic defendants to complete defensive driving courses that were administered in a classroom setting.

Public Order of Additional Education (2000)

A judge ordered a mother to ensure that her daughter complied with court-ordered community service. When the daughter did not comply, the judge acted without legal authority by: (1) issuing an arrest warrant against the mother based on a legally defective affidavit/complaint; (2) requiring the mother to obtain a cash-only bond to the exclusion of a surety bond; (3) failing to conduct an indigency hearing before committing the mother to jail to pay off the time he had imposed against her; (4) failing to offer the mother the options of paying the time in installments or performing community service in lieu of jail; and (5) ordering the mother to be confined in jail for her "disrespect" rather than finding her in contempt of court. [Violation of Canons 2A, 3B(2), and 3B(4).]

Private Warning and Order of Additional Education (2000)

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

After a judge's court had lost jurisdiction over the civil case, the judge assisted the plaintiff in collecting on the judgment. Without holding a hearing, the judge held the defendant in contempt for failure to pay the judgment and issued a warrant for the defendant's arrest. In a separate criminal case, the judge issued an arrest warrant for an unnamed defendant based upon a sworn complaint, which was devoid of specifics. [Violation of Canons 2A, 2B, and 3B(2).]

Private Order of Additional Education (2000)

Prior to the expiration of the 30 additional days allowed by law for a traffic defendant to present a certificate of completion of a driving safety course, the judge issued a show cause order requiring the defendant to appear and explain why the defendant had not submitted the certificate of completion, rendered a judgment against the defendant, and issued a capias pro fine for the arrest of the defendant for failure to submit the certificate of completion. [Violation of Canons 2A and 3B(2).]

Public Reprimand (2000)

A judge disassembled and reassembled two revolvers during voir dire in a capital murder case. Additionally, the judge allowed bailiffs to read

- (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.

magazines during court proceedings, jeopardizing the court's security and placing persons in the courtroom at risk. Further, the judge distributed cards that contained the seal of the State of Texas, described the judge as "Judge H. Lon Harper," and stated that the judge is a "State District Judge Sitting by Assignment" and is a "State Qualified Mediator." [Violations of Canons 2B, 3B(3), and 3B(4).]

A judge used demeaning, profane, and unprofessional language to parents who were before the judge's court in custody cases. [Violation of Canons 2B, 3B(3), and 3B(4).]

Public Reprimand (2000)

A judge made offensive racial statements to city police officers in the presence of citizens, and conveyed that he had the power to influence other judges in advancing the private interests of his grandson who was issued a traffic citation. [Violation of Canons 2A, 2B, 3B(4), and 4A.]

Public Warning and Order of Additional Education (2000)

A judge kissed a legal assistant, an employee under his supervision. Additionally, the judge made gender-biased comments to a staff attorney employed by the court. [Violation of Canons 3B(4) and 3B(6).]

Public Reprimand (2000)

A judge telephoned juvenile girls who were on probation in his court for truancy and engaged in explicit sexual conversations. Additionally, the judge pled no contest to the charge of official oppression. [Violation of Canons 2A, 2B, and 3B(4).]

Private Warning and Order of Additional Education (2000)

During telephone calls with a litigant, a judge made disparaging comments about the litigant and told the litigant that the judge would throw the litigant in jail if the litigant came to the judge's court. [Violation of Canon 3B(4).]

Public Admonition (2000)

In the course of conducting an inquest, the judge moved the deceased's purse and examined its contents prior to the completion of an investigation by law enforcement officials. The judge left the scene and later returned to search for the deceased's jewelry. The deceased was a good friend of the judge. Further, when the judge learned that the deceased's niece had filed a complaint against the judge with the State Commission on Judicial Conduct regarding the judge's actions at the inquest, the judge telephoned the niece and chastised her for filing the complaint.

Private Admonition (2000)

A judge did not act in a "patient, dignified and courteous" manner when dealing with a prosecutor in an official capacity. [Violation of Canon 3B(4).]

Private Order of Additional Education (2000)

A judge made a gratuitous and inappropriate comment to an African-American court employee about the Ku Klux Klan, a comment that could reasonably be construed as manifesting racial bias. [Violation of Canons 3B(4) and 3B(6).]

Private Admonition and Order of Additional Education (1999)

The judge inappropriately refused a defendant's request to contact an attorney when the defendant was brought before the judge for magistration in a criminal proceeding. Instead, the judge asked if the defendant wanted to enter a plea. In a separate civil case, the judge entered a default judgment in favor of the judge's bailiff. In addition, the judge refused to accept a pauper's affidavit for filing and denied a party's access to the court's file in the matter. [Violation of Canons 2A, 2B, and 3B(4).]

Private Warning (1999)

A judge made improper comments to an attorney,

including a threat to take retaliatory action, against the attorney. [Violation of Canons 2A, 3B(4), and 3B(5).]

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

OPINION 137 (1990)

☐ Annotation:

The code does not prohibit the use of judicial letterhead, or letterhead that shows the title "Judge," for personal matters as long as the judge avoids any appearance of impropriety or of conflict with the judge's judicial duties. The use of a picture of the judge on the letterhead would not violate any specific provision of the code but would be undignified.

OPINION 106 (1987)

☐ Annotation:

It is the duty of the judge(s) to see that the court's employees comply with the provisions of the code.

OPINION 68 (1983)

☐ Annotation:

Judges could send a form letter expressing their appreciation to those who reported for jury duty if the contents of the letter are a genuine expression of appreciation, the letter is mailed routinely when the panel is discharged, and the signatory privileges are rotated regularly.

Public Reprimand (2000)

A judge ordered a traffic defendant, who had damaged the judge's car in an auto accident, to pay restitution

- (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.

directly to the judge. The judge, as the injured party, should have known she was disqualified to hear the matter. Even though the defendant had not entered a plea, the judge assumed the defendant's guilt, assessed the defendant's punishment and fines, and ordered the defendant to pay restitution directly to the judge without providing the defendant with the full range of options available to the defendant. The judge acted in a discourteous and intemperate manner during the proceedings. [Violation of Canons 2A, 2B, 3B(1), 3B(4), and 3B(5).]

Private Warning (1999)

The master limited an attorney's ability to practice law in the master's court and advised the attorney that he intended to treat the attorney differently than other attorneys appearing in the court.

Conduct was found to be improper when a judge told a racial joke in the presence of several attorneys who were waiting to conduct court business. *State Commission on Judicial Conduct Annual Report for Fiscal Year 1990* at 11.

Public Admonition (2001)

A judge presiding over a truancy case made the comment to the effect that there are three bridges back to Mexico. The

- (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

judge also ordered both the parent and child to be “detained” while he made a decision. Both the statement and action were admonished.

Public Warning and Order of Additional Education (2000)

A judge kissed a legal assistant, an employee under his supervision. Additionally, the judge made gender-biased comments to a staff attorney employed by the court. [Violation of Canons 3B(4) and 3B(6).]

Private Order of Additional Education (2000)

A judge made a gratuitous and inappropriate comment to an African-American court employee about the Ku Klux Klan, a comment that could reasonably be construed as manifesting racial bias. [Violation of Canons 3B(4) and 3B(6).]

OPINION 106 (1987)

□ Annotation:

It is the duty of the judge(s) to see that the court's employees comply with the provisions of the code.

requirement does not preclude legitimate advocacy when any of these factors is an issue in the proceeding.

- (8) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. A judge shall not initiate, permit, or consider *ex parte* communications or other communications made to the judge outside the presence of the parties between the judge and a party, an attorney, a guardian or attorney ad litem, an alternative dispute resolution neutral, or any other court appointee concerning the merits of a pending or impending judicial proceeding. A judge shall require compliance with this subsection by court personnel subject to the judge's direction and control. This subsection does not prohibit:

- (a) communications concerning uncontested administrative or uncontested procedural matters;
- (b) conferring separately with the parties and/or their lawyers in an effort to mediate or settle matters, provided, however, that the judge shall first give notice to all parties and not thereafter hear any contested matters between the parties except with the consent of all

Municipal court judges are **not required to comply** with Section 3B(8) pertaining to *ex parte* communications. In lieu thereof, municipal court judges **shall comply** with Canon 6C(2). See Canon 6C(1).

OPINION 126 (1989)

☐ Annotation:

A judge should not personally participate in attempting to collect fees and collection letters should not appear to be from the "court," that is, from the judicial entity of which the judge is the principal officer.

OPINION 104 (1987)

☐ Annotation:

A judge who handles a mental illness docket may not ethically prepare applications and other legal pleadings for persons who desire to commit someone to a mental hospital.

parties;

- (c) obtaining the advice of a disinterested expert on the law applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond;
 - (d) consulting with other judges or with court personnel;
 - (e) considering an *ex parte* communication expressly authorized by law.
- (9) A judge should dispose of all judicial matters promptly, efficiently and fairly.

Private Order of Education (2000)

The judge failed to properly supervise a clerk under her direction over a five-year period; relied upon the clerk to receive, record, deposit, and report funds received by the court; made no effort to learn the use of the computerized information system used by the court; allowed the clerk access to a signature stamp bearing the judge's name; and relied on the advice given by the clerk. The clerk's actions resulted in the clerk being indicted for theft and tampering with or fabricating evidence, and tampering with governmental records.

Public Admonition (1997)

A judge unreasonably delayed signing and issuing arrest warrants. The judge also engaged in *ex parte* conversations with the

- (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 is a litigant in a personal capacity.

defendant.

Public Admonition (1999)

A judge made prejudicial comments to the grand jury concerning several pending criminal mischief cases, which gave the impression that he had assumed a prosecutorial role.

OPINION 265 (2000)

☐ Annotation:

A judge may not participate on a media response team whose job it is to respond to negative or inaccurate media stories about the legal profession, the judiciary, and the courts. Participation in this group would inevitably entail comment about pending litigation. A judge cannot do something as part of a group that he or she cannot do as an individual.

OPINION 209 (1997)

☐ Annotation:

A judge may not respond publicly, while the case is still pending, to criticism of his or her actions in the case. The judge may not respond to critics until he or she no longer accepts judicial assignments. Judges may explain court procedure, but may not discuss pending matters.

OPINION 191 (1996)

☐ Annotation:

A judge may not write an opinion/editorial piece for a newspaper discussing his or her position on a case that has been decided by the court because the decision could be revisited. A judge may not talk about the position he or she takes on a case.

OPINION 95 (1987)

☐ Annotation:

A justice of the peace may respond to news media inquiries concerning inquest proceedings prior to a final ruling on a death certificate. The justice of the peace may answer questions about the court's procedure but may not discuss the facts or other aspects of the case during the investigation or while the matter is pending in court. Judges may explain court procedure but may not discuss pending matters.

Private Admonition (2000)

Following the jury's deliberation and verdict, the judge made negative comments to jurors about a litigant's attorney's integrity and professionalism, and comments about the litigant that indicated the judge would not be fair and impartial concerning the litigant's case in the future. (The judge had continuing jurisdiction over the litigant's case.) [Violation of Canon 3B(10).]

- (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.

Private Warning and Order of Additional Education (2000)

A judge sought information on a juvenile from the police to help a friend and former employee, and the judge admonished a juvenile when no case was pending before the judge's court. [Violation of Canons 2A, 2B, and 3B(10).]

OPINION 140 (1991)

□ Annotation:

A judge may not allow a court administrator to participate in a group weekend trip that is sponsored, organized, and paid for by an attorney who practices before the judge, but the court administrator may participate if

- (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

he or she pays all of the expenses involved and the activity does not reflect on the impartiality of the court or create the appearance of impropriety.

OPINION 145 (1992)

☐ Annotation:

A judge should not permit members of the judge's office staff to participate in political activities such as publicly supporting a candidate for election, acting as campaign manager, and fund raising because such political activity would be likely to give the appearance of the judge's support for the candidate.

OPINION 106 (1987)

☐ Annotation:

A judge's staff and court officials who are subject to the judge's direction and control should adhere to the provisions of the Code of Judicial Conduct. Judges have a duty to see that the employees comply.

OPINION 182 (1995)

☐ Annotation:

A judge, as a member of the county juvenile board, should not

compensation of appointees beyond the fair value of services rendered.

appoint his brother-in-law to the county juvenile advisory council. Such an appointment would create the appearance of impropriety and perception of favoritism, despite the lack of any pecuniary benefit to the judge and his family.

OPINION 83 (1986)

□ Annotation:

A judge would violate the code by appointing an attorney to represent indigent, if the attorney is an employee of a law firm consisting of the judge's father, brother, and the attorney receiving the appointments.

Public Admonition (1999)

A judge appointed his son to represent litigants and ordered his son paid from county funds.

Public Reprimand (1999)

A judge appointed his long-time friend and former bailiff as a member, and as the foreman, of the grand jury. The judge also appointed a second grand jury without discharging the first grand jury.

- (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.

Rule 12 is designed to define public access to judicial records, which are those not related to a court's adjudicative functions.

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.

OPINION 78 (1985)

☐ Annotation:

A judge does not have the authority, in a criminal case, to remove a retained attorney for ineffective assistance of counsel. The action of removal of an attorney by a judge is a matter of law, not a question of ethics.

OPINION 45 (1979)

☐ Annotation:

A judge has an obligation to initiate appropriate disciplinary measures against an attorney when the judge becomes aware that the attorney has been guilty of unprofessional conduct or has presented false information to the court in order to obtain the entry of a judgment. Knowingly presenting false information in order to obtain the entry of a judgment is unprofessional conduct and the judge must take action.

CHAPTER 1 JUDICIAL CONDUCT

E. Canon 4 - Conducting the Judge's Extra-Judicial Activities to Minimize the Risk of Conflict with Judicial Obligations

Code of Judicial Conduct	Notes
<p>A. Extra-Judicial Activities in General.</p> <p>A judge shall conduct all the judge's extra-judicial activities so that they do not:</p> <ol style="list-style-type: none"> (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. 	<p><i>OPINION 273 (2001)</i></p> <p>There is no violation of the Canons of Judicial Conduct for an associate judge to preside as a municipal judge or supervise "Teen Court." The Committee did not consider any question of law presented by this question.</p> <p><i>Public Reprimand (2000)</i></p> <p>A judge, whose court has jurisdiction over alcohol-related offenses, pled guilty to the charge of driving while intoxicated. [Violation of Canons 2A and 4A(1).]</p> <p><i>Public Reprimand (2000)</i></p> <p>A judge made offensive racial statements to city police officers in the presence of citizens, and conveyed that he had the power to influence other judges in advancing the private interests of his grandson who was issued a traffic citation. [Violation of Canons 2A, 2B, 3B(4), and 4A.]</p> <p><i>Public Reprimand (1999)</i></p> <p>A judge became romantically involved with a woman who had matters pending in the judge's</p>

court. [Violation of Canons 2B and 4A.]

Public Admonition (1999)

A judge initiated *ex parte* contact with two female divorce/custody litigants whose cases were pending before his court. Because he socialized with both, he conveyed the impression that these women were in a special position to influence him.

Private Reprimand (1999)

The judge consumed an excessive amount of alcohol while attending a social gathering of a local bar association and, during that gathering, urinated into a garbage receptacle located in an open area, which was in sight of guests. [Violation of Article V, Section 1a(6)A of the Texas Constitution.]

Public Statement (2000)

The State Commission on Judicial Conduct concluded that any judge who attempted to serve as both a peace officer and a judge irrevocably undermines the public's confidence in the judiciary.

Public Reprimand (2001)

A judge continued to serve as both a judge and a law enforcement officer after the Public Statement (above) was issued. The Commission

reprimanded the judge for violations of Canon 2A and Canons 4A(1) and 4D(1) of the Texas Code of Judicial Conduct.

OPINION 269 (2001)

☐ Annotation:

A municipal court judge may not serve as head of security for the school district. The duty of the head of security would be to enforce the regulations passed by the school board for the safety and welfare of the students, employees, and property of the district. Since the judge has jurisdiction to hear alleged violations of those regulations, such employment would also violate Canon 2A.

OPINION 259 (2000)

☐ Annotation:

A judge may not serve as a delegate to a county, state, or national party convention, or as a member of a state political party's executive committee.

OPINION 257 (2000)

☐ Annotation:

A judge or his or her staff may not provide information about court cases to a commercial web site that publishes data about civil litigation, even if they receive no payment. The judge would be using her office to advance the private interests of the commercial web site, and his or her transmission of

information to one site but not to others could foster the impression that the site was in a

special position to influence the judge.

OPINION 242 (1999)

☐ Annotation:

1. A municipal court judge may not be employed as a certified peace officer or bailiff.
2. A certified peace officer may serve as a municipal court judge only in the event he or she is totally on inactive status as a peace officer.
3. An attorney may serve as a municipal court judge in one city and a prosecutor for another city.

OPINION 240 (1999)

☐ Annotation:

A judge may not serve as a member of a board of directors of a non-profit corporation that trains volunteers and employs professional staff to be appointed by the judge to serve as guardians of incapacitated or minor persons.

OPINION 228 (1998)

☐ Annotation:

A judge may not serve as a member of the board of directors of a water supply corporation. A director has a fiduciary duty to the corporation and shareholders. The judge's involvement in financial and

business dealings may reflect adversely on his or her appearance of impartiality. Also, the judge may have financial dealings with persons who may appear in court.

Public Warning (1997)

A judge presided over a criminal trial even though he had sued the defendant and the civil case was pending while the criminal case was tried.

The judge also had *ex parte* contact with the judges who were reviewing a motion to recuse the judge.

OPINION 74 (1984)

☐ Annotation:

A judge may serve on the disciplinary review committee of the State Bar. Judges are permitted to participate on governmental committees when the activities concern the legal system. The service should not conflict with or affect the performance of judicial duties.

OPINION 238 (1999)

☐ Annotation:

A judge may solicit contributions to the Texas Center for the Judiciary, Inc., a not-for-profit corporation dedicated to the education and service of Texas judges, in light of the January 1, 1998 adoption of Canon 4B(2).

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 fundraising 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.

OPINION 258 (2000)

☐ Annotation:

A Board of Judges may send a letter with the signature of all judges to all members of the local bar association asking them to consider volunteering by donating time and services to the Volunteer Lawyer Project's pro bono legal clinic.

OPINION 252 (1999)

☐ Annotation:

A judge may serve on the Host Committee of a fund raiser for the Guardian Ad Litem Task Force, a non-profit program for family courts. This activity is governed by Canon 4. Canon 4B(2) allows a judge to serve as a member, officer, or director of an organization 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, but should not personally participate in public fund raising activities. Additionally, Canon 4C(2) allows a judge to be a speaker or guest of honor at a charitable fund raiser.

OPINION 238 (1999)

☐ Annotation:

A judge may assist in soliciting contributions, without personally participating in fundraising activities, under the following circumstances:

1. a judge may solicit contributions only from charitable and educational foundations and other donors who would not ordinarily come before the court;
2. the organization for which funds are sought must be one which is devoted to the improvement of the law, the legal system, or the administration of justice;
3. any solicitation by the judge should be made as an authorized representation of the organization and not as a personal solicitation; and finally,
4. any judge assisting a Canon 4B(2) organization must strictly comply with the admonition found in Canon 1 to preserve the integrity and independence of the judiciary and the prohibition in Canon 2B against:
 - a. lending the prestige of office to advance the interests of others; or
 - b. conveying the impression that any donor would be in a position to influence the judge.

OPINION 22 (1977)

☐ Annotation:

A judge may act as a moderator for a short bi-weekly television

program designed to educate the public on the duties and functions of courts and related agencies dealing with the administration of justice.

OPINION 203 (1996)

☐ Annotation:

A judge may allow brochures in the courtroom for a county bar sponsored lawyer referral service so long as the service complies with all applicable State Bar guidelines and statutory requirements.

The judge may also appear in public service announcements recommending that people without lawyers contact the service before going to court.

OPINION 185 (1996)

☐ Annotation:

A judge may be on the host committee, attend and promote an event for a "Citizens' Crime Commission" whose focus is problems facing the legal system.

OPINION 157 (1993)

☐ Annotation:

A judge may join in raising funds for a political party by participating in a car wash at a function sponsored by the political party, but a judge may not be the chairman of a committee within a political party that will be responsible for holding fund raising events to

obtain money for a donation to a particular charitable organization within the community.

OPINION 131 (1989)

☐ Annotation:

A judge may serve on and advise committees to consider funding and organizing a project to restore the courthouse dome but may not allow his or her name to appear on the letterhead used for fund raising.

OPINION 74 (1984)

☐ Annotation:

A judge does not violate the code by serving on the Disciplinary Review Committee of the State Bar of Texas so long as it does not conflict with or affect the performance of judicial duties.

OPINION 66 (1983)

☐ Annotation:

A judge should not participate with law enforcement officers in the development and preparation of a program designed to inform officers concerning possible pitfalls during cross-examination because the program reflects adversely on the judge's appearance of impartiality.

OPINION 63 (1982)

☐ Annotation:

A judge may write a weekly column about legal matters for

newspaper publication. Judges may write about the law, the legal system and the administration of justice. The judge should be careful not to cast doubt on his or her impartiality and should not answer inquiries on any matter in the field of law other than in those specific areas (*i.e.*, don't give legal advice).

OPINION 22 (1977)

☐ Annotation:

A judge may act as a moderator for a short bi-weekly television program designed to educate the public on the duties and functions of courts and related agencies dealing with the administration of justice.

OPINION 253 (1999)

☐ Annotation:

A judge may make a public service announcement recruiting volunteers for a non-profit organization as long as the prestige of judicial office is not used. Canon 4 of the Code allows a judge to participate in civic and charitable activities that do not reflect adversely upon the judge's impartiality or interfere with the performance of judicial duties. Although the judge may be identified as a judge, it would be improper if he or she appeared in the announcement wearing his or her robe. The committee believes wearing the judicial robe other than while

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:

performing official duties or during official ceremonies inappropriately lends the prestige of office to the activity in which the robe is worn.

OPINION 65 (1983)

☐ Annotation:

A judge may not serve as member of the board of a state agency created by the legislature other than those concerned with issues for improving the law, the legal system or the administration of justice unless the organization is limited to historical, educational or cultural activities.

- (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.

OPINION 189 (1996)

☐ Annotation:

A judge may serve on the Board of Directors of a United Way charity provided the board only sets policy and does not engage in raising funds, and that such service does not otherwise interfere with judicial duties.

- (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.

OPINION 245 (1999)

☐ Annotation:

A judge's name may appear on the letterhead of a private, non-profit corporation as a director of the corporation, even if some of the children benefiting from the corporation's programs might appear in the judge's court. (The judge would do no fund raising.)

OPINION 228 (1998)

☐ Annotation:

A municipal judge may not serve as the director of a county crime commission that is designed to raise funds for an annual banquet to recognize local law enforcement personnel.

OPINION 205 (1997)

☐ Annotation:

Judges may not donate items to charity or political fundraiser auctions if those items are attributable to the judge. Doing so would lend the prestige of judicial office to the event and could create the appearance that the high bidder is in a special position to influence the judge. Examples include golf or dinner with the judge.

OPINION 165 (1993)

☐ Annotation:

A municipal judge who is a member of a nonprofit organization for religious purposes may not speak to church groups to raise funds, even if not introduced as a judge. A judge may not participate in fund raising for an organization as a mere participant selling items.

OPINION 110 (1988)

☐ Annotation:

Court personnel may solicit funds for charitable organizations, churches, or civic projects as long as: (1) the judge's prestige

or the prestige of the court is not being used to solicit funds; (2) the solicitation of funds does not interfere or conflict, in any manner, with the official duties of the court or the person doing the solicitation; and (3) there is no impropriety or appearance of impropriety in the manner of solicitation.

OPINION 66 (1983)

☐ Annotation:

A judge may not participate with law enforcement officers in the development and preparation of a program designed to inform them of pitfalls during cross-examination. Although a judge may participate in activities concerning the administration of justice, this program has the appearance of advocating particular results in certain types of cases. The judge's participation would reflect adversely on his or her impartiality.

OPINION 53C (1980)

☐ Annotation:

A judge may be a delegate in precinct, county and state party conventions. Since a judge may be listed as an officer or director, etc. of a political organization, he or she may be a delegate in that organization.

OPINION 16 (1976)

☐ Annotation:

A judge may not participate as a "celebrity auctioneer" on a television "telethon auction" to raise funds for a non-profit public educational television station where all the judge does is describe the article to be sold and asks that the bids be telephoned to the TV station personnel.

OPINION 11 (1976)

□ Annotation:

Judges may not sell tickets for fund raising activities for educational, religious or charitable organizations. The prohibition against fund raising includes this activity.

- (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 officeholder expenses as permitted by state law.

Public Statement (2000)

The State Commission on Judicial Conduct concluded that any judge who attempted to serve as both a peace officer and a judge irrevocably undermines the public's confidence in the judiciary.

Public Reprimand (2001)

A judge continued to serve as both a judge and a law enforcement officer after the

Public Statement (above) was issued. The Commission reprimanded the judge for violations of Canon 2A and Canons 4A(1) and 4D(1) of the Texas Code of Judicial Conduct.

OPINION 257 (2000)

☐ Annotation:

A judge or his or her staff may not receive payment for providing information about court cases to a commercial web site that publishes data about civil litigation.

OPINION 255 (2000)

☐ Annotation:

A judge may not accept a referral fee for referring the case of a family member to an attorney, even though the attorney does not regularly appear before the judge.

OPINION 239 (1999)

☐ Annotation:

A judge-elect who owns an office building with a sibling that is leased to attorneys must recuse himself or herself from cases that involve the tenant lawyers if he or she continues his or her ownership of if the judge is a guarantor on the sibling's note securing a mortgage. In a smaller county where recusal is impractical, the judge must completely divest himself or

herself from the property so long as it is leased to lawyers.

Public Reprimand (1999)

A judge continued to foster, further and participate in the operations of a bail bond company that purportedly was owned and operated by his children, even after he had assumed the bench.

OPINION 236 (1998)

☐ Annotation:

A judge may receive a fee for weddings performed during regular office hours, and for those performed after hours and away from the courthouse. This is acceptable so long as the judge does not take advantage of his or her official position to conduct such services.

OPINION 228 (1998)

☐ Annotation:

A judge may not serve as a member of the board of directors of a water supply corporation. A director has a fiduciary duty to the corporation and shareholders. The judge's involvement in financial and business dealings may reflect adversely on his or her appearance of impartiality. Also, the judge may have financial dealings with persons who may appear in court. See also Canon 4(A)(1).

OPINION 211 (1997)

☐ Annotation:

A judge may not make telephone calls and send letters to debtors on behalf of a collection agency. Even if the judge did not mention a judicial title and did the work from home, it would still be perceived as using the prestige of office and might reflect adversely on the judge's impartiality.

OPINION 210 (1997)

☐ Annotation:

A judge who refers friends and former clients to a realtor may not accept a referral fee.

OPINION 204 (1997)

☐ Annotation:

A judge may not accept employment on a television show portraying a judge, nor as a consultant sharing technical expertise with the writers or producers for such a show. A judge shall refrain from exploiting the judicial office for financial gain.

OPINION 153 (1993)

☐ Annotation:

A judge may not lease his or her former law office, of which the judge is the sole owner, directly to attorneys who will be practicing in the judge's court.

OPINION 141 (1991)

☐ Annotation:

A judge may not be the chairman of and serve on a committee to encourage and expand the economic development and historical restoration of a downtown area in which the judge owns real property.

Municipal court judges are **not required to comply** with Canons 4D(2) and 4D(3); see Canon 6C(1). But see Opinion 179 (1995) *supra* page 4.

- (2) Subject to the requirements of subsection (1), a judge may hold and manage investments, including real estate, and engage in other remunerative activity including the operation of a business. A judge shall not be an officer, director or manager of a publicly owned business. For purposes of this Canon, a “publicly owned business” is a business having more than ten owners who are not related to the judge by consanguinity or affinity within the third degree of relationship.
- (3) A judge should manage any investments and other economic interests to minimize the number of cases in which the judge is disqualified. As soon as the judge can do so without serious financial detriment, the judge should divest himself or herself of investments and other economic interests that might require frequent disqualification. A judge shall be informed about the judge’s personal and fiduciary economic interests, and make a reasonable effort to be informed about the personal economic interests of any family member residing in the judge’s household.
- (4) Neither a judge nor a family member residing in the judge’s household shall accept a gift, a 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;

OPINION 215 (1997)

☐ Annotation:

A judge who has suffered a catastrophic loss (e.g., house burned down) may not accept gifts from lawyers or parties who have come or might come before the court. Placing gifts and/or donations in a blind trust would not solve the problem.

OPINION 194 (1996)

☐ Annotation:

It is a violation of the Code of Judicial Conduct for a judge or court staff to accept holiday or seasonal gifts from lawyers and

- (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 the judge (as spouse or family member), provided the gift, award or benefit could not reasonably be perceived as intended to influence the judge in the performance of judicial duties.

E. Fiduciary Activities.

- (1) A judge shall not serve as executor, administrator or other personal representative, trustee, guardian, attorney in fact or other fiduciary, except for the estate, trust or person or a member of the judge's family, and then only if such service will not interfere with the proper performance of judicial duties.
- (2) A judge shall not serve as a fiduciary if it is likely that the judge as a fiduciary will be engaged in proceedings that would ordinarily

law firms unless they are personal friends.

It is not a violation to attend a law firm holiday party as long as the party is open to people other than judges and court staff.

OPINION 178 (1995)

☐ Annotation:

An appellate judge may accept office space in a state law school free of charge so long as the university has not and is not likely to come before the judge.

Municipal court judges are **not required to comply** with Canon 4E. See Canon 6C(1).

come before the judge, or if the estate, trust or ward becomes involved in adversary proceedings in the court on which the judge serves or one under its appellate jurisdiction.

- (3) The same restrictions on financial activities that apply to a judge personally also apply to the judge while acting in a fiduciary capacity.

F. Service as Arbitrator or Mediator.

An active full-time judge shall not act as an arbitrator or mediator for compensation outside the judicial system, but a judge may encourage settlement in the performance of official duties.

G. Practice of Law.

A judge shall not practice law except as permitted by statute or this Code. Notwithstanding this prohibition, a judge may act pro se and may, without compensation, give legal advice to and draft or review documents for a member of the judge's family.

Canon 4F does **not apply to municipal court judges**. See Canon 6C(1).

Canon 4G does not apply to municipal judges who are attorneys so long as the judge does not appear in the judge's court and does not handle anything related to a case in which the judge has served as a judge. See Canon 6C(1)(d).

OPINION 132 (1989)

Facts Assumed:

In the county in question municipal court judges act as magistrates in most criminal cases in which defendants are arrested. Those judges consider affidavits for, and they issue, both search and arrest warrants. They also arraign defendants, and they set bonds.

Issue 1:

A relief judge for a municipal court may not represent—or practice law with—a lawyer who represents a defendant in a county court or district court case in which a magistrate who is another judge of the same municipal court took some action.

Issue 2:

A part-time judge may represent, or practice law with a lawyer who represents, an accused in a criminal case that has not been considered by another municipal court judge.

Issue 3:

A municipal court judge may continue to serve in that position if the judge's lawyer spouse represents defendants mentioned in Issues 1 and 2.

See also Opinion 173 (1994) that states "a municipal court judge should not simultaneously serve as a city attorney for the same city."

H. Extra-Judicial Appointments.

A judge should not accept appointment to a governmental committee, commission, or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice. A judge, however, may represent his or her country, state, or locality on ceremonial occasions or in connection with historical, educational, and cultural activities.

Municipal court judges are **not required to comply** with Canon 4H. See Canon 6C(1).

OPINION 202 (1996)

☐ Annotation:

Municipal judge may serve on a zoning board of adjustment, an uncompensated position.

OPINION 275 (2001)

A district judge may not serve on the board of regents of a state university. Canon 4H of the Code provides in part: "A judge should not accept appointment to a governmental committee, commission or other position that is concerned with the issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice." The Texas Education Code 65.16 and 65.31 lists the duties of the board to include the employment and supervision of the chief executive officer of the system and the establishment of policies for the general management of the university system. These activities are exactly those prohibited by Canon 4H.

I. Compensation, Reimbursement and Reporting.

(1) Compensation and Reimbursement. A judge may receive compensation and reimbursement of expenses for the extra-

The Texas Ethics Commission also has jurisdiction in this area.

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.

OPINION 261 (2000)

□ Annotation:

A city may appoint a part-time bail bondsman as an alternate municipal court judge, provided that he or she disqualifies himself or herself if: (1) he or she is hearing a matter involving a person for whom he or she has acted as a surety; or (2) his or her compensation from issuing bail bonds creates any appearance of impropriety.

CHAPTER 1 JUDICIAL CONDUCT

F. Canon 5 - Refraining from Inappropriate Political Activity

Code of Judicial Conduct	Notes
A judge or judicial candidate shall not:	<p><i>Private Admonition (1999)</i></p> <p>A judge improperly allowed his name to be used in a radio commercial for his businesses during the holiday season.</p> <p><i>OPINION 234 (1998)</i></p> <p><input type="checkbox"/> Annotation: A court administrator may campaign for political candidates on his or her own personal time, away from the courthouse, without giving the impression that he or she speaks for the judge.</p> <p><i>OPINION 184 (1995)</i></p> <p><input type="checkbox"/> Annotation: A judicial candidate may list groups that have endorsed the candidate. A judicial candidate may not make a public statement stating a position regarding abortion.</p> <p><i>OPINION 22 (1977)</i></p> <p><input type="checkbox"/> Annotation: A judge may act as a moderator for a short bi-weekly television program designed to educate the public on the duties and functions of courts and related agencies dealing with the administration of justice.</p>

(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).

OPINION 195 (1996)

☐ Annotation:

An individual who resigned as judge to run for another judicial office may not use the title “judge” in political advertising. Only a currently active judge may use the judicial title in campaign literature and advertisements.

OPINION 193 (1996)

☐ Annotation:

A candidate for justice of the peace who is a former justice of the peace may not imply in his political advertising that he or she is a current justice of the peace.

OPINION 267 (2000)

☐ Annotation:

A judge may not hire a staff member who is a candidate for judicial office.

Public Statement (2000)

Political endorsements by judges reflect adversely on the integrity and impartiality of the judiciary. It

(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).

is immaterial to the issue of misconduct that a judge does not use his judicial title or refer to his judicial position in a public endorsement of a candidate for public office. When interpreting the term "authorize" in Canon 5(3), the Commission makes no distinction between acting on one's own behalf and empowering another to act on one's behalf. [Violation of Canons 2B and 5(3).]

Public Admonition (2000)

A judge allowed his name, judicial position, likeness, and supportive statements to be used in a political advertisement for a candidate's re-election campaign. [Violation of Canons 2B and 5(3).]

Private Warning (2000)

A judge prepared a newspaper advertisement in which the judge urged local residents to vote for a specific candidate for a local public office. [Violation of Canons 2B and 5(3).]

Private Warning (2000)

A judge mailed postcards urging voters to support the judge's son's election campaign. [Violation of Canons 2B and 5(3).]

Public Admonition (1999)

Following his decision not to seek re-election, a judge caused

a political advertisement to be published in the local newspaper endorsing another judicial candidate.

Private Reprimand (1999)

A judge publicly endorsed another candidate for justice of the peace.

OPINION 231 (1998)

☐ Annotation:

A judge may be publicly thanked at a political party state convention program for contributing to a dinner sponsored by the party.

OPINION 224 (1998)

☐ Annotation:

An association or group of judges cannot endorse candidates for political office. Judges as a group cannot do what judges individually cannot do, even if the group consists of some non-judicial members.

OPINION 180 (1995)

☐ Annotation:

A judge whose spouse is a candidate for elective office may attend campaign functions, but may not be identified by name and title in press releases or campaign literature, be introduced by name and title, or speak at public gatherings in support of the spouse's candidacy.

OPINION 170 (1994)

☐ Annotation:

Publicly handing out campaign material for another candidate constitutes an improper public endorsement.

OPINION 145 (1992)

Annotation:

A judge should not permit members of the judge's office staff to participate in political activities such as publicly supporting a candidate for election, acting as campaign manager, and fund raising because such political activity would be likely to give the appearance of the judge's support for the candidate.

OPINION 136 (1990)

☐ Annotation:

A judge may not display on the judge's vehicle a bumper sticker supporting a political candidate.

OPINION 92 (1987)

☐ Annotation:

A part-time municipal judge may not publicly endorse judicial or non-judicial candidates for political office. Municipal judges must comply with the Canons and therefore may not lend the prestige of office to advance the private interest of others.

OPINION 60 (1982)

- (3) A judge shall resign from judicial office upon becoming a candidate in a contested election for a non-judicial office either in a primary or in a general or in a special election. A judge may continue to hold judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention or while being a candidate for election to any judicial office.
- (4) A judge or judicial candidate subject to the Judicial Campaign Fairness Act, Tex. Elec.

☐ Annotation:

A judge may not sit at the head table and make supportive comments in behalf of another person seeking public office at a fund raising event for the other person.

OPINION 59 (1982)

☐ Annotation:

A judge may not act as a co-chairman of a fund raising event for another person seeking public office.

OPINION 53C (1980)

☐ Annotation:

Canon 5B(2) permits a judge to be a delegate at precinct, county, and state party conventions.

OPINION 53B (1980)

☐ Annotation:

Endorsing a political party is within the discretion of a judge and does not violate Canon 5B(2) of the Code.

OPINION 159 (1993)

Code sec. 253. 151, *et. seq.* (the "Act"), shall not knowingly commit an act for which he or she knows the Act imposes a penalty. Contributions returned in accordance with sections 253.155(e), 253.157(b), or 253.160(b) of the Act are not a violation of this paragraph.

☐ Annotation:

A sitting judge may not use the title "Judge" as part of his or her advertising for non-judicial office nor may he or she use the title "Judge" in the name of the campaign committee although a judge may describe in his or her political literature for a non-judicial office his or her experience as a judge.

OPINION 100 (1987)

☐ Annotation:

Two or more judges running for judicial office at the same time may not jointly sponsor a fund raising event or jointly advertise by any news media.

OPINION 68 (1983)

☐ Annotation:

Judges could send a form letter expressing their appreciation to those who reported for jury duty if the contents of the letter are a genuine expression of appreciation, the letter is mailed routinely when the panel is discharged, and the signatory privileges are rotated regularly.

OPINION 48 (1979)

☐ Annotation:

A candidate for judicial office does not violate the Code of Professional Responsibility or the Code of Judicial Conduct by accepting, through his or her campaign treasurer, contributions from lawyers who

might be expected to appear
before him or her if the candidate
is elected to judicial office.

CHAPTER 1 JUDICIAL CONDUCT

G. Canon 6 - Compliance with the Code of Judicial Conduct

Code of Judicial Conduct	Notes
<p>A. The following persons shall comply with all provisions of this Code:</p> <ul style="list-style-type: none"> (1) An active, full-time justice or judge of one of the following courts: <ul style="list-style-type: none"> (a) the Supreme Court, (b) the Court of Criminal Appeals, (c) courts of appeals, (d) district courts, (e) criminal district courts, and (f) statutory county courts. (2) A full-time commissioner, master, magistrate, or referee of a court listed in (1) above. <p>B. A county judge who performs judicial functions shall comply with all provisions of this Code except the judge is not required to comply:</p> <ul style="list-style-type: none"> (1) when engaged in duties which relate to the judge's role in the administration of the county; (2) with Canons 4D(2), 4D(3), or 4H; (3) with Canon 4G, except practicing law in the court on which he or she serves or in any court subject to the appellate jurisdiction of the county court, or acting as a lawyer in a proceeding in which he or she has served as a judge or in any proceeding related thereto; (4) with Canon 5(3). <p>C. Justices of the Peace and Municipal Court Judges.</p>	

(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 Canon 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 the matter or parties involved in the arbitration or mediation; or

OPINION 173 (1994)

☐ Annotation:

If a municipal judge determines that a phone call is becoming an improper *ex parte* communication, the judge should end the call.

OPINION 233 (1998)

☐ Annotation:

A judge may, without compensation, serve as a mediator and may observe mediation sessions conducted by another mediation (withdrawing former Opinion 161 (1993)).

OPINION 208 (1997)

☐ Annotation:

A justice of the peace may serve as a court-appointed special advocate (CASA) so long as judicial duties come first.

OPINION 202 (1996)

☐ Annotation:

A home rule city municipal court relief judge may serve on the city's zoning board of adjustment, a voluntary and uncompensated position appointed by the city council. But see Canon 4H.

- (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 a 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:

OPINION 242 (1999)

☐ Annotation:

Canon 6C(1)(d) allows a municipal court judge to practice law if the judge is an attorney. Pursuant to this Canon, the judge would not be permitted to prosecute in the court on which the judge serves, nor would he or she be permitted to prosecute, in any court, any case related to a matter heard as a judge.

Public Reprimand (1995)

A judge was reprimanded for hearing a case when a party was a client of his law practice involved in active litigation. The Commission found a clear conflict of interest.

Private Reprimand and Order of Additional Education (2000)

A judge attempted to mediate a private dispute, even though no case was pending in the judge's court. Additionally, the judge engaged in *ex parte* communications with a law enforcement officer about the merits of a criminal case, and issued a fine without giving the defendant the opportunity to enter a plea and without holding a hearing. [Violation of Canons 2B, 3B(8), and 6C(2).]

Private Admonition and Order of Additional Education (2000)

A judge improperly conducted "informal" peace bond hearings. After some of the "informal" hearings, the judge granted the peace bonds without requiring the defendants to post cash or surety bonds. In a separate case, the judge engaged in improper *ex parte* communications with another judge and wrote a letter to the other judge on behalf of a private citizen. [Violation of Canons 2A, 2B, and 6C(2).]

Private Order of Additional Education (1999)

Although no case was pending in a judge's court, the judge telephoned and personally met with a landlord to encourage the landlord to resolve the dispute with a tenant, and issued to the landlord a letter on official stationery. The judge presided over an action filed later by the tenant against the landlord, after engaging in numerous *ex parte* communications with each party. Instead of scheduling the hearing in accordance with the time frames set forth in the Texas Property Code, the judge conducted the hearing on the same day the landlord was served with the citation. [Violation of Canons 2A, 2B, and 6C(2).]

Private Order of Additional Education (1999)

<p>(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 <i>ex parte</i> communications are contemplated or authorized by law.</p> <p>D. A part-time commissioner, master, magistrate, or referee of a court listed in 6A(1) above:</p> <p>(1) shall comply with all provisions of this Code, except he or she is not required to comply with Canons 4D(2), 4E, 4F, 4G or 4H, and</p> <p>(2) should not practice law in the court on which he or she serves or in any court subject to the appellate jurisdiction of the court on</p>	<p>A judge permitted the court staff to telephone a traffic defendant to attempt to persuade the defendant to waive the right to a trial. In a separate case, the judge negotiated a plea bargain agreement and the "instanter" payment of the fine and costs imposed on a traffic defendant. [Violation of Canons 2A and 6C(2).]</p> <p><i>Public Reprimand (1994)</i></p> <p>Judge publicly reprimanded, in part, for unilaterally dismissing cases and disposing of cases in an informal, <i>ex parte</i> fashion.</p> <p><i>Private Reprimand (1999)</i></p> <p>Judge privately reprimanded for entering a guilty plea for a defendant who had not appeared in court based upon <i>ex parte</i> communication with the defendant's wife.</p>
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which he or she serves, or act as a lawyer in a proceeding in which he or she has served as a commissioner, master, magistrate, or referee, or in any proceeding related thereto.

E. A judge pro tempore, while acting as such:

- (1) shall comply with all provisions of this Code applicable to the court on which he or she is serving, except he or she is not required to comply with Canons 4D(2), 4D(3), 4E, 4F, 4G, or 4H, and
- (2) after serving as a judge pro tempore, should not act as a lawyer in a proceeding in which he or she has served as a judge or in any other proceeding related thereto.

F. A senior judge, or a former district judge or a retired or former statutory county court judge who has consented to be subject to assignment as a judicial officer:

- (1) shall comply with all the provisions of this Code except he or she is not required to comply with Canons 4D(2), 4E, 4F, 4G or 4H, but
- (2) should refrain from judicial service during the period of an extra-judicial appointment permitted by Canon 4H.

G. Candidates for Judicial Office.

- (1) Any person seeking elective judicial office listed in Canon 6A(1) shall be subject to the same standards of Canon 5 that are required of members of the judiciary.
- (2) Any judge who violates this Code shall be subject to sanctions by the State Commission on Judicial Conduct.
- (3) Any lawyer who is a candidate seeking

judicial office who violates Canon 5 or other relevant provisions of this Code, is subject to disciplinary action by the State Bar of Texas.

- (4) The conduct of any other candidate for elective judicial office, not subject to Paragraphs (2) and (3) of this section, who violates Canon 5 or other relevant provisions of the Code is subject to review by the Secretary of State, the Attorney General, or the local District Attorney for appropriate action.

H. 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.

CHAPTER 1 JUDICIAL CONDUCT

H. Canon 7 - Effective Date of Compliance

Code of Judicial Conduct	Notes
A person to whom this Code becomes applicable should arrange his or her affairs as soon as reasonably possible to comply with it.	

CHAPTER 1 JUDICIAL CONDUCT

I. Canon 8 - Construction and Terminology of the Code

Code of Judicial Conduct	Notes
<p>A. Construction.</p> <p>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.</p> <p>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.</p> <p>The Code is designed to provide guidance to judges and candidates for judicial office and 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.</p> <p>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.</p> <p>B. Terminology.</p>	

- (1) “Shall” or “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.
- (4) “De minimis” denotes an insignificant interest that could not raise reasonable question as to a judge’s impartiality.
- (5) “Economic interest” denotes ownership of a more than de minimis legal or equitable interest, or a relationship as officer, director, advisor or other active participant in the affairs of a party, except that:
 - (i) ownership of an interest in a mutual or common investment fund that holds securities is not an economic interest in such securities unless the judge participates in the management of the fund or a proceeding pending or impending before the judge could substantially affect the value of the interest;
 - (ii) service by a judge as an officer, director, advisor or other active participant, in an educational, religious, charitable, fraternal, or civic organization or service by a judge’s spouse, parent or child as an officer, director, advisor or other active participant in any organization does not create an economic interest in securities held by that organization;

- (iii) a deposit in a financial institution, the proprietary interest of a policy holder in a mutual insurance company, of a depositor in a mutual savings association or of a member in a credit union, or a similar proprietary interest, is not an economic interest in the organization unless a proceeding pending or impending before the judge could substantially affect the value of interest; and
- (iv) ownership of government securities is not an economic interest in the issuer unless a proceeding pending or impending before the judge could substantially affect the value of the securities.
- (6) “Fiduciary” includes such relationships as executor, administrator, trustee, and guardian.
- (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, grandparent 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.

- (13) “Retired judge” means a person who receives from the Texas Judicial Retirement System, Plan One or Plan Two, an annuity based on service that was credited to the system. (Secs. 831.001 and 836.001, V.T.C.A. Government Code [Ch. 179, Sec. 1, 71st Legislature (1989)])

- (14) “Senior judge” means a retired appellate or district judge who has consented to be subject to assignment pursuant to Section 75.001, Government Code. [Ch. 359, 69th Legislature, Reg. Session (1985)]

- (15) “Statutory county court judge” means the judge of a county court created by the legislature under Article V, Section 1, of the Texas Constitution, including county courts at law, statutory probate courts, county criminal courts, county criminal courts of appeals, and county civil courts at law. (Sec. 21.009, V.T.C.A. Government Code)

- (16) “County judge” means the judge of the county court created in each county by Article V, Section 15, of the Texas Constitution. (Sec. 21.009, V.T.C.A. Government Code)

- (17) “Part-time” means service on a continuing or

periodic basis, but with permission by law to devote time to some other profession or occupation and for which the compensation for that reason is less than that for full-time service.

- (18) “Judge pro tempore” means a person who is appointed to act temporarily as a judge.

CHAPTER 2 MAGISTERIAL DUTIES

A. Adult "Magistration"

All judges are magistrates. ([Art. 2.09, C.C.P.](#)) All magistrates have co-equal jurisdiction with all other magistrates within the county and their jurisdiction is coextensive with the limits of the county. [Gilbert v. State](#), 493 S.W.2d 783 (Tex. Crim. App. 1973) and [Ex parte Clear](#), 573 S.W.2d 224 (Tex. Crim. App. 1978) As a magistrate, municipal judges are authorized to warn adult and juvenile offenders of their respective rights as required by law.

The "magistration" hearing or 15.17 hearing must take place without unnecessary delay, but in no event more than 48 hours after the person is arrested.

Warning an offender of his or her rights and setting bail is not an arraignment although it is sometimes called such. An arraignment involves fixing the identity of the offender and taking a plea.

1. Magistrate's Warning for Adult, Art. 15.17, C.C.P.

Checklist 1	Script/Notes
<input type="checkbox"/> 1. Determine probable cause.	Gerstein v. Pugh 420 U.S. 103 (1975)
<input type="checkbox"/> If arrest is by a warrant, no further inquiry is needed.	Ex Parte Garcia , 547 S.W. 2d 271 (Tex.Crim. App. 1977)
<input type="checkbox"/> If arrest is without a warrant, conduct probable cause hearing either by sworn testimony or written affidavit to review the facts and circumstances of the arrest to determine if probable cause exists for continued detention of arrestee.	Magistrate to use a practical common sense approach to determine probable cause by considering all facts presented under oath; the "totality of the circumstances" test to determine whether there is a fair probability that the arrestee committed the offense with which he or she is charged, Illinois v. Gates , 462 U.S. 213 (1983).
<input type="checkbox"/> If there is no probable cause, release the arrestee.	
<input type="checkbox"/> If there is probable cause, proceed.	

- ☐ Appearance before a magistrate may be broadcast by closed circuit television to the magistrate. Two-way communication must be possible and the warning must be recorded.
- ☐ 2. Identify yourself to the arrestee.
- ☐ 3. Determine if the arrestee sufficiently understands the English language or possesses any impairments.
- ☐ 4. If necessary, swear in a qualified interpreter.
- ☐ 5. If the arrestee is hearing impaired, obtain the services of an interpreter as provided by [Art. 38.31, C.C.P.](#), to interpret the warning.
- ☐ 6. Determine the arrestee's age at the time of the offense.
 - ☐ If the arrestee has not reached his or her 17th birthday, or was under 17 at the time of the offense but is now 17 or older, use the juvenile admonishment (warning).
 - ☐ If the arrestee reached his or her 17th birthday at the time of the offense, continue.
- ☐ 7. Determine whether arrestee is currently on bail for a separate offense
- ☐ 8. Advise the arrestee in clear language of the offense with which they are charged.
 - ☐ Name the offense.
 - ☐ Make arrestee aware of any affidavit filed in the case.

[Art. 15.17\(a\), C.C.P.](#)

SEE [CHECKLIST 53](#) **Form**

[Art. 15.17\(c\), C.C.P.](#)
SEE [CHECKLIST 53](#)

SEE [CHECKLIST 68](#) **Form**

[Art. 15.17\(a\), C.C.P.](#)

"You are charged with the **Form** offense of _____.
It is a _____
Degree/Class Misdemeanor/Felony.

☐ 9. Warn the arrestee of the following rights:

- ☐ the right to remain silent;
- ☐ that the arrestee is not required to make a statement and that any statement made can and will be used against the arrestee;
- ☐ the right to have an attorney present during any interview with peace officers or prosecutors;
- ☐ the right to terminate the interview at any time; and
- ☐ the right to an examining trial if the offense charged is a felony.

- ☐ accusation of offenses may lead to deportation if the arrestee is not a U.S. citizen.

☐ 10. Warn arrestee of right to counsel and appointment of counsel.

- ☐ Warn of the right to retain counsel.
- ☐ Warn of the right to request appointment of counsel if the person cannot afford counsel.
- ☐ Describe the local procedures, created by the district and county judges, for requesting appointment of counsel.
- ☐ Provide the appropriate locally approved paperwork for request of appointment of counsel.

No right to counsel at probable cause hearing or during "magistration" warnings. [Gerstein, supra.](#)

[Art. 1.051, C.C.P.](#)

Only indigent defendants charged with a crime that may result in punishment by confinement are entitled to have an attorney appointed. However, if a court concludes that the interests of justice requires representation by counsel, the court may appoint counsel. SEE [CHECKLIST 44](#) for indigent hearings.

Order or download *Magistrate's Guide to the Vienna Convention on Consular Notification* from the Texas Attorney General's Office: (512) 463-2170 or www.oag.state.tx.us.

Form

Form

- ☐ Ensure reasonable assistance in completing the necessary forms.
- ☐ Appoint counsel, if the magistrate is the designated by the local district and county judges as the appropriate authority under [Article 26.09, C.C.P.](#), to appoint counsel.
- ☐ Forward the completed paperwork to the appropriate designee if not designated by the local district and county judges to appoint counsel:
 - ☐ without unnecessary delay, and
 - ☐ not later than 24 hours after request for appointment.
- ☐ 11. A record must be made of each 15.17 hearing; it may be written, recorded or in other form adopted by the county, and include:
 - ☐ the magistrate informing the person of the person's right to request appointment of counsel;
 - ☐ the magistrate asking the person whether the person wants to request appointment of counsel; and
 - ☐ whether the person requested appointment of counsel.
- ☐ 12. Inquire if the arrestee understands his or her rights.
 - ☐ A magistrate has a duty to clarify the rights if the arrestee indicates a lack of understanding.
 - ☐ A magistrate must ensure that reasonable assistance is given to the arrestee in completing the necessary forms

SEE [CHECKLIST 8](#) if you are the designated authority to appoint

for requesting appointment of counsel at the time of the 15.17 hearing.

counsel.

[Art. 26.04, C.C.P.](#)

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

☐ 13. Bail.

- ☐ Bail is the security given by the accused that he or she will appear and answer the accusation before the proper court.
- ☐ A defendant may be released on bond by posting a cash deposit or surety bond, or by agreeing to a personal recognizance bond.

Form - Cash bond

Form - Personal bond

Form - Surety bond

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

☐ 14. Setting Bail.

- ☐ Bail should be set at a reasonable amount. The court may consider any factor relevant to the fixing of bail.
- ☐ The court may consider any other issues deemed appropriate including any or all of

[Art. 17.15, C.C.P.](#)

the following:

- ☐ the amount must be high enough to ensure the presence of the arrestee when required, but not so high as to be oppressive;
- ☐ the nature and circumstances of the offense;
- ☐ the range of punishment for the offense charged;
- ☐ the arrestee's ability to make bail in the amount under consideration;
- ☐ consider the income of a spouse;
- ☐ do not consider the income of friends or other family members;

- ☐ the arrestee's community ties;
- ☐ work record;
- ☐ family ties;
- ☐ prior criminal record and appearances in other matters; and
- ☐ bail, if any, set in the defendant's other cases.
- ☐ If a pretrial services agency operates in the judicial district or county, order the arrestee to be interviewed and the information brought to you immediately.

- ☐ The court must also consider the safety of

"Do you work?

For whom?

How much do you earn?

Are you married?

How much does your spouse earn?

Does anyone else live with you?

Do you live in _____ County?

How will you get to court if you are released?

Have you ever been arrested before?

When and for what?

What was the outcome of the case?"

[Art. 56.02\(2\), C.C.P.](#)

the victim, his or her family, and the community in fixing the amount of bail.

- ☐ The magistrate may impose any reasonable condition related to safety of the victim or safety of the community.
- ☐ Bail may only be denied or temporarily denied in certain instances.
- ☐ If bail is to be denied, or temporarily denied, make a written finding.
- ☐ Set the amount of bail.
- ☐ Set conditions of bail.
 - ☐ Record each condition in writing; or
 - ☐ Recite each condition into the record; and
- ☐ Require the arrestee to acknowledge that he or she understands each condition.
- ☐ If the charge is a subsequent “Driving, Flying or Boating While Intoxicated”, “Intoxication Assault” or “Intoxication Manslaughter”, the magistrate **shall** require on release that a defendant:
 - ☐ have installed on the motor vehicle owned or most regularly operated by the defendant a vehicle ignition interlock device; and
 - ☐ not operate any motor vehicle unless the vehicle is equipped with that device;

[Art. 17.40, C.C.P.](#)

SEE [CHECKLIST 2](#)

“I now set bail at \$_____.

Further, I am setting the following conditions and I order you to abide by each and every one of them.”

Where the alleged victim is a child 12 years of age or younger, see [Art. 17.41, C.C.P.](#)

"Do you understand each of these conditions?"

[Art. 17.441, C.C.P.](#)

Form

- ☐ must have device installed on appropriate motor vehicle within 30 days of release on bond;
- ☐ must pay the expense of installation.
- ☐ You may designate an appropriate agency to verify the installation of the device and to monitor the device.
- ☐ Do not require the installation of the device if to do so would not be in the best interest of justice.
- ☐ 15. Consider the arrestee for release on personal bond.
- ☐ 16. Set conditions of personal bond, if arrestee qualifies.
 - ☐ insure that the arrestee acknowledges and understands each condition.
- ☐ 17. If the offense is punishable by fine only, you may, after identifying the defendant:
 - ☐ release the defendant on personal bond;
 - ☐ order the defendant in writing to appear in the appropriate court for arraignment at a specific:
 - ☐ date;
 - ☐ time;
 - ☐ place; and
 - ☐ provide the arrestee with a copy of the order.
 - ☐ Other restrictions:
 - ☐ Magistrate does not have discretion to restrict the type of bail, cash or surety, to the exclusion of the other. A magistrate may require a cash bond only when a forfeiture of bail has been declared. A magistrate may designate that personal

SEE [CHECKLIST 5](#) **Form**

[Art. 15.17\(b\), C.C.P.](#)

Form

[Ex parte Deaton](#)
582 S.W.2d 151 (Tex. Crim. App. 1979);
[Ex parte Rodriguez](#)
583 S.W.2d 792 (Tex. Crim. App. 1979);
[Art. 23.05, C.C.P.](#)

recognizance bond be denied by stating “cash or surety” on the bail setting.

- ☐ A magistrate may not set differential bonds (e.g., \$200 cash or \$500 surety).
- ☐ A magistrate cannot set a bond that would be an instrument of oppression (i.e., high in light of financial resources).
- ☐ A bond that is more than what the court would accept as a fine in a fine-only misdemeanor case is probably too high a bond when there is no history of failing to appear.

☐ 18. Other consideration:

- ☐ Enter "Magistrate's Order of Emergency Protection."

SEE CHECKLIST 7 **Form**

☐ 19. Special procedures on fine-only offenses.

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

- ☐ Magistrate may set surety/cash appearance bond.
- ☐ Magistrate may set personal bond.
- ☐ Magistrate may release without setting bond:
- ☐ Only in fine-only misdemeanors;
 - ☐ Magistrate must give defendant the time and place to appear to answer to the charges against him or her in writing;
 - ☐ Release without bond is not available if defendant has prior felony or Class A or B misdemeanor conviction; and
 - ☐ If defendant fails to appear and a subsequent warrant is executed, the magistrate may set bail and should set

Form - Cash Bond
Form - Surety Bond

Form - Personal Bond

the amount of bail at twice the potential fine and cost.

- ☐ 20. Magistrate may take a plea of guilty if person was arrested under warrant for a fine-only offense issued in a county other than the one in which the person is arrested.

[Art. 15.18, C.C.P.](#)

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

- ☐ Defendant must make written plea of guilty or nolo contendere and waiver of jury trial.

- ☐ Magistrate must enter a judgment that includes the following:

Form

- ☐ Set fine;

- ☐ Determine cost;

- ☐ Accept payment;

- ☐ Give credit for time served:

- ☐ Determine what constitutes a day, a period between eight and 24 hours;

[Art. 45.048, C.C.P.](#)

- ☐ Credit of at least \$100 for each "day";

- ☐ Determine indigency. **Form**

SEE [CHECKLIST 44](#)

- ☐ On satisfaction of judgment, discharge the defendant.

- ☐ 21. Magistrate must, before the 11th business day following the plea, transmit to the court with jurisdiction the following:

[Art. 15.18\(b\), C.C.P.](#)

- ☐ Written plea;

- ☐ Any orders entered in the case;

☐ Any fine or cost collected in the case.

|

CHAPTER 2 MAGISTERIAL DUTIES

A. Adult "Magistration"

2. When Bail May be Denied or Delayed

Checklist 2	Notes
<input type="checkbox"/> 1. Bail may be denied in capital cases when the state presents proof evident that conviction and death sentence will result from trial.	Art. I, Sec. 11, Texas Constitution
<input type="checkbox"/> 2. A district judge may deny bail in non-capital cases when there is a substantial showing by the state within seven (7) days of arrest that the defendant:	<p>When a person accused of a felony is brought before a magistrate, the magistrate should contact the district court. Article 17.21, C.C.P. provides that if the court is not in session, then the magistrate may set the bail. Because Art. 1, Sec. 11a, Texas Constitution provides that only a district judge may deny bail in non-capital cases and that the order denying the bail must be entered within seven (7) calendar days of a defendant's incarceration, a municipal court judge exercising his or her authority as a magistrate should notify the district court immediately and send the warning sheet to the district court as soon as possible.</p>
<input type="checkbox"/> (A) is guilty of the charged felony, with two (2) prior convictions;	
<input type="checkbox"/> the second being subsequent to the first;	
<input type="checkbox"/> both in point of time of commission of the offense; and	
<input type="checkbox"/> conviction therefore;	
<input type="checkbox"/> (B) committed a felony while on bail for a prior felony for which he or she was indicted;	<p>United States v. Salerno, 481 U.S. 739 (1987), sanctioned the denial of bail if person was found to</p>

<p><input type="checkbox"/> (C) committed a felony involving the use of a deadly weapon after being convicted of a prior felony;</p> <p><input type="checkbox"/> (D) committed a violent or sexual offense while under the supervision of a criminal justice agency of the state or political subdivision of the state for a prior felony.</p> <p><input type="checkbox"/> 3. The state's burden is:</p> <p><input type="checkbox"/> to prove guilt of the defendant in (A) and (C) above; or</p> <p><input type="checkbox"/> that the offense was committed while on bail in (B) and (D).</p> <p><input type="checkbox"/> 4. The court's order is reduced to writing.</p> <p><input type="checkbox"/> 5. In non-capital case only, set aside the order after 60 days and set bail if the defendant has not been tried.</p>	<p>be a threat to individuals or the community after clear and convincing evidence of those facts presented at an adversarial hearing.</p> <p>Art. 1, Sec. 11a, Texas Constitution</p> <p>Bills v. State, 796 S.W.2d 194 (Tex. Crim. App. 1990)</p>
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CHAPTER 2 MAGISTERIAL DUTIES

A. Adult "Magistration"

3a. When the Defendant Must be Released Because a Magistrate has not Found Probable Cause

Checklist 3(a)	Notes
<input type="checkbox"/> 1. All persons arrested must be brought before a magistrate without unnecessary delay, never later than 48 hours after arrest.	Art. 15.17(a), C.C.P.
<input type="checkbox"/> 2. Persons arrested without warrants must be released if a magistrate has not determined probable cause exists to believe that the person committed the offense within certain time frames.	Art. 17.033, C.C.P.
<input type="checkbox"/> 3. In misdemeanor cases: <ul style="list-style-type: none"> <input type="checkbox"/> 24 hours; <input type="checkbox"/> Bonds not to exceed \$5,000; <input type="checkbox"/> Personal bonds if arrestee is unable to make or secure surety/cash appearance bond. 	Form
<input type="checkbox"/> 4. In felony cases: <ul style="list-style-type: none"> <input type="checkbox"/> 48 hours <input type="checkbox"/> Bonds not to exceed \$10,000 <input type="checkbox"/> Personal bonds if arrestee is unable to make or secure surety/cash appearance bond. 	Form
<input type="checkbox"/> 5. On application by the prosecutor, the magistrate may postpone release for 72 hours from arrest. <ul style="list-style-type: none"> <input type="checkbox"/> Application must state sufficient reasons 	

why a magistrate has not made a probable cause determination.

CHAPTER 2 MAGISTERIAL DUTIES

A. Adult "Magistration"

3b. When the Defendant Must be Released because the State is not Ready

Checklist 3(b)	Notes
<p>Ed. Note: The magistrate that enters orders under Article 15.17, Criminal Code of Procedures keeps jurisdiction of the defendant's charge until a charging instrument (indictment, information, complaint) is filed in a court with jurisdiction. Once the charging instrument has been filed in the cause, the magistrate has no further jurisdiction or responsibility. See Guerra v. Garza, 987 S.W.2d 593 (Tex. Crim. App. 1999).</p> <p><input type="checkbox"/> 1. When the state is not ready and the defendant is unable to post the bail previously set, the defendant must be released on personal bond, or reasonable bail that the defendant can make must be set, if the defendant is charged with:</p> <p><input type="checkbox"/> any grade of felony and he or she has been incarcerated for 90 days;</p> <p><input type="checkbox"/> a misdemeanor punishable by 180 days in jail or more and he or she has been incarcerated for 30 days;</p> <p><input type="checkbox"/> a misdemeanor punishable by 180 days in jail or less and he or she has been incarcerated for 15 days; or</p> <p><input type="checkbox"/> a misdemeanor punishable by fine only and he or she has been incarcerated for five (5) days.</p> <p>AND</p> <p>The defendant is not otherwise:</p> <p><input type="checkbox"/> serving a sentence of confinement for</p>	<p>Art. 17.151, C.C.P.; Jones v. State, 803 S.W.2d 712 (Tex. Crim. App. 1991)</p> <p>Art. 17.151(4), C.C.P.</p>

another offense;

☐ being detained pending trial of another case and time has not yet lapsed on that case;

☐ incompetent to stand trial, during a period of incompetence.

- ☐ 2. When defendant is indigent, either reduce bail to an amount the defendant can post, or release the defendant on personal bond.

Form

CHAPTER 2 MAGISTERIAL DUTIES

A. Adult "Magistration"

4. Requisites of a Bail Bond

Checklist 4	Notes
<p><input type="checkbox"/> 1. Requisites of a bail bond:</p> <ul style="list-style-type: none"> <input type="checkbox"/> made payable to "The State of Texas"; <input type="checkbox"/> defendant and surety, if any, bind themselves that the defendant will appear before the proper court or magistrate to answer the accusation against him or her; <input type="checkbox"/> states whether the defendant is charged with a felony or misdemeanor; <input type="checkbox"/> signed by name or mark of the defendant and surety, if any, with a mailing address for each; <input type="checkbox"/> states the time and place, when and where the defendant binds himself or herself to appear; <input type="checkbox"/> states the court or magistrate before whom to appear; <input type="checkbox"/> states the defendant is bound to appear before any court or magistrate before whom the matter may be pending at any time and place required under law or by any court or magistrate; <input type="checkbox"/> conditioned that the defendant and sureties, if any, will pay all necessary and reasonable expenses incurred by any and all sheriffs or other peace officers in re-arresting the defendant if failure to appear before the court or magistrate named in the bond at the time stated therein; and 	<p>Art. 17.08, C.C.P.</p> <p>Form - where child is alleged victim</p>

<input type="checkbox"/> such expense shall be in addition to the principal amount of the bond.	
<input type="checkbox"/> 2. Set any reasonable conditions that will assure the appearance of the defendant.	Valenciano v. State , 720 S.W.2d 523 (Tex. Crim. App. 1986)
<input type="checkbox"/> 3. Sureties, generally:	
<input type="checkbox"/> If only one surety, must be worth at least double the amount of bail set less exempted, encumbered or indebted property.	Art. 17.13, C.C.P. Form
<input type="checkbox"/> Must be a resident of this state.	
<input type="checkbox"/> A corporate surety must have a power of attorney designating an authorized agent on file.	Arts. 17.07 and 17.14, C.C.P.
<input type="checkbox"/> A minor may not be a surety.	Art. 17.10, C.C.P.
<input type="checkbox"/> A person who has signed as a surety on a bond and is in default is disqualified to sign as a surety as long as he or she is in default.	Art. 17.11, Sec. 2, C.C.P. A surety is in default from the time execution may be issued on the final judgment in a bond forfeiture proceeding unless the final judgment is superseded by the posting of a supersedeas bond (a bond required of someone who petitions to set aside a judgment or execution). If surety is a corporation, see Sec. 1704.212(c), O.C.

CHAPTER 2 MAGISTERIAL DUTIES

A. Adult "Magistration"

5. Requisites of a Personal Bond

Checklist 5	Notes
<p><input type="checkbox"/> 1. A personal bond must contain the requisites of a bail bond and:</p> <p><input type="checkbox"/> identification information, including the defendant's:</p> <ul style="list-style-type: none"> <input type="checkbox"/> name; <input type="checkbox"/> address; <input type="checkbox"/> place of employment; <input type="checkbox"/> date and place of birth; <input type="checkbox"/> height; <input type="checkbox"/> weight; <input type="checkbox"/> color of hair and eyes; <input type="checkbox"/> driver's license number and state of issuance, if any; <input type="checkbox"/> nearest relative's name and address, if any; and <input type="checkbox"/> the following oath: <p>I swear that I will appear before the (court or magistrate) at (address, city, county), Texas, on the (date), at the hour of (time, a.m. or p.m.) or upon notice by the court, or pay to the court the principal sum of (amount) plus all necessary and reasonable expenses incurred in any arrest for failure to appear.</p> <p><input type="checkbox"/> 2. Only the court before whom the case is pending may release on personal bond a defendant who:</p> <p><input type="checkbox"/> is charged with:</p> <ul style="list-style-type: none"> <input type="checkbox"/> capital murder; <input type="checkbox"/> aggravated kidnapping; <input type="checkbox"/> aggravated sexual assault; <input type="checkbox"/> deadly assault on law enforcement 	<p>Form</p> <p>Art. 17.04, C.C.P.</p> <p>Art. 17.03(b), C.C.P.</p>

<p>officer, corrections officer, parole board member or employee, or court participant;</p> <ul style="list-style-type: none"> <input type="checkbox"/> injury to a child or elderly individual; <input type="checkbox"/> aggravated robbery; <input type="checkbox"/> burglary; <input type="checkbox"/> organized criminal activity; <input type="checkbox"/> any aggravated felony under V.T.C.A. Healthy & Safety Code, Chapter 481 or Sec. 485.033; or <p><input type="checkbox"/> does not submit to testing as required by the court or a magistrate or whose test results for alcohol or drugs are positive.</p>	
<p><input type="checkbox"/> 3. In addition to any other reasonable conditions that will assure the appearance of the defendant, consider:</p> <ul style="list-style-type: none"> <input type="checkbox"/> electronic monitoring or home curfew; <input type="checkbox"/> weekly testing for controlled substances; <input type="checkbox"/> if charge is prostitution, counseling or education or both for HIV; and <input type="checkbox"/> if the charge is stalking, consider a no contact order. 	<p>Art. 17.43, C.C.P.</p> <p>Art. 17.44(a)(2), C.C.P.</p> <p>Art. 17.45, C.C.P.</p> <p>Art. 17.46(a), C.C.P., Sec. 42.072, P.C.</p>
<p><input type="checkbox"/> 4. If the charge is a subsequent “Driving, Flying or Boating While Intoxicated”, “Intoxication Assault” or “Intoxication Manslaughter”, the magistrate shall require on release that a defendant:</p> <ul style="list-style-type: none"> <input type="checkbox"/> have installed on the motor vehicle owned or most regularly operated by the defendant a vehicle ignition interlock device; <input type="checkbox"/> not operate any motor vehicle unless the vehicle is equipped with that device; <ul style="list-style-type: none"> <input type="checkbox"/> must have device installed on appropriate motor vehicle within 30 days of release on bond; and <input type="checkbox"/> must pay the expense of installation. 	<p>Art. 17.441, C.C.P.</p> <p>Form</p>

- | | |
|---|--|
| <ul style="list-style-type: none"> <input type="checkbox"/> You may designate an appropriate agency to verify the installation of the device and to monitor the device. <input type="checkbox"/> Do not require the installation of the device if to do so would not be in the best interest of justice. | |
| <ul style="list-style-type: none"> <input type="checkbox"/> 5. Order drug or alcohol testing, education and/or treatment if you, or the investigating or arresting law enforcement officer, reasonably believe: <ul style="list-style-type: none"> <input type="checkbox"/> that drug or alcohol abuse was related to the offense; or <input type="checkbox"/> drugs or alcohol are presently in the body of the defendant; and <input type="checkbox"/> the condition will serve to reasonably assure the appearance of the defendant in court. | <p>Art. 17.03(c), C.C.P.</p> |
| <ul style="list-style-type: none"> <input type="checkbox"/> 6. Costs of testing may be assessed as a condition of bond or as court costs. | <p>Art. 17.03(e), C.C.P.</p> |
| <ul style="list-style-type: none"> <input type="checkbox"/> 7. Order the personal bond fee: <ul style="list-style-type: none"> <input type="checkbox"/> paid before the defendant is released; <input type="checkbox"/> paid as a condition of bond; <input type="checkbox"/> paid as court costs; <input type="checkbox"/> reduced; or <input type="checkbox"/> waived. | <p>Art. 17.03(g), C.C.P.</p> |
| <ul style="list-style-type: none"> <input type="checkbox"/> 8. Release a mentally ill offender if: <ul style="list-style-type: none"> <input type="checkbox"/> the defendant is not charged with and has not previously received deferred adjudication, community supervision or probation, any deferred final disposition of a case, or a final conviction for: <ul style="list-style-type: none"> <input type="checkbox"/> murder; <input type="checkbox"/> capital murder; | <p>Art. 17.032, C.C.P.</p> |

CHAPTER 2 MAGISTERIAL DUTIES

A. Adult "Magistration"

6. When Bail May be Raised, Changed, or Forfeited

Checklist 6	Notes
<input type="checkbox"/> 1. Bail may be changed if the initial bail bond is: <ul style="list-style-type: none"> <input type="checkbox"/> defective; <input type="checkbox"/> excessive; <input type="checkbox"/> insufficient; <input type="checkbox"/> the sureties, if any, are not acceptable; <input type="checkbox"/> set prior to indictment and indictment is returned; or <input type="checkbox"/> conditioned upon treatment under Art. 17.03, C.C.P., and that condition is violated. 	<p>Art. 17.09, Sec. 3, C.C.P.</p> <p>Guerra v. Garza, 987 S.W.2d 593 (Tex. Crim. App. 1999) A judge lacks the authority to change the status of bonds set by another judge acting as a magistrate.</p> <p>Ex parte King, 613 S.W.2d 503 (Tex. Crim. App. 1981)</p> <p>Art. 11.56, C.C.P.</p> <p>Art. 22.021, C.C.P.</p>
<input type="checkbox"/> 2. Bail may not be raised or forfeited: <ul style="list-style-type: none"> <input type="checkbox"/> without cause; <input type="checkbox"/> if the defendant fails to hire counsel as ordered by the court; or <input type="checkbox"/> if defendant is only slightly late, with no prior forfeiture history. 	<p>Art. 17.09, Sec. 3, C.C.P.</p> <p>Art. 22.02, C.C.P.; Meador v. State, 780 S.W.2d 836 (Tex. App.—Houston [14th] 1989) (Three to five minutes late is not enough.)</p>

CHAPTER 2 MAGISTERIAL DUTIES

A. Adult "Magistrations"

7. Magistrate's Order for Emergency Protection, [Art. 17.292, C.C.P.](#)

After an arrest involving family violence or stalking under [Art. 42.072, P.C.](#), a magistrate may render an emergency protection order effective for up to 60 days. The order may be entered upon the magistrate's own motion, upon request by the victim, the guardian of the victim, a peace officer, or by the attorney representing the state. If an order is issued, it must be issued at the time the accused appears before the magistrate. **Form**

The order may prohibit the arrested person from committing further violence or threats and from communicating directly with the victim or a family member of the victim in a threatening manner or communicating a threat through any person to a family member or from going to or near the residence, place of employment or business of a family or household member or a child care facility or school where a child protected under the order resides or attends. It should also prohibit the defendant from possessing a firearm.

The prohibited locations and distances must be particularly described. If the magistrate's emergency protection order conflicts with other existing orders, the magistrate's emergency protection order shall prevail for the duration of the period imposed.

The magistrate may also suspend the defendant's license to carry a concealed handgun issued under [Sec. 411.177](#) of the Government Code.

Checklist 7	Notes
<p><input type="checkbox"/> 1. Determine if any of the following persons are present:</p> <ul style="list-style-type: none"> <input type="checkbox"/> a peace officer involved in the arrest; <input type="checkbox"/> the attorney representing the State of Texas; <input type="checkbox"/> the victim; or <input type="checkbox"/> the guardian of the victim. <p><input type="checkbox"/> 2. If none of the above is present, consider requesting the presence of one or more of the above.</p>	

☐ 3. Determine if the case involves “family violence”:

[Secs. 71.004 and 71.0021, F.C.](#)

- ☐ An act or threat of violence by one member of a family or household against another member of a family or household
- ☐ Abuse of a child of the family or household by a member of the family or household.
- ☐ Dating violence, victim and defendant have a dating relationship (more than a casual acquaintanceship or ordinary fraternization).

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

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

[Art. 17.292\(a\), C.C.P.](#)

- ☐ serious bodily injury to the victim; or
- ☐ the use or exhibition of a deadly weapon during the commission of an assault.

☐ 5. Identify the:

- ☐ victim;
- ☐ members of the victim’s family or household;
- ☐ children.

☐ 6. Identify the:

- ☐ residence;
- ☐ place of employment or business; and
- ☐ school or child care facility where a child to be protected by the order is in attendance or is enrolled.

☐ 7. Determine the minimum distances the defendant must maintain from each location.

- ☐ 8. Determine whether the children, if any, should be protected by the order.
- ☐ 9. Determine if the location is within:
 - ☐ a municipality; or
 - ☐ the unincorporated part of the county.
- ☐ 10. Determine whether a family lawsuit involving the parties is pending.
- ☐ 11. Determine if possession of firearms should be prohibited. Magistrates should note if the defendant is a peace officer.
- ☐ 12. Determine if the defendant has a concealed handgun license.
 - ☐ You may suspend the handgun license.
 - ☐ If you suspend the license, you or the clerk must immediately send a copy of the order to DPS.
- ☐ 13. Identify the defendant on the order by date of birth (D.O.B.).
- ☐ 14. Enter these findings in the protection order.
- ☐ 15. Explain the contents and meaning of the order to the defendant.
- ☐ 16. Sign the order.
 - ☐ The order must contain the following statements printed in bold-faced type or

[Sec. 46.04, P.C.](#)

Ed. Note: While the magistrate appears to have discretion to make this order, the Penal Code appears to make possession of a firearm by a person subject to a magistrate's protective order illegal regardless of the content of the order.

[Arts. 17.292\(l\) and 17.293, C.C.P.](#)

Form

in capital letters:

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

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

- ☐ 17. Insure that a copy of the order is served on the defendant, and that he or she signs the acknowledgment.
- ☐ 18. File the original order and acknowledgment with your court clerk.
- ☐ 19. Instruct the court clerk to transmit copies of the order to the Department of Public Safety and a copy to the victim.

[Art. 17.293, C.C.P.](#) **Form**

Attention: Suspension/
Revocation, Texas
Department of Public
Safety, Concealed
Handgun Licensing,

Section #0235, Austin,
Texas 78765-4143
(512) 424-7284

- ☐ 20. Send a copy of the order to the chief of police in the municipality or sheriff in the county where the protected persons reside.
- ☐ 21. If the victim is not present at the time the order is issued, order an appropriate peace officer to make a good faith effort to notify the victim within 24 hours by calling the victim's residence and place of employment.

CHAPTER 2 MAGISTERIAL DUTIES

A. Adult "Magistration"

8. Appointment of Counsel – When the Right Attaches

Checklist 8	Notes
<input type="checkbox"/> 1. Article 26.04, C.C.P. controls appointment of counsel and requires the judges of the county courts, statutory county courts, and district courts trying criminal cases in each county to adopt and publish written countywide procedures for appointment of counsel.	SEE CHECKLISTS 1 and 8
<input type="checkbox"/> 2. Those judges acting as a body may designate someone to make the actual appointment under the guidelines and procedures they adopt. That could be a municipal judge.	It is rare when the municipal judge sitting as magistrate will be required to appoint counsel; this duty is normally the prerogative of the higher trial courts.
<input type="checkbox"/> 3. The procedures adopted by the body of judges must include procedures, financial standards, and forms to determine indigency, and whether counsel should be appointed.	Since municipal courts try fine-only offenses, there is no statutory or case law requirement to appoint counsel for a case tried in municipal court. Counsel should be appointed in a municipal court case only when the interests of justice require appointment. See, for example, Peace Bonds, Chapter 7, Code of Criminal Procedure .
<input type="checkbox"/> Standards can include all of the defendant's financial information including spousal income available to the defendant.	
<input type="checkbox"/> The designee appointing counsel cannot consider whether the defendant posted bail.	
<input type="checkbox"/> 4. If a municipal judge is made the designee of the county judges, an interlocal agreement should be entered addressing the obligation to compensate counsel appointed by the municipal judge.	
<input type="checkbox"/> 5. The local guidelines and procedures must be in place by April 1, 2002.	

CHAPTER 2 MAGISTERIAL DUTIES

B. Examining Trial

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

- | | |
|---|---|
| <p><input type="checkbox"/> 8. The defendant must be present at the examining trial.</p> | <p>Art. 16.08, C.C.P.</p> |
| <p><input type="checkbox"/> 9. The court may issue a subpoena, or an attachment without having first issued a subpoena, for any witness within the county.</p> | <p>Art. 16.10, C.C.P.</p> |
| <p><input type="checkbox"/> 10. An attachment for an out-of-county witness may be issued:</p> <ul style="list-style-type: none"> <input type="checkbox"/> When the party applying for the attachment makes affidavit that the testimony is material; and <input type="checkbox"/> Sets forth the facts expected to be proven by the witness; <input type="checkbox"/> Unless the court finds the facts are not material, or they are admitted by the adverse party after a hearing before the court. | <p>Art. 16.11, C.C.P.</p> |
| <p><input type="checkbox"/> 11. The proceeding must be transcribed by a court reporter, or a statement of facts, agreed to by the state and defense and approved by the presiding magistrate, may be used to preserve the testimony of the witnesses.</p> | <p>Art. 16.09, C.C.P.</p> |
| <p><input type="checkbox"/> 12. Before beginning the hearing, inform the defendant:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Of the right to make a statement relative to the accusation in the complaint; <input type="checkbox"/> That he or she may not be compelled to make any statement; and <input type="checkbox"/> That if he or she does make a statement, it may be used in evidence against him or her. | <p>Art. 16.03, C.C.P.</p> |
| <p><input type="checkbox"/> 13. If the defendant desires to make a statement he or she may only do so prior to the examination of any witnesses.</p> <ul style="list-style-type: none"> <input type="checkbox"/> The statement must be reduced to | |

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

CHAPTER 2 MAGISTERIAL DUTIES

C. Mental Impairments. Examination of Defendant in Custody Suspected of Having Mental Illness or Mental Retardation, [Art. 16.22, C.C.P.](#)

Checklist 11	Notes
Definitions:	
“Mental illness” means an illness, disease or condition, other than epilepsy, senility, alcoholism, or mental deficiency that: (a) substantially impairs a person’s thought, perceptions of reality, emotional process, or judgment; or (b) grossly impairs behavior as demonstrated by recent disturbed behavior.	Sec. 571.003(14), H.S.C.
“Mental retardation” means significantly subaverage general intellectual functioning that is concurrent with deficits in adaptive behavior and originates during the developmental period.	Sec. 591.003(13), H.S.C.
“Subaverage general intellectual functioning” refers to measured intelligence on standardized psychometric instruments of two or more standard deviations below the age-group mean for the tests used.	Sec. 591.003(20), H.S.C.
“Person with mental retardation” means a person determined by a physician or psychologist licensed in this state or certified by the department to have subaverage general intellectual functioning with deficits in adaptive behavior.	Sec. 591.003(16), H.S.C.
“Department” means the Texas Department of Mental Health and Mental Retardation.	Sec. 591.003(7), H.S.C.
“Adaptive behavior” means how effectively individuals cope with common life demands and how well they meet the standards of personal independence expected of someone in their particular age group, sociocultural background and community setting.	

- ☐ 1. The sheriff has a duty to notify the judge that there may be reasonable cause to believe that a defendant committed to sheriff's custody has a mental illness or is a person with mental retardation.

Sheriff shall notify a magistrate within 72 hours after receiving evidence or a statement that may establish reasonable cause. [Art. 16.22\(a\), C.C.P.](#)

While the statute does not indicate how a magistrate is notified, requiring written notification is strongly advised.

- ☐ 2. Determine if there is reasonable cause to believe (1) defendant has a mental illness, or (2) a person with mental retardation, by considering:

See definitions at beginning of this Checklist.

- ☐ The defendant's behavior; and
- ☐ The result of a prior evaluation indicating a need for referral for further mental health or mental retardation assessment.

- ☐ 3. Is there reasonable cause:

- ☐ If the judge determines that there is no reasonable cause, no further action is required.
- ☐ If reasonable cause is determined, issue a written order that the defendant be examined. **Form**

The examination must be conducted by a disinterested expert determined appropriate by the local mental health or mental retardation authority and experienced and qualified in mental health or mental retardation. [Art. 16.22\(a\), C.C.P.](#)

- ☐ 4. The expert the judge designates must return a

[Art. 16.22\(b\), C.C.P.](#)

written report within 30 days of the order.

- ☐ The judge is required to give copies of the report to the prosecutor and the defense attorney.

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

- ☐ The judge **may** order the defendant to custody for examination for a period not to exceed 21 days; **but**

- ☐ The judge **may not** order a defendant to a facility operated by the Texas Department of Mental Health and Mental Retardation **without the consent** of the head of that facility.

As a practical note, it is **Form** advisable to work within your community to establish in advance procedures for in-detention examinations. If the defendant has been released from custody, the judge will need to know what facility to commit the individual to.

CHAPTER 2 MAGISTERIAL DUTIES

D. Tow Hearings

Ed. Note: Along with many other property rights issues, magistrates are given the authority and responsibility to determine property rights and probable cause issues under Chapter 684 of the Texas Transportation Code, also known as the “towing statute”. Chapter 684 begins with definitions, creates the substantive rules of towing and then creates a procedure to enforce the substantive rules. This paper will follow the same order.

It is important to note that jurisdiction is permissive, only justices of the peace must take the cases. Permissive authority is given to magistrates based on towing having occurred in their jurisdiction, [Transportation Code Section 685.004\(a\)](#). Municipal ordinances on this issue are permitted, but must be “identical” or only impose “additional requirements that exceed the minimum standards” of Transportation Code Chapter 684, [Section 684.101, T.C.](#)

This hearing, like other probable cause hearings, is ex parte in nature. It does not require a prosecutor and can proceed if only one party appears. The rules of evidence do not explicitly apply and there are some specific provisions for photographic evidence. The proceedings are nominally civil, but the statute does not apply the civil pleading and discovery rules.

Checklist 12	Notes
<input type="checkbox"/> 1. Definitions. <ul style="list-style-type: none"> <input type="checkbox"/> “Parking Facility” means: <ul style="list-style-type: none"> <input type="checkbox"/> Public or Private; <input type="checkbox"/> Restricted or paid parking; <input type="checkbox"/> Adjacent property or serving property; <input type="checkbox"/> Including right of way leased by governmental entity. <input type="checkbox"/> “Parking Facility Owner” means: <ul style="list-style-type: none"> <input type="checkbox"/> Owner; <input type="checkbox"/> Operator; <input type="checkbox"/> An entity, person or association in 	<p>Sec. 684.001(1), T.C.</p> <p>Sec. 684.001(2), T.C.</p>

contract with either of the above.

- ☐ “Towing Company” means:
 - ☐ Must be registered under Art. 6687-9b Vernon’s Civil Statute;
 - ☐ Owner, Operator, Agent;
 - ☐ Not a political subdivision.
- ☐ “Unauthorized Vehicle” means:
 - ☐ Vehicle parked, stored or located;
 - ☐ On the parking facility;
 - ☐ Without consent of the parking facility owner.
- ☐ 2. Legal requirements of involuntary towing of vehicles.
 - ☐ The first of three justifications for towing is the prohibition of unattended vehicles in certain areas. If a vehicle is left in one of these narrowly defined locations the vehicle can be towed without notice or posted sign. The prohibited places include the following:
 - ☐ On the parking facility obstructing an aisle, entry or exit;
 - ☐ On a parking facility blocking in another vehicle;
 - ☐ On a parking facility obstructing a marked fire lane;
 - ☐ On a parking facility illegally parked in a handicapped space;
 - ☐ This section does not apply to emergency vehicles.
 - ☐ The second justification is that the parking facility owner has given the vehicle

Sec. 684.001(4), T.C.

Sec. 684.001(6), T.C.

Sec. 684.012(a)(4), T.C.

Sec. 684.011(a)(1), T.C.

Sec. 684.011(a)(2), T.C.

Sec. 684.011(a)(3), T.C.

Sec. 684.011(a)(4), T.C.

Sec. 684.011(b), T.C.

Sec. 684.012(a)(2)&(3),
T.C.

owner/operator actual notice the vehicle will be towed or notice that complies with the following:

- ☐ Conspicuous notice is attached to the windshield that:
 - ☐ The parking space is not authorized for the vehicle.
 - ☐ A description of all other unauthorized parking areas.
 - ☐ A warning that the vehicle will be towed at the owner/operators expense if not removed.
 - ☐ A telephone number, answered 24 hours a day, to enable the owner/operator to locate the vehicle.
- ☐ If the vehicle returns to the parking facility, it may be towed.
- ☐ If the vehicle is not moved, the parking facility owner must send a letter:
 - ☐ To the registered owner according to the Department of Transportation.
 - ☐ Certified, return receipt requested.
 - ☐ Requiring the vehicle be moved before the 15th day after postmark.
 - ☐ Containing all the information in the windshield notice.
- ☐ The most common method is if signs prohibiting unauthorized vehicles are located at the parking facility at the time of towing and at least 24 hours preceding towing.
- ☐ The sign must be:
 - ☐ Facing and conspicuously visible to the driver of a vehicle that enters the

Sec. 684.012(b)(1), T.C.

Sec. 684.012(d), T.C.

Sec. 684.012(b)(2) &(c), T.C.

Sec. 684.012(a), T.C.

Sec. 684.031(a)(1), T.C.

facility.	
<input type="checkbox"/> Located at each entrance or every 25 feet if there is no clear entrance.	Sec. 684.031(a)(2), T.C.
<input type="checkbox"/> Permanently attached to a pole or structure.	Sec. 684.031(a)(3), T.C.
<input type="checkbox"/> The bottom edge of the sign must be between five and eight feet from ground level.	Sec. 684.031(a)(5), T.C.
<input type="checkbox"/> Made of weather resistant material.	Sec. 684.031(b)(1), T.C.
<input type="checkbox"/> Is at least 18 inches wide by 24 inches tall.	Sec. 684.031(b)(2), T.C.
<input type="checkbox"/> Contains the international symbol for towing vehicles:	Sec. 684.031(b)(3), T.C.
<input type="checkbox"/> A silhouette of a tow truck towing a vehicle;	Sec. 684.032(a)(b)&(c), T.C.
<input type="checkbox"/> Bright red;	
<input type="checkbox"/> On a rectangular white background;	
<input type="checkbox"/> At least four inches high;	
<input type="checkbox"/> On the top of the sign or on a separate sign above the towing sign;	
<input type="checkbox"/> Immediately followed by words "Towing Enforced" in white two inch letters on a red background.	
<input type="checkbox"/> Has a statement describing who may park and excluding all others.	Sec. 684.031(b)(4), T.C.
<input type="checkbox"/> This and the remaining information must be at least one inch tall.	Sec. 684.032(d), T.C.
<input type="checkbox"/> In bright red on a white background.	
<input type="checkbox"/> Bears the words "Unauthorized Vehicles Will Be Towed at Owner's or Operator's Expense".	Sec. 684.031(b)(5), T.C.

<input type="checkbox"/> Contains the hours and days towing is enforced.	Sec. 684.031(b)(6), T.C.
<input type="checkbox"/> Contains a telephone number (with area code) answered 24 hours a day to enable the owner/operator to locate the vehicle.	Sec. 684.031(b)(7), T.C. Sec. 684.033, T.C.
<input type="checkbox"/> This number must be white letters on bright red background.	Sec. 684.032(e), T.C.
<input type="checkbox"/> At least one inch tall.	
<input type="checkbox"/> May name the storage facility.	
<input type="checkbox"/> Minor variation of required or minimum height or lettering is not a violation of the chapter.	Sec. 684.087, T.C.
<input type="checkbox"/> 3. Towing Company Responsibilities.	
<input type="checkbox"/> A towing company must be insured against liability for damage while towing and storage to meet the requirements of the statute.	
<input type="checkbox"/> The towing company must receive written verification that the parking facility owner followed the procedures outlined in (B) above.	
<input type="checkbox"/> Towing must be pursuant to Chapter 684 of the Traffic Code, an identical ordinance, or the order of a peace officer.	Sec. 684.014, T.C.
<input type="checkbox"/> The towing company or vehicle storage facility must report to the police department of the municipality in which the towed vehicle was located the following:	Sec. 684.015, T.C.
<input type="checkbox"/> A general description of the vehicle;	
<input type="checkbox"/> Vehicles plate number and state;	
<input type="checkbox"/> Vehicle ID numbers (if possible);	
<input type="checkbox"/> The location from which the vehicle was towed;	

<ul style="list-style-type: none"> <input type="checkbox"/> The name and location of the vehicle storage facility; <input type="checkbox"/> Must occur within two hours. <input type="checkbox"/> When the owner/operator of the vehicle pays the cost of the vehicles removal and storage the towing company or storage facility must give a written notice of rights that contains: <ul style="list-style-type: none"> <input type="checkbox"/> Notice of the right to request a hearing with in 14 days; <input type="checkbox"/> A list of the information the request for a hearing must contain; <input type="checkbox"/> Notice of the filing fee charged; <input type="checkbox"/> The name, address, phone number of the towing company; <input type="checkbox"/> The name, address, phone number of the vehicle storage facility; <input type="checkbox"/> The name, address, phone number of one or more appropriate magistrates to hold the hearing. 	<p>Sec. 685.005, T.C.</p> <p>Sec. 685.006, T.C.</p>
<ul style="list-style-type: none"> <input type="checkbox"/> 4. Procedural Remedies <ul style="list-style-type: none"> <input type="checkbox"/> If the Chapter 684 provisions are followed the parking facility owner has no liability for damage or loss of the vehicle. Compliance with chapter requires that towing and storage facilities be insured. <input type="checkbox"/> If the towing company or parking facility owner violates the chapter, they are subject to civil liability for damages to the vehicle without a showing of negligence. There is also a separate civil cause of action that includes liquidated damages of \$300, triple actual damages and attorney's fees. This remedy is available in civil cases filed in a district or county court with jurisdiction, not 	<p>Sec. 684.083, T.C.</p> <p>Sec. 684.084, T.C.</p>

in the magistrate hearing.

- ☐ Violations of this chapter may be addressed by injunction.

[Sec. 684.086, T.C.](#)

- ☐ Violations of the chapter are punishable in a criminal action and carry a fine of \$200 to \$500. This is a separate matter from the tow hearing and presumptively must be prosecuted like all other criminal offenses.

[Sec. 684.085, T.C.](#)

- ☐ The tow hearing is initiated by a request by the owner operator of the towed vehicle.

[Sec. 685.007\(a\)\(c\), T.C.](#)

- ☐ Notice must be made within 14 working days of the vehicle being towed. Unless the storage facility fails to give the statutory notice, then there is no time limit until such notice is given.

- ☐ The court may charge a filing fee of \$10.

[Sec. 685.008, T.C.](#)

- ☐ Notice must be filed with the court in writing and include:

[Sec. 685.007, T.C.](#)

- ☐ The name, address and telephone number of the owner/operator of the vehicle;

- ☐ The location from which the vehicle was removed;

- ☐ The name, address and telephone number of the person that authorized removal of the vehicle;

- ☐ The name, address and telephone number of the storage facility in which the vehicle was placed;

- ☐ The name, address and telephone number of the towing company that removed the vehicle;

- ☐ A copy of any receipt and notification received from the storage or towing

company;	
<input type="checkbox"/> One or more photographs of the location and any signs posted; or	
<input type="checkbox"/> A statement that there were no signs.	
<input type="checkbox"/> A hearing must be set within seven working days of the request. The owner/operator of the vehicle as well as the owner of the parking facility must be notified of the hearing.	Sec. 685.009(a)(b), T.C.
<input type="checkbox"/> The sole issue at the hearing is whether probable cause existed for removal of the vehicle.	Sec. 685.009(c), T.C.
<input type="checkbox"/> Findings of fact and conclusions of law must be in writing.	Sec. 685.009(d), T.C.
<input type="checkbox"/> The court may award:	Sec. 685.009(e), T.C.
<input type="checkbox"/> Court cost;	
<input type="checkbox"/> Reasonable cost of photographs;	
<input type="checkbox"/> Cost of removal or storage or reimbursement to the owner for the same.	
<input type="checkbox"/> No provision is made for appeal	

CHAPTER 3 SEARCH AND ARREST WARRANTS

A. Warrants and Affidavits for the Arrest and Search of Persons and Places

1. The Arrest Warrant

Municipal judges have authority to issue warrants of arrest for fine-only misdemeanors filed in their court. For authority and procedures, judges should review [Art. 45.014, Code of Criminal Procedure](#).

Municipal judges are also magistrates and have additional authority as a magistrate to issue warrants of arrest for offenses that they have no jurisdiction over, such as Class A and B misdemeanors and felonies. A magistrate's authority for issuing warrants of arrest is in Chapter 15 of the Code of Criminal Procedure. [Art. 2.09 of the Code of Criminal Procedure](#) lists who are magistrates. Included in that list are municipal court judges. A magistrate's authority is county wide. [Gilbert v. State](#), 493 S.W.2d 783 (Tex. Crim. App. 1973) and [Ex parte Clear](#), 573 S.W.2d. 224 (Tex. Crim. App. 1978)

Only a magistrate's authority to issue warrants is discussed in CHECKLIST 12.

Checklist 12	Notes
<p>A "warrant of arrest" is a written order from a magistrate directed to a peace officer, commanding the officer to take the body of the person accused of an offense, to be dealt with according to law.</p> <p><input type="checkbox"/> 1. An arrest warrant may be issued:</p> <p><input type="checkbox"/> When a verbal order of arrest is proper;</p> <p><input type="checkbox"/> When a person swears under oath that another has committed an offense against the laws of this state; or</p> <p><input type="checkbox"/> In any case in which the Code of Criminal Procedure permits the issuance of an arrest warrant.</p> <p><input type="checkbox"/> 2. The arrest warrant:</p> <p><input type="checkbox"/> Issues in the name of "The State of Texas";</p>	<p>Art. 15.01, C.C.P.</p> <p>Form</p> <p>Art. 15.03(a)(1), C.C.P.</p> <p>Art. 15.03(a)(2), C.C.P.</p> <p>Form</p> <p>Art. 15.03(a)(3), C.C.P.</p>

<ul style="list-style-type: none"> <input type="checkbox"/> Names the person to be arrested, if known, or describes the person to be arrested including any or all of the following, although all need not be present: <ul style="list-style-type: none"> <input type="checkbox"/> Nickname or “street” name; <input type="checkbox"/> Age; <input type="checkbox"/> Gender; <input type="checkbox"/> Height and weight; <input type="checkbox"/> Identifying marks; <input type="checkbox"/> Ethnic origin; <input type="checkbox"/> Alleges the commission of some offense against the laws; and <input type="checkbox"/> Is signed by a magistrate with his or her office named in the body of the warrant or in connection with the officer’s signature. 	<p>Art. 15.02, C.C.P.</p>
<ul style="list-style-type: none"> <input type="checkbox"/> 3. An arrest warrant must also be supported by an affidavit of probable cause stating: <ul style="list-style-type: none"> <input type="checkbox"/> The name of the accused, if known, and if not known, a reasonably definite description; <input type="checkbox"/> The time and place of the commission of the offense, as definitely as can be stated by the affiant; and <input type="checkbox"/> Sufficient facts to support a finding of probable cause that the person named therein: <ul style="list-style-type: none"> <input type="checkbox"/> Committed the offense charged; <input type="checkbox"/> Within the period covered by the statute of limitations. 	<p>Form</p> <p>Arts. 15.04 and 15.05, C.C.P.</p>
<ul style="list-style-type: none"> <input type="checkbox"/> 4. The specific requisites of the complaint or affidavit are covered later in this section. 	<p>SEE CHECKLIST 15</p>
<ul style="list-style-type: none"> <input type="checkbox"/> 5. An arrest warrant is valid throughout Texas, unless issued by a city mayor. 	<p>Art. 15.06, C.C.P.</p>

CHAPTER 3 SEARCH AND ARREST WARRANTS

A. Warrants and Affidavits for the Arrest and Search of Persons and Places

2. The Capias and Capias Pro Fine

Checklist 13	Notes
<p>A “capias” is an order by a judge, directing any peace officer in Texas to arrest the person named therein and bring the person before that court immediately, or on a day stated in the order.</p> <p><input type="checkbox"/> 1. A capias must:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Issue in the name of “The State of Texas”; <input type="checkbox"/> Name the person whose arrest is ordered or, if the name is unknown, a description; <input type="checkbox"/> Specify which penal offense the person is accused of committing; <input type="checkbox"/> State the name of the court to which and the time when it is returnable; and <input type="checkbox"/> Contain the date and an official attestation by the issuing authority. <p><input type="checkbox"/> 2. A capias may be issued in any one of the following instances:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Upon the return of an indictment and after setting bail; <input type="checkbox"/> After the filing of information supported by an affidavit of probable cause in a misdemeanor. 	<p>Art. 23.01, C.C.P.</p> <p>Form</p> <p>Art. 23.02, C.C.P.</p> <p>Art. 23.03, C.C.P.</p> <p>Art. 23.04, C.C.P. <i>Sharp v. State</i>, 677 S.W.2d 513 (Tex. Crim. App. 1984) Capias may issue only after a magistrate’s determination of probable cause.</p>

☐ 3. A capias shall be issued:

- ☐ When a bail forfeiture is declared.

[Art. 23.05, C.C.P.](#)

☐ 4. Capias Pro Fine.

- ☐ When a defendant fails to satisfy a judgment according to its terms. The capias pro fine must state the amount of the judgment and sentence, command the appropriate peace officer to bring the defendant before the court, or place the defendant in jail until the defendant can be brought before the court.

[Art. 45.045, C.C.P.](#)

- ☐ When a defendant defaults in the discharge of the judgment, the judge must conduct a hearing to determine the following:

[Art. 45.046\(a\), C.C.P.](#)

- ☐ The defendant intentionally failed to make a good faith effort to discharge the judgment; or

- ☐ The defendant is not indigent.

- ☐ If the defendant is not indigent and failed to make a good faith effort to discharge the fine, the judge may confine the defendant to jail.

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

[Art. 45.046\(b\), C.C.P.](#)

- ☐ The court should set out a period of time between eight and 24 hours as the period the defendant must remain in jail to satisfy \$100 of the fine and cost.

[Art. 45.048, C.C.P.](#)

Jail credit for time served before the judgment should be credited to each case concurrently. Post judgment credit can be ordered to be served consecutively (or stacked) if ordered by the court and if all cases with which the

fine is to be treated
consecutively are
identified in the order.
Ex parte Hannington, 832
S.W.2d 355 (Tex. Crim
App. 1992); Tex. Atty.
Gen. Op. JC0393 (2001);
Ex Parte Minjares, 582
S.W.2d105 (Tex. Crim.
App. 1978).

CHAPTER 3 SEARCH AND ARREST WARRANTS

A. Warrants and Affidavits for the Arrest and Search of Persons and Places

3. Search Warrants for Persons and Property

Checklist 14	Notes
<p>A “search warrant” is a written order from a magistrate to a peace officer commanding the officer to search for and to seize designated property or things and to return them to the magistrate.</p> <p><input type="checkbox"/> 1. Review the search warrant, being certain it:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Issues in the name of “The State of Texas”; and <input type="checkbox"/> Directs any peace officer of the county to search the person, place or thing named, and seize one or more of the following: <ul style="list-style-type: none"> <input type="checkbox"/> Property acquired by theft or by any manner that makes its acquisition a penal offense; <input type="checkbox"/> Property specifically designed, made or adapted for or commonly used in the commission of an offense; <input type="checkbox"/> Arms or munitions kept or prepared for purposes of insurrection or riot; <input type="checkbox"/> Weapons prohibited by the Penal Code; <input type="checkbox"/> Gambling devices or equipment, altered gambling equipment or gambling paraphernalia; <input type="checkbox"/> Obscene materials kept or prepared for commercial distribution or exhibition; 	<p>Art. 18.01(a), C.C.P.</p>

- | | |
|---|--|
| <ul style="list-style-type: none"> <input type="checkbox"/> Drugs kept, prepared or manufactured in violation of law; <input type="checkbox"/> Any property whose possession is prohibited by law; <input type="checkbox"/> Implements or instruments used in commission of a crime; <input type="checkbox"/> Property or items, except the personal writings by the accused, constituting evidence of an offense or constituting evidence tending to show that a particular person(s) committed an offense; <input type="checkbox"/> Persons; or <input type="checkbox"/> Contraband subject to forfeiture under Chapter 59 of the Code of Criminal Procedure. | <p>SEE CHECKLIST 16 for special rules concerning “evidentiary” warrants for mere evidence.</p> |
| <ul style="list-style-type: none"> <input type="checkbox"/> Identifies the property to be seized with particularity; | <p>Art. 18.02, C.C.P.</p> |
| <ul style="list-style-type: none"> <input type="checkbox"/> Identifies the location or property sought including: <ul style="list-style-type: none"> <input type="checkbox"/> A specific of the street address; <input type="checkbox"/> A full description of the building and surrounding areas if no address is provided. In cases of a multiple unit structure, such as apartment complexes, condominiums and storage facilities, identify the specific unit to be searched. <input type="checkbox"/> Describes the person to be searched including any or all of the following, although all need not be present: <ul style="list-style-type: none"> <input type="checkbox"/> Proper name, nickname or street name; <input type="checkbox"/> Age; <input type="checkbox"/> Gender; <input type="checkbox"/> Height and weight; <input type="checkbox"/> Identifying marks; or | <p>Art. 18.04, C.C.P.</p> |

☐ Ethnic origin.

- ☐ 2. Be certain to record the date and hour the warrant is signed on the face of the warrant.
- ☐ 3. Retain a copy of the affidavit and warrant if possible.
- ☐ 4. For any search warrant, the municipal court judge signing the warrant should have geographical authority over the **area to be searched**, the county or counties in which the city is located. Thus, a municipal court judge would not have geographical authority to issue a search warrant for property located in a different county. For example, an Austin municipal judge would lack the authority to issue a search warrant for property located in the City of El Paso.
- ☐ 5. If the facts presented for the issuance of an arrest warrant also establish probable cause that a person has committed an offense, the search warrant may also order the arrest of that person.

[Art. 18.07, C.C.P.](#)

All magistrates have co-equal jurisdiction with all other magistrates within the county or counties in which their city is situated and their jurisdiction is coextensive with the limits of the county or counties. [Gilbert v. State](#), 493 S.W.2d. 783 (Tex. Crim. App. 1973) and [Ex parte Clear](#), 573 S.W.2d. 224 (Tex. Crim. App. 1978)

This is a “combination” search and arrest warrant. [Art. 18.03, C.C.P.](#)

CHAPTER 3 SEARCH AND ARREST WARRANTS

A. Warrants and Affidavits for the Arrest and Search of Persons and Places

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

Checklist 15	Notes
<input type="checkbox"/> 1. The affidavit must establish a substantial basis for concluding that there is a “fair probability” that a search will uncover evidence of wrongdoing or that a person has committed an offense.	<i>Illinois v. Gates</i> , 462 U.S. 213 (1983); <i>Bellah v. State</i> , 653 S.W.2d 795 (Tex. Crim. App. 1983).
<input type="checkbox"/> 2. The affidavit must contain facts , not mere conclusions, from which the magistrate can make an independent determination of probable cause.	Art. 18.01(b), C.C.P.
<input type="checkbox"/> The determination is based on the totality of the circumstances, practicality and common sense.	
<input type="checkbox"/> Probable cause is a level of certainty more than mere suspicion but less than a preponderance; it is not a more-likely-than-not standard.	
<input type="checkbox"/> 3. Any reliable evidence may be considered without regard to its admissibility at trial; hearsay and police records may be considered.	
<input type="checkbox"/> 4. Do not consider any information not in the warrant affidavit.	<i>Miller v. State</i> , 736 S.W.2d 643 (Tex. Crim. App. 1987). The “four corners” doctrine prohibits consideration of information not in the affidavit.
<input type="checkbox"/> If the applicant for a warrant has additional information, have that information included in	

an affidavit that is attached to the warrant.

- ☐ 5. Determine whether the **source** of the information in the affidavit is reliable.
 - ☐ The person making the affidavit is presumed to be honest (because of the oath).
 - ☐ A named victim, eyewitness or citizen informant who reports a crime is presumed reliable.
 - ☐ An unnamed informant's reliability may be shown by:
 - ☐ Recitation of lack of criminal record, good reputation in the community for general veracity and gainful employment;
 - ☐ Corroboration of details provided by the informant;
 - ☐ Recitation that informant has provided true, correct and reliable information in the past;
 - ☐ Declaration by informant against penal interest.
- ☐ 6. Determine the basis of the source's knowledge and whether the information from the source is credible.
 - ☐ Is the information first-hand and the result of direct observation of the facts rather than an opinion or a conclusion?
 - ☐ Is the information hearsay and, if so, is there an indication of its reliability?
 - ☐ Is the information corroborated by other sources or independent investigation?
 - ☐ Are there details not commonly known that

Wood v. State, 573
S.W.2d 207 (Tex. Crim.
App. 1978)

suggest inside information by the informant?

- ☐ In the case of a search warrant, does it state the time when the information was acquired?

- ☐ 7. The search warrant affidavit is public information after the warrant is executed and should be made available for public inspection.

[*Schmidt v. State*](#), 659 S.W.2d 420 (Tex. Crim. App. 1983). Stale information will not support a conclusion that property is still on the premises to be searched.

[Art. 18.01\(b\), C.C.P.](#)

CHAPTER 3 SEARCH AND ARREST WARRANTS

A. Warrants and Affidavits for the Arrest and Search of Persons and Places

5. Search Warrants for Mere Evidence

Checklist 16	Notes
<p>A “mere evidence” or evidentiary search warrant is an order from the magistrate to a peace officer to search for and to seize property or items, except the personal writings of an accused, that constitute evidence of an offense or tend to show a particular person committed an offense.</p>	<p>Art. 18.02(10), C.C.P.</p>
<p><input type="checkbox"/> 1. An original mere evidence warrant may be issued by a judge of a municipal court of record, a county court who is a licensed attorney, a statutory county court, the Court of Criminal Appeals, or the Supreme Court.</p>	<p>Art. 18.01(i), C.C.P.</p>
<p><input type="checkbox"/> 2. Except under the limited circumstances below, neither a judge of a non-record municipal court nor a justice of the peace may issue a mere evidence warrant. The exception is for:</p>	
<p><input type="checkbox"/> A municipal judge or justice of the peace in a county in which the only judge serving the county who is a licensed attorney is a district judge whose district includes more than one county; or</p>	
<p><input type="checkbox"/> A municipal judge or justice of the peace in a county in which the only judges serving the county who are licensed attorneys are two or more district judges, each of whose district includes more than one county.</p>	
<p><input type="checkbox"/> 3. Any subsequent mere evidence warrant to search the same person, place or thing subjected to a prior search under a mere evidence warrant may be issued only by a judge of a district court, a court of appeals, the</p>	<p>Even municipal courts of record cannot issue a second mere evidence warrant. Art. 18.01(d), C.C.P.</p>

Court of Criminal Appeals, or the Supreme Court.

- ☐ 4. Greater specificity in the affidavit for an evidentiary warrant is required than for a regular search warrant.
 - ☐ The affidavit must contain facts to establish probable cause that:
 - ☐ A specific offense was committed;
 - ☐ Specifically described property or items to be searched for and seized constitute evidence of the specific offense or that a particular person committed it; and
 - ☐ The property or items constituting evidence are located at or on the particular person, place or thing to be searched.
- ☐ 5. A warrant to search for “mere evidence” and not for items in Art. 18.02(1-9) may not be issued for the office of a:
 - ☐ Newspaper;
 - ☐ News magazine;
 - ☐ Television or radio station.

[Art. 18.01\(c\), C.C.P.](#)

SEE [CHECKLIST 15](#) on probable cause.

[Art. 18.01\(e\), C.C.P.](#)

CHAPTER 3 SEARCH AND ARREST WARRANTS

A. Warrants and Affidavits for the Arrest and Search of Persons and Places

6. Search Warrants to Photograph a Child, [Art. 18.021, C.C.P.](#)

Checklist 17	Notes
<input type="checkbox"/> 1. The affidavit must contain the following information in addition to that normally required: <ul style="list-style-type: none"> <input type="checkbox"/> The allegation of one of the following specific offenses: <ul style="list-style-type: none"> <input type="checkbox"/> Injury to a child; <input type="checkbox"/> Sexual assault of a child; or <input type="checkbox"/> Aggravated sexual assault of a child. <input type="checkbox"/> The name or a description of the victim; <input type="checkbox"/> A statement that evidence of the offense or evidence that a particular person committed the offense can be detected by photographing the child; and <input type="checkbox"/> A statement that the child to be located and photographed can be found at a particular place to be searched. 	<p>Sec. 22.04, P.C.</p> <p>Sec. 22.011(a), P.C.</p> <p>Sec. 22.021, P.C.</p> <p>Art. 18.01(f), C.C.P.</p>
<input type="checkbox"/> 2. The return on the warrant shall include the exposed film.	

CHAPTER 3 SEARCH AND ARREST WARRANTS

A. Warrants and Affidavits for the Arrest and Search of Persons and Places

7. Administrative Search Warrants, [Art. 18.05, C.C.P.](#)

Checklist 18	Notes
<input type="checkbox"/> 1. The warrant is issued to one of the following only: <ul style="list-style-type: none"> <input type="checkbox"/> Fire marshal; <input type="checkbox"/> Health officer; or <input type="checkbox"/> Code enforcement officer. 	<p>Ed. Note: Municipal courts of record are granted concurrent jurisdiction with district courts to enforce provisions of Chapter 214, Local Government Code and Chapter 683, Transportation Code in Sect. 30.00005, Government Code. This is power to issue destruction orders after the due process contained in those acts. It is different than the preliminary inspection powers discussed here.</p>
<input type="checkbox"/> 2. Of any county, city or other political subdivision.	
<input type="checkbox"/> 3. For the inspection of any specified premises to determine the presence of a: <ul style="list-style-type: none"> <input type="checkbox"/> Fire hazard; <input type="checkbox"/> Health hazard; <input type="checkbox"/> Unsafe building condition; or <input type="checkbox"/> Violation of any: <ul style="list-style-type: none"> <input type="checkbox"/> Fire; <input type="checkbox"/> Health; or <input type="checkbox"/> Building regulation; <input type="checkbox"/> Statute; or <input type="checkbox"/> Ordinance. 	<p>Art. 18.05(a), C.C.P.</p>

- | | |
|---|---------------------------------------|
| <input type="checkbox"/> 4. If the officer is from a city or county, or political subdivision, verify that he or she is designated as the person authorized to be issued the warrant. | Art. 18.05(d), C.C.P. |
| <input type="checkbox"/> 5. If the officer is from a political subdivision other than a city or county, verify that the political subdivision routinely inspects premises to determine whether there is a fire or health hazard or unsafe building condition or a violation of fire, health or building regulations, statutes, or ordinances. | Art. 18.05(d), C.C.P. |
| <input type="checkbox"/> 6. A warrant may not be issued under Art. 18.05, C.C.P., to a code enforcement official of a county with a population of 2.4 million or more for the purpose of allowing the inspection of specified premises to determine the presence of an unsafe building condition or a violation of a building regulation, statute or ordinance. | Art. 18.05(e), C.C.P. |
| <input type="checkbox"/> 7. The affidavit must demonstrate probable cause to believe that the specific named violation or hazardous condition is present in the premises to be inspected. | |
| <input type="checkbox"/> 8. The judge may consider the: <ul style="list-style-type: none"> <input type="checkbox"/> Specific knowledge of the affiant; <input type="checkbox"/> Age and general condition of the premises; <input type="checkbox"/> Previous violations or hazards found present in the premises; <input type="checkbox"/> Type of premises; <input type="checkbox"/> Purposes for which the premises are used; and <input type="checkbox"/> Presence of hazards or violations in, and the general condition of premises near, the premises sought to be inspected. | Art. 18.05(c), C.C.P. |

CHAPTER 3 SEARCH AND ARREST WARRANTS

A. Warrants and Affidavits for the Arrest and Search of Persons and Places

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

Checklist 19	Notes
<input type="checkbox"/> 1. Review the search warrant returned and determine: <ul style="list-style-type: none"> <input type="checkbox"/> If the warrant was executed; <input type="checkbox"/> The manner of execution; and <input type="checkbox"/> If any articles were seized. 	
<input type="checkbox"/> 2. Enter an order directing where and with whom the seized property will be kept for safekeeping.	Form
<input type="checkbox"/> 3. Hold a hearing on any questions arising from the execution of the search warrant. <ul style="list-style-type: none"> <input type="checkbox"/> Discharge the defendant and release the property if good grounds for the issuance of the warrant are not shown. <input type="checkbox"/> Retain any criminal instruments seized and order them to be held by the sheriff subject to a subsequent order as provided by Arts. 18.17, 18.18 and 18.19, C.C.P., or Chapter 59, C.C.P. 	<p>Art. 18.12, C.C.P.</p> <p>Art. 18.13, C.C.P. This provision presumably applies only if the defendant is also arrested, perhaps under a combination arrest/search warrant.</p>
<input type="checkbox"/> 4. If there were good grounds for issuance of the search warrant, conduct a hearing.	<p>Art. 18.14, C.C.P.</p> <p>Art. 18.10, C.C.P.</p>
<input type="checkbox"/> 5. The property seized may not be removed from the county without an order approving the removal signed by a magistrate in the county in which the warrant was issued.	

- ☐ 6. File the search warrant.
- ☐ 7. Return and record any proceedings with the clerk of the court having jurisdiction of the case.
- ☐ 8. Retain a copy of all search warrants, affidavits, returns and related documents.

[Art. 18.15, C.C.P.](#)

CHAPTER 4 PRO SE DEFENDANT

Because a defendant in a municipal court does not have the right to an appointed lawyer, and often will appear without a retained lawyer, the municipal court usually will be dealing with unrepresented (pro se) defendants. This fact poses problems in insuring that defendants are treated fairly. A court should have procedures for dealing with the pro se defendant in two settings: (1) outside the courtroom; and (2) in the courtroom during hearings.

A. Dealing with the Pro Se Defendant Out of Court

Checklist 20	Notes
<input type="checkbox"/> 1. Develop procedures for support personnel for advising walk-in defendants. <input type="checkbox"/> Give walk-in defendant the options: <input type="checkbox"/> Plead not guilty and have a trial; <input type="checkbox"/> May elect to have a jury or bench trial; <input type="checkbox"/> Plead guilty or nolo contendere; <input type="checkbox"/> The accused must waive a trial by jury in writing. <input type="checkbox"/> This may occur in open court with an appearance before the judge; or <input type="checkbox"/> In the clerk's office. <input type="checkbox"/> Be aware that special procedures apply when dealing with a juvenile. <input type="checkbox"/> 2. Instruct support personnel not to give legal advice: they may inform individuals of the procedures, but not suggest a particular course of action. <input type="checkbox"/> 3. When guilty plea is made or fine paid, clerk should verify it is being done by the defendant or person authorized to act for the defendant.	<p>Form</p> <p>SEE CHAPTER 8.</p> <p>Arts. 27.14 and 45.022, C.C.P.</p> <p>Art. 45.025, C.C.P.</p> <p>SEE CHAPTER 13.</p> <p>Guilty plea void when neither entered or authorized by the defendant. Ex parte Super, 175 S.W. 697</p>

| (Tex. Crim App. 1915)

CHAPTER 4 PRO SE DEFENDANTS

B. Dealing with the Pro Se Defendant in Court Proceedings

Checklist 21	Script/Notes
<input type="checkbox"/> 1. Remind the defendant that conversations with the judge are “court” proceedings.	
<input type="checkbox"/> 2. Inform the defendant of right to retain counsel.	<p>A warning and waiver of the constitutional right to retain counsel is required. Warr v. State, 591 S.W.2d 832 (Tex. Crim. App. 1979)</p>
<input type="checkbox"/> 3. If the defendant chooses to represent himself or herself, inquire whether the defendant understands the consequences of proceeding without counsel.	
<input type="checkbox"/> There is no right to lay representation (except self representation).	<p>United States v. Wilhelm, 570 F.2d 461 (3d Cir. 1978)</p>
<input type="checkbox"/> Allowing a lay person to act as an attorney representing anyone other than himself or herself permits unauthorized practice of law.	
<input type="checkbox"/> 4. No special treatment is required for pro se defendants.	<p>An accused who elects to represent himself or herself cannot complain of the lack of effective assistance of counsel. The rules of evidence, procedure and substantive law will be applied the same to all parties in a criminal trial whether that party is represented by counsel or pro se. Williams v. State, 549 S.W.2d 183, 187 (Tex. Crim. App. 1977)</p>
<input type="checkbox"/> 5. The judge should be aware of the defendant's ignorance of legal procedure and rules of	

evidence in maintaining order and decorum.

- ☐ 6. In interest of fairness and orderliness, the court may inform the defendant of:
 - ☐ General procedure and steps in the trial;
 - ☐ Voir dire and jury selection;
 - ☐ Opening statement;
 - ☐ Right to confront and examine prosecution witnesses;
 - ☐ Right to present defenses and defense evidence;
 - ☐ Right to testify on own behalf;
 - ☐ Right to request jury instructions;
 - ☐ Closing argument; and
 - ☐ Right to appeal.
- ☐ 7. If the defendant wishes to testify, inform him or her of the privilege against self-incrimination and obtain waiver.

Warning to testifying defendant:

“You have the constitutional right under the Fifth Amendment not to testify and the fact that you do not testify cannot be held against you in any way. The prosecution is required to prove your guilt beyond a reasonable doubt, and you are not obliged to present any evidence. If you do testify, you may be cross-examined, that is, asked questions by the prosecution on any matter relevant to any issue in the

- ☐ 8. The judge must maintain control of proceedings.
 - ☐ If the defendant is unruly and disruptive, consider warning, restraint or threat of contempt.

case. Do you understand that?"

[If the defendant says "yes":] "Then, understanding that, it is your desire to testify on your own behalf?"

Illinois v. Allen, 397 U.S. 337 (1970); also SEE [CHECKLIST 73](#).

CHAPTER 5 BOND FORFEITURES

A. Cash Bond Forfeitures under Art. 45.044, C.C.P.

Checklist 22	Script/Notes
<input type="checkbox"/> 1. Ask the defendant to acknowledge his or her presence when the defendant's name is called.	
<input type="checkbox"/> 2. When the defendant fails to answer, order the bailiff or another to call the defendant's name distinctly at the courtroom door.	Art. 22.02, C.C.P.
<input type="checkbox"/> 3. If a cash bond is posted and the defendant has signed a conditional plea of nolo contendere and waiver of jury trial, the judge may forfeit the bond for fine and court costs when the defendant fails to appear. Otherwise, skip remaining steps and proceed to CHECKLIST 24 .	Art. 45.044, C.C.P. Form
<input type="checkbox"/> 4. Notify the defendant by regular mail of the court action and the right to request a new trial.	<p>The defendant's bond in the amount of \$_____ is hereby forfeited for fine and costs. A notice of this action and the right to request a new trial is to be sent immediately to the defendant's address.</p>
<input type="checkbox"/> 5. If the defendant makes a request for a new trial within 10 days, the court shall grant the motion and allow the defendant to withdraw his or her conditional plea of nolo contendere and waiver of jury trial. The bond is reinstated and the case is set for trial.	
<input type="checkbox"/> Amount of time increased by "Mailbox Rule." If the request for new trial is mailed first class mail on or before the due date of filing of the request for new trial and received by the clerk not later than 10 days after the due date, the motion is properly filed. (Day does not include Saturday, Sunday or legal	Art. 45.013, C.C.P. Defendants filing documents by mail have additional time (10 days) in which to present the document to the court. This rule, commonly called the "Mailbox Rule,"

holiday.) Make sure the clerk keeps the envelope showing the postmark.

- ☐ 6. If the defendant does not make a timely motion for a new trial, the judgment and forfeiture becomes final. Court costs are paid to the state and the fine is placed in the general revenue fund. If the offense is a traffic offense, the court reports the conviction to the Department of Public Safety.
- ☐ If the defendant has been in jail, jail time credit is required to be given at a rate of not less than \$100 per day. The court should determine what period of time, between eight and 24 hours, constitutes a day.
- ☐ Depending on the credit and amount of fine imposed, the court may have to refund all or part of the bond.

increases the time for filing documents.

[Arts. 42.03, Sec. 2, 45.041 and 45.048, C.C.P.](#)

CHAPTER 5 BOND FORFEITURES

B. Cash, Surety, or Personal Bond Forfeiture Procedures under [Chapter 22, C.C.P.](#)

Before a judgment nisi is issued initiating a bond forfeiture, a surety can be released from the responsibility on the bond by filing an affidavit of intention to surrender the defendant. The affidavit must include a statement that notice to the principal's attorney has been given as required by [Article 17.19, C.C.P.](#) See [Articles 17.16-17.19, C.C.P.](#) for rules regarding discharge of liability on bond.

An action by the state to forfeit a bail bond must be brought not later than the fourth anniversary of the date the principal fails to appear in court. [Art. 22.18, C.C.P.](#)

Checklist 23	Script/Notes
<p>Definitions:</p> <p>“Agreed judgment” is a judgment entered on agreement of the parties, which receives the sanction of the court. When the court gives the agreement its sanction, it becomes the judgment of the court.</p> <p>An “answer” is the formal written statement made by a defendant setting forth grounds for his or her defense. In some instances may be required to be verified (sworn to).</p> <p>A “citation” is a writ (written order) issued by the clerk of the court. The citation notifies a person of a lawsuit filed against him or her and directs the person to file an answer to the suit within a certain number of days.</p> <p>The terms “court” and “judge” are used interchangeably.</p> <p>“Defendant” is a term used to describe the surety.</p> <p>“Forfeiture” means the signing of the judgment nisi. “Judgment nisi” is a temporary order which will become final unless the defendant in the criminal case and/or the surety show good cause why the</p>	

judgment should be set aside.

“Judicial notice” is an act by which a court, in conducting a trial, will, without the production of evidence, recognize the existence and truth of certain facts or documents because the court already is aware of the facts or documents.

A “movant” is one who makes a motion before a court.

“Pleadings” are formal allegations by parties of their respective claims and defenses.

A “principal” is the defendant in the criminal case.

“Scire Facias” is a special docket required by law to handle all cases and proceedings involved in the forfeiture of bail bonds. This docket may also be called the civil docket.

[Art. 22.10, C.C.P.](#)

“Summary proceeding” is any proceeding by which a controversy (lawsuit) is settled, case disposed of, or trial conducted in a prompt and simple manner, without a jury. The court may grant a summary judgment when it believes that there is no genuine issue of material fact and that the party is entitled to prevail as a matter of law. Any party to a civil action may move for a summary judgment.

“Surrender” means that a surety may relieve himself or herself of liability before forfeiture by surrendering the accused into custody or by filing an affidavit stating that the accused is in federal, state or county custody.

[Art. 17.16 et. seq., C.C.P.](#)

A “waiver” is a sworn statement that intentionally and voluntarily relinquishes the right of being served by citation.

- ☐ 1. Ask the defendant to acknowledge his or her presence when the defendant’s name is called.
- ☐ 2. When the defendant fails to answer, order the bailiff or another to call the name distinctly at

[Art. 22.02, C.C.P.](#)

the courtroom door.

- ☐ 3. Note the time the call was made and who made the call.
- ☐ 4. If the defendant does not appear within a reasonable time after such call, enter judgment nisi against the defendant and his or her sureties. (The judgment nisi is usually prepared by the clerk for the judge's signature.) **Form**
- ☐ 5. Issue a Capias for the defendant's arrest.
- ☐ 6. Set the new bond. (May require this bond to be a cash bond.)
- ☐ 7. Set the case on the Scire Facias or civil docket.
 - ☐ List plaintiff as "The State of Texas."
 - ☐ List the defendant as "criminal defendant" and the principal and surety, if any, as "defendants."
- ☐ 8. On request of the prosecutor, order issuance of Citation to surety, if any.
 - ☐ Citation shall be in the form provided for citations in civil cases.
- ☐ 9. Notify the defendant/principal by regular mail, only if the address appears on the bond.
- ☐ 10. Answers are due as in civil cases.
 - ☐ Maximum of 27 days to answer.
 - ☐ Amount of time increased -- ten (10) additional days are allowed if the answer is mailed by first class mail, properly addressed and mailed on or before the last day for filing an answer. (Make sure

Form

[Arts. 22.02 and 23.05, C.C.P.](#)

State's motion for bond forfeiture of (Defendant's name)'s bond is granted.

A capias for the defendant's arrest is hereby issued with a new bond set at \$_____.

[Art. 23.05, C.C.P.](#) **Form**

[Art. 23.05, C.C.P.](#)

[Art. 22.10, C.C.P.](#) **Form**

[Art. 22.03, C.C.P.](#) **Form**

[Art. 22.04, C.C.P.](#); [Tex. R. Civ. P. 99](#)

[Art. 22.05, C.C.P.](#)

[Art 22.11, C.C.P.](#); [Tex. R. Civ. P. 92](#)

[Tex. R. Civ. P. 5](#)

the court clerk keeps the envelope in which answer is received.)

- ☐ 11. If the surety and principal all fail to answer within the time limit, the court shall enter a Final Judgment - Surety Bond.
 - ☐ Proof of service (or properly signed and verified waiver); proof of service includes:
 - ☐ Verified waiver;
 - ☐ Certified mail; green card signed by:
 - ☐ Defendant/surety;
 - ☐ State Board of Insurance (surety is corporation);
 - ☐ Registered agent (surety is a corporation);
 - ☐ Executor, administrator or heirs (surety is deceased).
 - ☐ If prosecutor presents a motion, supported by an affidavit showing specific facts why personal service or service by mail has not been successful, grant substitute service (someone over 16 years of age at location specified in affidavit); officer's return on citation completed;
 - ☐ Personal service -- officer's return on citation is completed; or
 - ☐ If substitute service is unsuccessful and prosecutor under oath states the residence of surety is unknown and, though diligence has been used to serve the citation, the defendant surety cannot be located, grant publication.
 - ☐ Proof of service on file at least ten (10) days, exclusive of the date of filing and the date of judgment, for every defendant;

Art. 22.15, C.C.P.; Tex.
R. Civ. P. 239

Clerk is required to complete return on citation after receiving properly signed green card.

Tex. R. Civ. P. 109

Tex. R. Civ. P. 107

<ul style="list-style-type: none"> <input type="checkbox"/> Time expired for answer for every defendant; <input type="checkbox"/> Approximately 40 days have elapsed; <input type="checkbox"/> The state moves for default judgment: <ul style="list-style-type: none"> <input type="checkbox"/> The state prepares Final Judgment - Surety Bond for judge's signature; <input type="checkbox"/> The state certifies the address of the parties against whom the default is taken. <input type="checkbox"/> The clerk sends notice of default judgment to surety and defendant. 	<p>Defendant(s) may have been served on different days and therefore may have different deadlines to answer.</p> <p>Tex. R. Civ. P. 239</p> <p>Tex. R. Civ. P. 305 Form</p> <p>Tex. R. Civ. P. 239a</p> <p>If an answer has been filed and the case set on the scire facias docket but no one appears, the state can move for default judgment.</p>
<ul style="list-style-type: none"> <input type="checkbox"/> 12. Summary judgment -- in bond forfeiture case, usually filed by the state. <ul style="list-style-type: none"> <input type="checkbox"/> Party requesting must file and serve the motion and supporting affidavit at least 21 days before the time specified for hearing. <input type="checkbox"/> Filed when: <ul style="list-style-type: none"> <input type="checkbox"/> No valid defense is raised; <input type="checkbox"/> No genuine issue as to material fact and moving party entitled to judgment as matter of law. <input type="checkbox"/> Defenses raised must be verified and the answer not verified. Defenses required to be verified include: 	<p>Tex. R. Civ. P. 166a</p> <p>Tex. R. Civ. P. 166a(c)</p>

- ☐ Defendant did not execute bond;
- ☐ Defendant is not liable in the capacity sued;
- ☐ There is a defect of parties; or
- ☐ Defendant alleged to be a corporation and is not incorporated as alleged.
- ☐ Adverse party has no later than seven (7) days prior to hearing to file and serve opposing affidavits.
- ☐ Fact issues:
 - ☐ Whether surety executed bond;
 - ☐ Whether principal's name called at courthouse door;
 - ☐ Whether principal failed to appear; or
 - ☐ Whether principal had a valid reason for not appearing.
- ☐ Summary judgment hearing:
 - ☐ No oral testimony;
 - ☐ Judge reviews pleadings;
 - ☐ State asks judge to take judicial notice of bond and judgment nisi, then rests;
 - ☐ Defense must set forth affidavits. Affidavit must include:
 - ☐ Information based on personal knowledge;
 - ☐ And must show how affiant became personally familiar with facts.

[Tex. R. Civ. P. 93](#)

[Alvarez v. State](#), 861 S.W.2d 878 (Tex. Crim. App. 1992)

[Villarreal v. State](#), 826 S.W.2d 621 (Tex. App.—

- ☐ If no genuine issue, grant movant's (usually state's) motion for summary judgment.
- ☐ If genuine issue, deny and set for bond forfeiture trial.
- ☐ 13. Procedure at bond forfeiture trial.
 - ☐ At least 45 days notice of trial setting required.
 - ☐ If service of citation is by publication and there was no answer, appoint an attorney to represent the surety.
 - ☐ Defendant may request a jury trial.
 - ☐ Written request for a jury trial is required.
 - ☐ Must be received not less than 30 days in advance.
- ☐ 14. Call case.
- ☐ 15. State presents case:
 - ☐ Bond;

Houston 14th Dist. 1992)

[Tex. R. Civ. P. 245](#)

In the case of continuance, the court may reset to a later date on any reasonable notice to the parties or by agreement of the parties.

[Tex. R. Civ. P. 244](#)

[Tex. R. Civ. P. 216](#)

"What says the state in cause number ____?"

(State answers.)

(If defense does not appear, state can move for default judgment.)

"What says the defendant?"

(Defense answers.)

- | | |
|--|---|
| <ul style="list-style-type: none"> <input type="checkbox"/> Docket entry and indication of forfeiture; <input type="checkbox"/> Certificate or testimony of bailiff or person who called name; <input type="checkbox"/> Judgment nisi. <input type="checkbox"/> 16. State may ask court to take judicial notice of bond and judgment nisi. <input type="checkbox"/> 17. Judge will take judicial notice of bond and judgment nisi unless defendant and/or surety have filed a sworn answer challenging bond's validity. If sworn answer, state must establish required predicate to introduce bond. <input type="checkbox"/> 18. State rests. <input type="checkbox"/> 19. Defendant or principal or surety presents evidence under one of the following: <ul style="list-style-type: none"> <input type="checkbox"/> Bond not valid: <ul style="list-style-type: none"> <input type="checkbox"/> Bond not valid as to principal or surety; <input type="checkbox"/> Defendant did not execute bond (must be verified by affidavit); <input type="checkbox"/> Bond more burdensome than statute requirement. <input type="checkbox"/> Defendant or principal died before forfeiture taken. <input type="checkbox"/> Defendant or principal was sick or some uncontrollable circumstance prevented the defendant's appearance. <input type="checkbox"/> Incarceration has been held to be an uncontrollable circumstance. | <p>Art. 22.13, C.C.P.</p>
<p>Art. 22.13, C.C.P.</p>
<p>Art. 22.13, C.C.P.</p>
<p>Browne v. State, 268 S.W.2d 131 (Tex. Crim. App. 1954)</p>
<p>Art. 22.13, C.C.P.</p>
<p>James v. State, 413 S.W.2d 111 (Tex. Crim. App. 1967)</p> |
|--|---|

<ul style="list-style-type: none"> <input type="checkbox"/> Exonerate defendant; burden on sureties to show existence of facts: <ul style="list-style-type: none"> <input type="checkbox"/> Bond not valid and/or binding: <ul style="list-style-type: none"> <input type="checkbox"/> If principal not liable, everyone exonerated; <input type="checkbox"/> If principal liable and one or more sureties, if any, liable on bond, then only non-liable sureties exonerated. <input type="checkbox"/> Principal dies before date bond forfeited; <input type="checkbox"/> Sickness of principal or uncontrollable circumstances not fault of principal caused principal's failure to appear; <input type="checkbox"/> Principal must appear before final judgment or show cause for not appearing. <input type="checkbox"/> Remit forfeiture. <input type="checkbox"/> Set aside forfeiture only as expressly provided for in Chapter 22, C.C.P. <input type="checkbox"/> The court may approve any proposed settlement of the liability on the forfeiture that is agreed to by the state and by the defendant or the defendant's sureties, if any. 	<p>Art. 22.13, C.C.P.</p>
<ul style="list-style-type: none"> <input type="checkbox"/> 22. If no exoneration, enter Final judgment - Surety Bond against each for the amount in which sureties, if any, are respectively bound. 	<p>Art. 22.125, C.C.P.</p> <p>Art. 22.14, C.C.P. Form</p> <p>The court finds that the judgment nisi is now made final. The defendant and sureties are jointly and severally bound in the amount of \$_____ and costs of court to (<u>City</u>), Texas and order that judgment be entered and execution issue.</p>

- ☐ 23. Enter dismissal of forfeiture and reinstatement of bond if exoneration is found.

Form - Dismiss and reinstate bond

Form - Dismiss with costs

Form - Dismiss without costs

The court finds that the principal and/or surety has/have shown grounds for exoneration and the court enters an order of dismissal in this matter.

- ☐ 24. Remittitur:

[Art. 22.16, C.C.P.](#)

- ☐ If defendant or surety is entitled to remittitur, before entry of final judgment and written motion submitted, deduct from the amount of the bond, court costs, interest and any reasonable costs to the city for the return of the defendant.

The court finds remittitur in an amount of \$_____.

- ☐ Remittitur permitted if the defendant or sureties show:

- ☐ Defendant or principal in jail locally;
- ☐ Verified defendant or principal in jail in another jurisdiction;
- ☐ New bail posted;
- ☐ Defendant or principal deceased;
- ☐ Underlying criminal case dismissed.

- ☐ 25. Agreed Final Judgment: **Form**

[Art. 22.125, C.C.P.](#), Sec. 1704.205, O.C.

- ☐ County population is more than 110,000; or
- ☐ A Bail Bond Board created within the county.
- ☐ State and defense agree to an amount less than bond and recommendation is submitted to court.

The court accepts the state's recommendation of the agreed judgment and finds that the judgment nisi is now final. The defendant and sureties are jointly and severally bound in the amount of \$_____ and costs of court to (City),

- ☐ Court accepts the recommendation and enters a final judgment.

Texas and order judgment be entered and execution issue. (Note: If sureties are a corporation, they are not in default until the 11th day after judgment. [Sec. 1704.212, O.C.](#))

☐ 26. Motion for New Trial:

- ☐ Defendant and/or surety requests within 30 days after final judgment has been signed.
- ☐ Request (motion) is made in writing.

[Tex. R. Civ. P. 329b](#)

Motion extends time for issuance of execution up to 105 days. If the judge never signs motion for new trial, it will be deemed overruled 75 days after the original judgment was signed. The same rule applies whenever a final judgment is signed.

☐ 27. Non-Contested Cases:

- ☐ Proper answer is filed;
- ☐ Defendant is not contesting forfeiture.

[Tex. R. Civ. P. 245](#)

The case may be tried or disposed of at any time, whether set or not, and may be set at any time for any other time.

☐ 28. Appeal:

- ☐ Defendant(s) have the right to appeal a final forfeiture.

[Art. 45.042, C.C.P.](#)

☐ 29. Bill of Review:

- ☐ Defense presents not later than two (2) years after the date of final judgment.
- ☐ Includes request, on equitable grounds, that final judgment be reformed and that all or part of the bond be remitted to the surety.
- ☐ The court grants a bill in part or in whole.

[Art. 22.17, C.C.P.](#)

The court grants the bill of review (in part / in whole) and orders that judgment be reformed and the amount

☐ The court denies the bill.

of \$_____ be returned to the defendant.

The court denies the bill.

The state should review and respond to the bill. If granting the bill, costs of court, any reasonable expenses in re-arresting the defendant and interest accrued on the bond from the date of the forfeiture should be deducted.

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CHAPTER 6 DISPOSITION WITHOUT TRIAL

A. Guilty and No Contest Pleas

Checklist 24	Script/Notes
<p>“No contest” means that the defendant is neither admitting nor denying the charge, but is choosing not to contest the charges in court. Within municipal court, a plea of no contest has the same legal effect as a plea of guilty.</p> <p>Defendant may waive a trial by jury in writing. Only when a written waiver is made can the court proceed. The decision to waive rests with the defendant. The manner, in writing, is controlled by statute.</p> <p>Once a plea of guilty or no contest has been accepted, the court may find the defendant guilty and assess a fine and court costs without hearing any evidence. The court does have the option of requiring evidence before finding a defendant guilty or determining the amount of the fine.</p> <p><input type="checkbox"/> 1. Ensure that the plea is made by the defendant or the defendant’s attorney. Form</p> <p><input type="checkbox"/> If court receives payment without a plea, go to Step 6.</p> <p><input type="checkbox"/> If plea made by any other person (parent,</p>	<p>Art. 27.02, C.C.P.</p> <p>Art. 45.025, C.C.P.</p> <p>Arts. 27.14(a) and 45.022, C.C.P.</p> <p>“You are charged with _____, a misdemeanor punishable by a fine of not more than \$_____ (<i>if offense has a minimum fine</i>) and not less than \$_____ and by _____ (<i>if offense bears sanctions in addition to a fine</i>). You have the right to a trial by jury or by judge. Do you wish to plead guilty, not guilty or no contest?”</p> <p>Form</p>

friend, spouse, etc.), do not accept the plea. Skip the rest of this chapter.

- ☐ Since this is a criminal case, inform the person that the law only allows the defendant or his or her attorney to enter a plea.
- ☐ 2. If defendant refuses to plead:
 - ☐ Enter a plea of not guilty.
 - ☐ Note on docket that defendant would not plea and that a plea of not guilty was entered by the court.
 - ☐ Note defendant's election of jury trial or jury waiver on docket; set case for trial; and skip rest of this Checklist.
- ☐ 3. If defendant will not elect jury or bench trial, set case for jury trial.
 - ☐ Note on docket defendant would not elect jury or non-jury trial and that jury trial was set by the court. Skip the rest of this Checklist.
- ☐ 4. Determine if there are any conditions attached to the plea.
 - ☐ If defendant pleads guilty or no contest without conditions, go to [Step 5](#).
 - ☐ If the conditions are denied, inform the defendant or his or her attorney that defense must enter an unconditional plea of not guilty, guilty or no contest.

[Arts. 27.16\(a\) and 45.024, C.C.P.](#) **Form**

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

"Since you will not tell me whether you want a trial with or without a jury, I am setting your case for a jury trial."

Form

- Look for requests for:
- driving safety; **Form: DSC(1) & (2)**
 - deferred disposition;
 - a limit on the fine or time to pay it;
 - community service; **Form**
 - outright dismissal; or
 - any other attempt by the defendant to set the conditions of the

judgment.

- ☐ If the conditions are accepted, determine if other procedures are necessary (see the sections on Driving Safety or Deferred Disposition).
- ☐ 5. Determine whether it is a plea of guilty or a plea of no contest and enter it on the court's docket.
- ☐ 6. If the court receives payment, without a plea:
 - ☐ Determine that offense is punishable by fine only and that no other sanction (such as counseling, community service or DL suspension) are mandatory.
 - ☐ Determine that the fine is sufficient to cover the minimum lawful fine, court costs and any warrant fees.
 - ☐ Determine that the fine is not more than the maximum lawful fine plus court costs and any warrant fees.
 - ☐ Determine that the payment is in an amount acceptable to you.
 - ☐ Determine that payment is from the defendant, from defendant's attorney or made with defendant's agreement to be found guilty.
 - ☐ If the above requirements are met, sign a judgment of guilty. Skip the rest of this Checklist. **Form**

Form

Form

[Art. 27.14\(c\), C.C.P.](#)

If punishment is by fine only, payment of a fine or an amount accepted by the court constitutes a finding of guilty in open court, as though the defendant had entered a nolo contendere (no contest) plea and a written waiver of jury trial.

- ☐ If the above requirements are **not** met, return the fine to the defendant or defense attorney, inform them of the acceptable fine amount and of any other applicable sanctions and set the case for trial. Skip the rest of this Checklist.
- ☐ 7. Determine if defendant has:
 - ☐ Requested in writing that the court notify defendant of the amount of an appeal bond the court will approve.
 - ☐ Waived a jury trial in writing.
 - ☐ Provided the court with defendant's or defense attorney's address.
 - ☐ Delivered the request, plea, jury waiver and address by defendant's appearance date.
 - ☐ Amount of time increased by "Mailbox Rule."

If the defendant sent by first class mail the plea and jury waiver on or before the due date of appearance, and these documents are received by the clerk not later than the ten days after the due date, the plea and waiver are properly filed. Make sure the clerk keeps the envelope with the postmark.
 - ☐ Determine that the offense is punishable by fine only and that no other sanctions (such as counseling, community service or DL suspension) are mandatory.
 - ☐ If above are done, notify defendant/defense attorney—either in person or by certified mail, return receipt requested—of the amount of the fine assessed and the amount of the appeal bond. Skip the rest of this Checklist.

[Art. 27.14\(c\), C.C.P.](#)

[Art. 27.14\(b\), C.C.P.](#)

Form - Cash appeal bond
Form - Personal appeal bond
Form - Surety appeal bond

[Art. 45.025, C.C.P.](#)

[Art. 45.013, C.C.P.](#)

"Day" does not include Saturday, Sunday or legal holiday. This rule increases the amount of time allowed to file a document when the document is filed by mail.

Defendant must pay fine or post the appeal bond by the 31st day after receiving the notice. Remember that the bond is timely filed if postmarked before the 31st day and received within 10 days. [Art. 45.013, C.C.P.](#)

- ☐ 8. Enter a judgment of guilty and set the fine. Inform defendant or his or her attorney of the total of the fine plus court costs and any warrant fee due. Inform defendant/defense attorney of any other applicable sanctions and deadlines.

“Based on your plea of (guilty) (no contest), I find you guilty. Your fine plus court costs is \$_____.” *(If applicable, add)* “In addition, you must do the following: _____.”

CHAPTER 6 DISPOSITION WITHOUT TRIAL

B. Driving Safety

1. Mandatory Driving Safety, [Art. 45.0511\(b\)\(1\), C.C.P.](#)

Checklist 25	Notes
<p><input type="checkbox"/> 1. Subsection (b)(1) applies to offenses under Subtitle C, Rules of the Road, T.C. except the following offenses: speeding 25 mph or more over limit; Sec. 550.022 (remain at accident scene); Sec. 550.023 (duty to give information and aid); Sec. 545.401 (reckless driving); Sec. 545.066 (overtaking and passing a school bus); Sec. 545.421 (fleeing police officer); and serious traffic violations defined in Sec. 522.003. Serious traffic violations means a conviction arising from the driving of a commercial motor vehicle for: (a) excessive 15 mph or more; (b) reckless driving; (c) violations of state and local traffic laws other than parking, weight or vehicle defect violations, arising in connection with a fatal accident; (d) improper or erratic lane change; or (e) following too closely.</p> <p><input type="checkbox"/> 2. Determine defendant's eligibility to take a driving safety course:</p> <p><input type="checkbox"/> Determine that defendant has a valid Texas driver's license or permit.</p> <p><input type="checkbox"/> Require defendant to show proof of financial responsibility (insurance).</p> <p><input type="checkbox"/> Determine the date of this alleged offense.</p> <p><input type="checkbox"/> Determine the date the defendant last completed a driving safety course.</p> <p><input type="checkbox"/> Ensure that at least one year has elapsed from date defendant last completed a driving safety course and the date of the</p>	<p>Defendants operating a commercial motor vehicle are not eligible for a driving safety course. Art. 45.0511(a), C.C.P.</p> <p>Art. 45.0511(c)(3), C.C.P.</p> <p>Art. 45.0511(c)(6), (7), C.C.P.</p> <p>Date of court appearance, date defendant requests a driving safety course, and</p>

current citation.

- ☐ 3. Determine whether defendant has done the following by the answer date on the citation:

- ☐ Pled either guilty or no contest.
- ☐ Elected to take a driving safety course.
- ☐ Executed a written affidavit that provides:
 - ☐ Defendant is not in the process of taking a driving safety course.
 - ☐ Defendant has not completed a driving

date defendant received prior ticket are not relevant. If defendant has never taken a driving safety course to dismiss a ticket before, defendant meets the "at least one year" criteria.

[Art. 45.0511\(c\), C.C.P.](#)

Amount of time increased by "Mailbox Rule":

If the request for a driving safety course is mailed first class mail on or before the appearance date on the citation and received by the clerk not later than 10 days after the due date for appearance, the request is timely filed. Make sure the clerk keeps the envelope with the postmark.

[Art. 45.013, C.C.P.](#)

"Day" does not include Saturday, Sunday or legal holidays.

Plea can be oral or written. Request for a driving safety course can be oral or in writing.

[Art. 45.0511\(c\)\(7\), C.C.P.](#)

safety course, that is not reflected on DPS driving record.

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

- ☐ If defendant was not advised of right to a driving safety course, advise defendant now and allow defendant to enter plea of guilty or no contest, request a driving safety course and execute written affidavit.

- ☐ If defendant was advised of right to a driving safety course, and answer date on citation has passed, defendant has waived right to mandatory a driving safety course.

- ☐ 5. After the above requirements are satisfied, defendant must:

- ☐ Pay court costs; and
- ☐ At the court's discretion: pay an additional administrative fee up to 10 dollars.

- ☐ 6. After the above steps are completed:

Printing notice of a driving safety course eligibility on defendant's copy of citation should satisfy this requirement. [Art. 45.0511\(p\), C.C.P.](#); [Art. 543.101, T.C.](#)

Defendant must still have valid Texas driver's license or permit and proof of financial responsibility. [Art. 45.0511\(3\), \(5\), C.C.P.](#)

You have discretion to grant mandatory driving safety course **after answer date** and before final disposition, if defendant makes a written request for a driving safety course. [Art. 45.0511\(d\), C.C.P.](#) The following procedures still apply in this case.

The administrative fee is discretionary, but court should try to treat all defendants equally and fairly. [Art. 45.0511\(f\), C.C.P.](#) No other fee, special expense, or fine is allowed.

Defendant may take a six-hour driving safety course

- ☐ Enter judgment of guilty and set fine;
- ☐ Defer proceedings for 180 days; and
- ☐ Note on docket that imposition of the judgment is deferred for 180 days.
- ☐ 7. If offense alleged to have occurred while operating a motorcycle, order defendant to attend motorcycle operating training course.
- ☐ 8. If the defendant is charged with a seat belt or child safety seat violation, order defendant to attend a specialized driving safety course approved by TEA that includes four (4) hours of instruction that encourages the use of seat belts and safety seats.
- ☐ 9. If defendant presents original "COURT" copy of a driving safety course certificate timely, dismiss the case; and
- ☐ Report to DPS that the defendant completed DSC under 45.0511(b)(1).
- ☐ 10. If defendant fails to present certificate by deadline:

at any school in the state approved under the Texas Driver and Traffic Safety Education Act. Some schools offer approved video programs. Also, DSC is offered on the Internet. If state approves, the judge must accept these alternative courses. Defendant should check with TEA to determine if a school is approved (512/997-6500).

Form

Art. 45.0511(c)(2), C.C.P.

Deferring imposition of the judgment means that the court does not require the defendant to pay the fine.

Art. 45.0511(f), C.C.P.

Section 545.412(a), T.C.
Section 545.413(j), T.C.

The court should also verify that the course completed was a specialized DSC.

Don't accept
"INSURANCE" copy or
any reproduction of the
certificate. Reproduction
is illegal.

Form

Art. 45.0511(l)(2), C.C.P.

Art. 45.0511(i), C.C.P.

<ul style="list-style-type: none"> <input type="checkbox"/> Send defendant written notice of failure to present the certificate and require defendant to appear at time and place stated in notice to show cause why certificate was not presented on time. 	<p>Notice may be sent by first class mail. Certified mail not required.</p> <p>Form</p>
<ul style="list-style-type: none"> <input type="checkbox"/> 11. If defendant appears at show cause hearing: <ul style="list-style-type: none"> <input type="checkbox"/> If defendant shows good cause, court may allow defendant additional time to produce the certificate. <input type="checkbox"/> If defendant does not show good cause, impose the judgment. Form 	<p>The only issue is why defendant failed to submit certificate on time. Art. 45.0511(k), C.C.P.</p>
<ul style="list-style-type: none"> <input type="checkbox"/> 12. If defendant fails to appear at show cause hearing, impose the judgment. Defendant may also be charged with failure to appear for show cause hearing. Form 	<p>The Code requires the court defer imposition of judgment for 180 days. Art. 45.0511(c)(2), C.C.P.</p> <p>Art. 45.0511(j), C.C.P.</p>
<ul style="list-style-type: none"> <input type="checkbox"/> 13. If defendant produces certificate by extended deadline, dismiss the case. 	<p>The Code requires the court defer imposition of judgment for 180 days. Art. 45.0511(c)(2), C.C.P.</p>
<ul style="list-style-type: none"> <input type="checkbox"/> 14. If defendant fails to produce certificate by extended deadline, impose the judgment. 	

CHAPTER 6 DISPOSITION WITHOUT TRIAL

B. Driving Safety

2. Discretionary Driving Safety, [Art. 45.0511\(b\)\(2\), C.C.P.](#)

Checklist 26	Notes
<input type="checkbox"/> 1. Subsection (b)(2), like Subsection (b)(1), applies to offenses under Subtitle C, Rules of the Road. However, (b)(2), unlike (b)(1), is only triggered when defendant has completed a driving safety course in the preceding 12 months. Moreover, it is at the judge's discretion to allow this procedure.	<p>It may be far simpler to grant deferred under General Deferred. Art. 45.051, C.C.P.</p> <p>See CHECKLIST 27 Form</p>
<input type="checkbox"/> 2. Require defendant to: <div style="margin-left: 20px;"> <input type="checkbox"/> Enter a plea of either guilty or no contest; <input type="checkbox"/> Pay court costs. </div>	<p>Art. 45.051(a), C.C.P.</p> <p>Form</p>
<input type="checkbox"/> 3. The court may impose a special expense fee not to exceed fine at the conclusion of the deferral period and when the case is dismissed.	<p>Art. 45.051(q), C.C.P.</p> <p>This special expense fee is only applicable for (b)(2) – Discretionary Driving Safety.</p>
<input type="checkbox"/> 4. Enter Judgment of Guilty.	<p>Form</p>
<input type="checkbox"/> 5. Defer proceedings for up to 180 days. Set deferral period.	<p>Defendant may take a six-hour driving safety course at any school in the state approved under the Texas Driver and Traffic Safety Education Act.</p>
<input type="checkbox"/> 6. Note on docket the date that the defendant is required to return to court.	
<input type="checkbox"/> 7. If offense alleged occurred while operating a motorcycle, order defendant to attend motorcycle operating training course.	<p>Art. 45.0511(d), C.C.P.</p>

- ☐ 8. If the defendant is charged with a seat belt or child safety seat violation, order defendant to attend a specialized driving safety course approved by TEA that includes four (4) hours of instruction that encourages the use of seat belts and safety seats.
- ☐ 9. If defendant presents original "COURT" copy of a driving safety certificate, dismiss the case.
 - ☐ Report to DPS that DSC was completed under Art. 45.0511(b)(2), C.C.P.
- ☐ 10. If defendant fails to present certificate, send defendant written notice of failure to present the certificate and require defendant to appear at time and place stated in notice to show cause why certificate was not presented on time.
- ☐ 11. If defendant appears at show cause hearing:
 - ☐ If defendant shows good cause, court may allow defendant additional time to produce the certificate.
 - ☐ If defendant does not show good cause, enter conviction.
- ☐ 12. If defendant fails to appear at show cause hearing, enter judgment. **Form**
 - ☐ Defendant may also be charged with failure to appear at show cause hearing.
- ☐ 13. If defendant produces certificate by extended deadline, dismiss case.

[Section 545.412\(a\), T.C.](#)
[Section 545.413\(j\), T.C.](#)

The court should also verify that the course completed was a specialized DSC.

Do not accept "INSURANCE" copy or any reproduction of the certificate. Reproduction is illegal.

[Arts. 45.0511\(b\)\(2\) and \(i\)\(2\), C.C.P.](#)

Notice may be sent by first class mail. Certified mail not required. [Art. 45.0511\(i\), C.C.P.](#)

Form

The only issue is why defendant failed to submit certificate on time.

Form

The Code requires the court defer imposition of judgment for 180 days.
[Art. 45.0511\(c\)\(2\), C.C.P.](#)

[Art. 45.0511\(j\), C.C.P.](#) **Form**

- ☐ 14. If defendant fails to produce certificate by extended deadline, enter judgment.

Form

CHAPTER 6 DISPOSITION WITHOUT TRIAL

C. General Deferred Disposition, [Article 45.051, C.C.P.](#)

Granting deferred disposition is within the court's discretion. It is not mandatory.

Checklist 27	Notes
<input type="checkbox"/> 1. Determine that deferred disposition is available for the alleged offense. It is not available for: <ul style="list-style-type: none"> <input type="checkbox"/> A case disposed of by a driving safety course under Art. 45.0511, C.C.P. <input type="checkbox"/> Work-construction zone offenses, Secs. 543.117 and 472.022, T.C. <input type="checkbox"/> A minor with two prior convictions for Consumption of Alcohol by a Minor (Sec. 106.04, A.B.C.) and Driving under the Influence of Alcohol by a Minor (Sec. 106.041, A.B.C.). 	<p>If there are two prior convictions, municipal court does not have jurisdiction of the third or subsequent offenses. For minors under 17 years of age, see Sec. 51.08, F.C. For minors at least 17 years of age or older, see Secs. 106.041(c) and 106.071(c), A.B.C.</p>
<input type="checkbox"/> 2. Deferred Disposition may be granted: <ul style="list-style-type: none"> <input type="checkbox"/> After defendant pleads guilty or no contest; or <input type="checkbox"/> After a finding of guilt. 	<p>Form</p> <p>The plea may be oral or written.</p> <p>Deferred may be granted at the defendant's request, the prosecutor's suggestion, or the court's own motion.</p>
<input type="checkbox"/> 3. Set a fine.	<p>The court must set a fine when granting deferred disposition, even though the case may be dismissed later.</p>
<input type="checkbox"/> 4. Defendant must pay court costs.	

- ☐ 5. Defer the proceedings for up to a maximum of 180 days.
- ☐ 6. Set any or all of the following conditions to be performed by the defendant during the deferral period:
 - ☐ Post bond in amount of the fine to secure payment of the fine;
 - ☐ Require payment of restitution to victim;
 - ☐ Go to professional counseling;
 - ☐ Submit to alcohol or drug testing;
 - ☐ Submit to psychosocial assessment;
 - ☐ Participate in an alcohol or drug abuse treatment or education program;
 - ☐ Pay for testing, treatment or education;
 - ☐ Comply with any other reasonable requirements.
 - ☐ If the offense is Purchase, Attempt to Purchase, Consumption or Possession of Alcohol by a Minor; Misrepresentation of Age by a Minor; or Driving under the Influence of Alcohol by a Minor, the court must require as a condition of deferral that the minor attend an alcohol awareness course.
 - ☐ If the offense is Purchase, Attempt to Purchase, Consumption or Possession of Alcohol by a Minor or Misrepresentation of

Form - Cash bond
Form - Surety Bond
Form - Oath to surety

Restitution may not be more than the fine allowable.

Community service, and commit no further offenses are examples of "other reasonable requirements." Judge may also require DSC.

[Sec. 106.115\(a\), A.B.C.](#)

[Sec. 106.071\(d\), A.B.C.](#)

Age by a Minor, the court must require as a condition of deferral that the minor performs 8 to 12 hours of community service for a first offense and 20 to 40 hours of community service for a subsequent offense.

☐ 8. Inform the defendant that:

- ☐ When all the conditions are met, then at the end of the deferral period the case will be dismissed, otherwise the court will enter a judgment and the fine will be due;
- ☐ Inform the defendant what special expense fee will be charged if the case is dismissed.

☐ 9. At the end of the deferral period:

- ☐ If the defendant presents satisfactory evidence of compliance with the requirements then:
 - ☐ Dismiss the case; and
 - ☐ Charge the special expense (optional).
- ☐ If the defendant fails to comply with the requirements:
 - ☐ Find defendant guilty;
 - ☐ Impose or reduce fine.

Give the defendant a written copy of the order deferring disposition, listing all the conditions, and the consequences of both successful and unsuccessful compliance.

[Art. 45.051\(c\), C.C.P.](#)

Special expense may not exceed the fine amount. If defendant complies with all the conditions, the court must dismiss the case. Charging the special expense fee upon dismissal is discretionary.

Form

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CHAPTER 7 PRE-TRIAL PROCEEDINGS

[Article 28.01 of the Code of Criminal Procedure](#) provides that a “court may set any criminal case for a pre-trial hearing before it is set for trial upon its merits, and direct the defendant and his or her attorney, if any of record, and the state’s attorney, to appear before the court at the time and place stated in the court’s order for a conference and hearing.”

If a trial is held, a prosecutor must be present to represent the state. [Art. 45.031, C.C.P.](#) If the pretrial hearing is held to inform the defendant about procedures, such as his or her right to have an attorney (not appointed by the court), then the prosecutor need not appear. If, however, the pretrial hearing is held to resolve a contested issue, when the judge will be required to hear evidence and make a ruling, the prosecutor should be present to represent the state. The judge cannot serve as the state's attorney.

Since Chapter 45 of the Code of Criminal Procedure is silent on pre-trial matters, [Art. 28.01](#), though not specifically applicable to municipal court practice in all regards, provides a general framework and guidance in conducting pre-trials at municipal court.

A. Is a Hearing Appropriate?

Checklist 28	Notes
<input type="checkbox"/> 1. Pre-trial hearings may be set by court.	Art. 28.01, C.C.P.
<input type="checkbox"/> 2. Determine if issue raised by motion is an issue of (a) facts only, (b) facts and law, or (c) law only.	
<input type="checkbox"/> "Facts only issues" are issues of guilt or innocence and are not properly addressed by the court unless a jury is waived. If a motion raises only the issue of the defendant's guilt or innocence, the proper proceeding is a trial on the merits, not a pre-trial hearing.	Arts. 36.13 and 38.04, C.C.P. (except the issues in Art. 27.08, C.C.P.)
<input type="checkbox"/> "Law only issues" are determined based on the motions, briefs and arguments of law by the prosecution and defense. Arguments need only be allowed if the court believes such arguments will be helpful to its determination of the issue. No testimony or hearing is necessary to rule on issues of	

pure law.

- ☐ If the determination of the pre-trial issue requires both a finding of underlying facts and the law to be applied to the facts, a hearing with the testimony of live witnesses, exhibits or sworn affidavits is necessary (for example, a motion to suppress evidence).
- ☐ 3. Setting and holding pre-trials should be made with an eye toward effectively managing trial settings, court time and the smooth presentation of the trial before the jury. Except as noted hereafter, most pre-trial matters can be resolved by an objection at trial. As a practical consideration, allowing a matter before the jury that is later found by the court to be inadmissible can result in needless mistrials or reversals. Effective use of pre-trials can further the ends of judicial economy.

Art. 28.01(6) and
[*Rodriguez v. State*](#), 844
S.W.2d 744 (Tex. Crim.
App. 1992)

CHAPTER 7 PRE-TRIAL PROCEEDINGS

B. Conducting a Hearing

Checklist 29	Notes
<input type="checkbox"/> 1. Issues that may determine whether a trial may in fact be necessary are best performed prior to jury selection.	Art. 28.01, C.C.P.
<input type="checkbox"/> 2. If a hearing is set, notice must be given to both the municipal prosecutor and the defendant. The following matters should be heard: <ul style="list-style-type: none"> <input type="checkbox"/> Arraignment; <input type="checkbox"/> Appointment of counsel, if necessary; <input type="checkbox"/> Pleadings of the defendant; <input type="checkbox"/> Special pleas, if any (such as double jeopardy); <input type="checkbox"/> Exceptions to form or substance of the complaint; <input type="checkbox"/> Motions for continuance; <input type="checkbox"/> Motions to suppress evidence; <input type="checkbox"/> Motions for change of venue does not apply to municipal court unless teen court has been granted); <input type="checkbox"/> Discovery; <input type="checkbox"/> Entrapment; and <input type="checkbox"/> Motions for appointment of interpreter. <p>The notice can be made in open court or by written order.</p>	Art. 28.01, C.C.P.
<input type="checkbox"/> 3. The defense must have 10 days notice of trials or pre-trials in which to file motions.	Art. 28.01(3), C.C.P.
<input type="checkbox"/> 4. The conduct of any pre-trial hearing is largely a matter of court discretion.	Art. 28.01(2), C.C.P. See also Art. 45.018, C.C.P. , which provides that a defendant is entitled to one day's notice of any complaint against him or her. The defendant may waive the right to notice.

- ☐ 5. Unless standing (the right to complain about the matter of the motion) is an issue the party with the burden of proof should probably proceed first.
- ☐ 6. The party seeking relief is obligated to raise and explain the issue to the court. If the movant cannot explain the relief requested or the reasons for the relief, denial of the motion is appropriate.
- ☐ 7. Limit testimony to the issue contained in the motion.
- ☐ 8. The rules of evidence may not apply in all pre-trial proceedings.
 - ☐ The parties should always be provided the opportunity to cross, rebut or argue if the other side is permitted to present evidence or argue.
- ☐ 9. If motions are presented, after the judge makes a decision based on the evidence and arguments presented, he or she announces:
 - ☐ Granted; or
 - ☐ Denied.

Rule 33.1, T.R.A.P. and
Art. 1.14, C.C.P.

SEE [CHECKLIST 76](#)

CHAPTER 7 PRE-TRIAL PROCEEDINGS

C. Arraignment

Checklist 30	Notes
<input type="checkbox"/> 1. The purpose of an arraignment is twofold: <ul style="list-style-type: none"> <input type="checkbox"/> Fix identity of the accused; and <input type="checkbox"/> Take the plea of the accused. Form 	<p>Arts. 26.01-26.03, C.C.P.</p> <p>Arraignments in municipal court are not specifically required or prohibited.</p> <p>If the court orders an arraignment, the court can not refuse to accept a waiver of arraignment from an attorney representing the defendant and require the defendant to appear. Art. 26.011, C.C.P.</p>
<input type="checkbox"/> 2. Arraignments are required in all felonies and misdemeanors punishable by confinement.	
<input type="checkbox"/> 3. Only a court having jurisdiction over a particular offense may arraign the defendant. For instance, a municipal court judge is permitted only to arraign defendants charged with fine-only misdemeanors. <ul style="list-style-type: none"> <input type="checkbox"/> When a magistrate administers the warnings required by Art. 15.17, C.C.P., it is not an arraignment although it is sometimes improperly referred to as such. 	<p>Arts. 27.14, 27.16, 45.022 and 45.023, C.C.P.</p>
<input type="checkbox"/> 4. The defendant may plead guilty, nolo contendere or not guilty. <ul style="list-style-type: none"> <input type="checkbox"/> If he or she refuses to plead, the court will enter a not guilty plea. 	<p>Art. 27.14(a), C.C.P.</p>
<input type="checkbox"/> 5. The plea of guilty or nolo contendere, if made in open court, may be made by either the defendant or his or her counsel.	<p>Arts. 27.14(a) and 45.025, C.C.P.</p>
<input type="checkbox"/> 6. The defendant may also waive a jury. <ul style="list-style-type: none"> <input type="checkbox"/> Waiver of jury trial must be in writing. 	<p>Art. 27.16, C.C.P.</p>
<input type="checkbox"/> 7. The defendant may also mail in a not guilty plea. Form	

CHAPTER 7 PRE-TRIAL PROCEEDINGS

D. Motions for Continuance

Checklist 31	Notes
<input type="checkbox"/> 1. The court must keep a docket scheduling contested cases for bench or jury trials. The exact mechanism is up to the discretion of the court.	Art. 45.017, C.C.P.
<input type="checkbox"/> 2. Motions for continuance are used by the prosecutor or defendant to put off or continue the trial to a later setting.	
<input type="checkbox"/> 3. A defense motion for continuance should waive the defendant's right to a speedy trial.	
<input type="checkbox"/> 4. The court can continue the trial on its own motion.	Art. 29.01, C.C.P.
<input type="checkbox"/> The court must continue the trial where the defendant has not been arrested nor appeared, or insufficient time for trial exists in the term of court (an unlikely event).	
<input type="checkbox"/> If a jury panel is not available, the whole docket may be continued or reset.	
<input type="checkbox"/> 5. The motion for continuance must meet some legal standards. All motions in record courts for continuance must be in writing to be appealed.	Arts. 29.01 and 29.02, C.C.P. ; see Art. 29.011, C.C.P. for religious continuance.
<input type="checkbox"/> Motions must be sworn to by the moving party.	Art. 29.08, C.C.P. and Montoya v. State 810 S.W.2d 160 (Tex. Crim. App. 1989)
<input type="checkbox"/> Affidavits should be attached to the motion setting forth sufficient facts to justify the continuance.	Art. 29.08, C.C.P.
<input type="checkbox"/> All motions for continuance must be "for	Art. 29.03, C.C.P.

sufficient cause".

- ☐ Continuances by the prosecution must be based on missing witnesses, the motion must contain the witnesses' name and address, allegations of the efforts made to obtain them, and an assertion that their testimony is material.
- ☐ Subsequent motions by the prosecutor must embellish on the above list by showing the facts to be established by the witness, that the witness will be available and when, and that no other witness can testify to the same matter.
- ☐ The defendant has similar requirements for both first and subsequent motions. The defendant must also show that the defendant did not cause the witnesses' absence and that the motion is not made for the sole purpose of a delay of trial.
- ☐ The court must make these findings if the prosecutor's motion is opposed.
- ☐ 6. Motions may be by agreement or unopposed, subject to the court's approval. Agreed motions do not need to be litigated or argued, unless the court believes it is necessary.
- ☐ When a hearing is conducted:
 - ☐ The court is granted broad discretion in determining "sufficient cause."
 - ☐ Opposing affidavits can be filed.
 - ☐ The court may rule on affidavits or hear evidence or argument within its discretion.
- ☐ 7. The court has broad discretion in granting or denying motions for continuance and in

[Art. 29.04, C.C.P.](#)

[Art. 29.05, C.C.P.](#)

[Art. 29.06, C.C.P.](#)

[Art. 29.07, C.C.P.](#)

[Art. 29.02, C.C.P.](#) and
[Taylor v. State](#) 612
 S.W.2d 566 (Tex. Crim.
 App. 1981)

[Art. 29.09, C.C.P.](#)

resetting the case once a motion is granted.

- ☐ 8. Motions for continuance during trial can only be granted if:

- ☐ A surprise occurs;

- ☐ Due diligence would not have prevented the surprise; and

- ☐ The surprise prevents a fair trial.

[Art. 29.13, C.C.P.](#)

CHAPTER 7 PRE-TRIAL PROCEEDINGS

E. Motions to Dismiss the Case

Checklist 32	Notes
<p><input type="checkbox"/> 1. Ascertain that a legal issue is raised.</p> <p><input type="checkbox"/> Pre-trial motions asking for dismissal based on factual innocence or the existence of a legal or factual defense to the offense should be considered a plea of not guilty and entered as such.</p> <p><input type="checkbox"/> 2. Motions to dismiss must be based on statutory or constitutional grounds.</p> <p><input type="checkbox"/> Statutory grounds:</p> <p><input type="checkbox"/> The only statutory special plea is based on prior trial.</p> <p><input type="checkbox"/> A prior conviction, acquittal, mistrial or reversal on appeal are statutory and constitutional grounds for dismissal.</p> <p><input type="checkbox"/> A prior trial finding requires that a trial took place and that the same offense was tried.</p> <p><input type="checkbox"/> Dismissal for statute of limitations:</p> <p><input type="checkbox"/> The charging instrument shows that the offense was filed more than two (2) years after the date of the commission of the offense.</p> <p><input type="checkbox"/> The offense charged in the complaint must also be under the jurisdiction of the municipal court as set forth in Art. 4.14, C.C.P.</p>	<p>Arts. 45.023 and 27.05, C.C.P.</p> <p>Arts. 12.02 and 12.04, C.C.P.</p> <p>The day on which the offense was committed and the day on which the complaint is filed are excluded from the computation of time.</p> <p>Art. 4.14, C.C.P.</p>

<ul style="list-style-type: none"> <input type="checkbox"/> The offense or part of it must occur in the municipality, but this is a fact issue to be determined at trial. <input type="checkbox"/> Speedy trial motions are not available under the statute as it was declared unconstitutional. <input type="checkbox"/> No such violation exists in statute, code or ordinance. This kind of motion should be based on the complaint alone. 	<p>Art. 4.14(b), C.C.P.</p> <p>Art. 32A.02, C.C.P. Meshell v. State, 739 S.W.2d 246 (Tex. Crim. App. 1987)</p>
<ul style="list-style-type: none"> <input type="checkbox"/> Constitutional grounds: <ul style="list-style-type: none"> <input type="checkbox"/> The law and issues should be well briefed and studied before a dismissal is granted. <input type="checkbox"/> The statute or ordinance is void for vagueness in violation of due process provisions of the 14th Amendment. <input type="checkbox"/> The statute or ordinance as applied in the instant case denies the defendant equal protection of the law in violation of the Constitution. <input type="checkbox"/> The defendant's constitutional right to a speedy trial has been violated leading to a denial of due process, so great as to require dismissal based on demonstrable harm to the defendant. <input type="checkbox"/> Prosecutorial misconduct so egregious it shocks the consciousness and in order to assure due process requires the dismissal of the cause. 	<p>U.S. Constitution Fourteenth Amendment</p>
<ul style="list-style-type: none"> <input type="checkbox"/> 3. Dismissal is not the appropriate remedy for the defendant who is not competent. <input type="checkbox"/> The court should refer to Art. 46.02, C.C.P. if the issue of the present competency of the 	<p>Art. 46.02, C.C.P.</p>

defendant to stand trial is raised by any party in any manner.

- ❑ Competence or sanity at the time of the offense is an issue of guilt or innocence to be determined at trial. The determination of competence must be made prior to trial.

CHAPTER 7 PRE-TRIAL PROCEEDINGS

F. Motions to Dismiss (Quash) the Complaint

Checklist 33	Notes
<input type="checkbox"/> 1. A complaint gives the municipal court jurisdiction to try a cause. Motions objecting to the complaint are called motions to quash the complaint. These motions are properly made to the allegations of the complaint on its face, they are not properly related to the evidence that would prove the allegations, or the sufficiency of that evidence.	<p>Arts. 45.018 and 45.019, C.C.P.</p>
<input type="checkbox"/> 2. The complaint shall commence: <input type="checkbox"/> "In the name and by the authority of the State of Texas".	<p>Art. 45.019, C.C.P.</p> <p><i>Jones v. State</i>, 622 S.W.2d 109 (Tex. Crim. App. 1981). Beginning words absolutely required.</p>
<input type="checkbox"/> 3. The complaint must state: <input type="checkbox"/> The name or description of the defendant; <input type="checkbox"/> That the accused committed an offense; <input type="checkbox"/> A venue allegation that the offense was committed in the territorial limits of the municipality; <input type="checkbox"/> The date on which the offense was committed and the date the complaint is signed (these dates must be within two (2) years of each other).	<p>Art. 45.019, C.C.P.</p>
<input type="checkbox"/> 4. The complaint shall conclude: <input type="checkbox"/> "Against the peace and dignity of the State" (penal statutes) or it may, when appropriate, also conclude "Contrary to said ordinance" (municipal ordinances).	<p><i>Brock v. State</i>, 233 S.W.2d 143 (Tex. Crim. App. 1950). Concluding words absolutely required.</p>

- ☐ 5. Complaints must be sworn.
- ☐ 6. The offense alleged in "plain and intelligible words" should include:
 - ☐ Every element of the offense;
 - ☐ The facts sufficient to identify a particular offense to be defended against and sufficient facts to enable the defendant to plead the judgment in bar of further prosecution;
 - ☐ The intent required under the statute or ordinance, if any;
 - ☐ The name of the owner of property if that is an element of the offense;
 - ☐ A specific description of property if that is an element of the offense;
 - ☐ Language used in the allegation should be clear and concise;
 - ☐ The exact language of the statute or ordinance is usually most appropriate, but not required; and
 - ☐ The manner and means of committing most legal acts.

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

The trial court is not prohibited from requiring that each objection to a complaint be made at an earlier time.

[Art. 45.018, C.C.P.](#)

[Kindley v. State](#), 879 S.W.2d 261 (Tex. App.—Houston [14th Dist.] 1994)

[Art. 45.019\(f\), C.C.P.](#)

Note the implications of 45.019(f) on [Huynh v. State](#), 901 S.W.2d 480 (Tex. Crim. App. 1995), which holds that if a specific objection is made, insufficient allegations in any of the categories (See Step 6 of this list) requires dismissal of the complaint.

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

[Art. 28.04, C.C.P.](#)

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

☐ In writing;

☐ Before the date of trial;

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

☐ 10. An amendment to the complaint:

☐ Complaint cannot be amended because it is affiant's sworn statement.

[Givens v. State](#), 235 S.W.2d 899 (Tex. Crim. App. 1951)

☐ Complaint cannot be amended even if defendant acquiesces to amendment.

[Franklyn v. State](#), 762 S.W.2d 288 (Tex. App. – El Paso 1988, no pet.)

☐ But when complaint is amended and affiant "re-swears" to amend complaint, complaint valid.

[Cannon v. State](#), 925 S.W.2d 126 (Tex. App. – Amarillo 1992, pet. refd.)

☐ Defendant entitled to one day's notice of complaint before trial begins.

[Art. 45.019\(f\), C.C.P.](#)

CHAPTER 7 PRE-TRIAL PROCEEDINGS

G. Motions for Discovery

Checklist 34	Notes
<input type="checkbox"/> 1. Motions for discovery are to be determined by the exercise of the court's discretion. Very broad discretion on what is to be discovered and how discovery is to be done is provided to the court.	
<input type="checkbox"/> 2. Traditionally, depositions are generally not allowed in criminal proceedings. Depositions for the defendant may be ordered on application and the filing of affidavits "stating facts necessary to constitute a good reason for taking same." Merely wishing to discover adverse testimony has been held not to constitute "good reason" for deposition of a witness.	James v. State , 563 S.W.2d 599 (Tex. Crim. App. 1978); Art. 39.02, C.C.P.
<input type="checkbox"/> 3. Discovery of papers and physical items should be: <ul style="list-style-type: none"> <input type="checkbox"/> On motion by the defendant; <input type="checkbox"/> On a showing of good cause; <input type="checkbox"/> On the court's discretion; <input type="checkbox"/> Limited to production for examination, copying, and photographing; <input type="checkbox"/> Only for items in control of the state; <input type="checkbox"/> Not to be removed from the possession of the state or inspected outside the presence of the state; and <input type="checkbox"/> Not to include witness statements or other work product of the state. 	Art. 39.14, C.C.P.

- ❑ 4. No general right to discovery of inculpatory evidence exists. However, the defendant has the constitutional right to discover, "Brady" evidence, or evidence that shows the defendant may not be guilty.
- ❑ 5. If either party requests it, the court may order the parties to disclose the name and address of each person the party may use at trial. The judge shall specify when witness lists must be disclosed, no later than 20 days before trial.

[Quinones v. State](#), 592 S.W.2d 933 (Tex. Crim. App.1980); [Brady v. Maryland](#), 373 U.S. 83 (1963)
[Art. 39.14\(b\)](#), C.C.P.

CHAPTER 7 PRE-TRIAL PROCEEDINGS

There are two basic motions that affect evidence in the trial: The motion to suppress evidence is based on constitutional or statutory grounds, regardless of the admissibility otherwise established at trial. On the other hand, the motion in limine is advisory in nature only. This motion provides a way to pre-judge the admissibility of evidence at trial.

H. Motions about Evidence

1. Motions to Suppress

Checklist 35	Notes
<input type="checkbox"/> 1. The motion to suppress can be used to exclude: <ul style="list-style-type: none"> <input type="checkbox"/> Physical evidence based on police violation of the Fourth Amendment of the U.S. Constitution, Art. 38.23, C.C.P. and Art. I, Sec. 10 of the Texas Constitution prohibiting of "unreasonable searches or seizures." <input type="checkbox"/> The court must determine: <ul style="list-style-type: none"> <input type="checkbox"/> Did a search or seizure occur? To be a search or seizure the defendant complaining of the search or seizure must have had a "reasonable expectation of privacy". <input type="checkbox"/> Did the defendant have an interest in the items or area searched? If not then the defendant does not have "standing" to complain of the search or seizure. <input type="checkbox"/> Is the area private as opposed to open to the public or exposed to the public by the defendant? Open fields, overheard conversations, items abandoned or relinquished to others may not be protected by the 4th Amendment. 	<p>Illinois v. Gates, 462 U.S. 213 (1983)</p>
<input type="checkbox"/> 2. Was seizure pursuant to a warrant?	

- ☐ Was the warrant valid?
- ☐ Was the item seized within the scope of the warrant?
- ☐ 3. Was there an exception to the requirement of a warrant?
 - ☐ Was the seizure in "plain view"?
 - ☐ The court must find that the officer was properly in the place where the discovery was made and it was immediately apparent the item was in fact evidence.
 - ☐ Was the search made with consent of the defendant or another person with the right to consent to the search?
 - ☐ Was the search or seizure only a temporary detention or "frisk" based on reasonable suspicion?
 - ☐ Was the search of the person or the area within his or her reach incident to a proper arrest?
 - ☐ Was the search based on an inventory policy of searching a properly seized vehicle?
 - ☐ Was the seizure or stop based on a valid roadblock or traffic stop?
 - ☐ Was the search based on emergency or exigent circumstances?
- ☐ 4. Remember to make both parties establish or present the proper evidence and law so that you can rule.
- ☐ 5. If an illegal search or arrest leads to other evidence it too must be suppressed as "fruit of the poisonous tree".

SEE [CHECKLIST 14](#)

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

[Sitz v. Michigan](#), 496 U.S. 444 (1990)

- ☐ 6. Statements of the accused must be suppressed as violating the defendants Fifth Amendment right against self-incrimination if:
 - ☐ The statements were involuntarily made;
 - ☐ The statements were involuntary due to promises or threats made by the police;
 - ☐ The statements were made subject to "custodial interrogation" (the defendant must be in legal custody and the statements must be the result of questioning) and the police failed to "Mirandize" the defendant; or
 - ☐ The statements were made subject to "custodial interrogation" and the statement does not comply with the requirement in [Art. 38.22, C.C.P.](#) that the entire statement be recorded or in writing with the statutory warnings of that section included in the recording or writing.
- ☐ Exceptions to this section include:
 - ☐ Any statements that contain any assertions of fact or circumstances which are later found to be true;
 - ☐ Prior testimony of the defendant; or
 - ☐ For purposes of impeaching the defendant's testimony at trial.
- ☐ The statement was obtained by federal law enforcement in compliance with federal or obtained in another state and was in compliance with the laws of that state.
- ☐ If the defendant raises the issue of voluntariness as stated above, the court **must** hold a hearing outside the presence of the jury and make findings concerning the

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

[Art. 38.22, C.C.P.](#)

[Art. 38.22, Sec. 8, C.C.P.](#)

voluntariness of the statement.

- ☐ 7. A witness' in-court identification of a defendant must be suppressed if:
 - ☐ The court finds that the identification was based on an improperly suggestive police identification procedure; or
 - ☐ Police misconduct in this situation must be of such an improper nature that it causes the court to believe that there is a substantial likelihood of irreparable misidentification by the witness.
- ☐ Factors to consider include:
 - ☐ The witnesses opportunity to observe the defendant;
 - ☐ The nature of the suggestion;
 - ☐ Whether the in-court identification is based in any way on the improper procedure;
 - ☐ Accuracy of prior description;
 - ☐ Time between the offense and the identification; and
 - ☐ The totality of the circumstances must be judged.
- ☐ 8. In the hearing on a motion to suppress, the initial burden of establishing standing (or the right to complain) is upon the movant.

Once standing is established the burden to show the proper obtaining of evidence shifts to the state.
- ☐ 9. Hearings on motions to suppress can often turn into a trial of the entire case, the court can and should limit pre-trial testimony to only those

legal and factual matters which must be
developed for a proper ruling on the motion.

CHAPTER 7 PRE-TRIAL PROCEEDINGS

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

H. Motions About Evidence

2. Motions in Limine

Checklist 36	Notes
<ul style="list-style-type: none"> <input type="checkbox"/> 1. The court as a practicable matter should not make final rulings on matters of evidence until those matters are brought before the court in trial. <input type="checkbox"/> 2. The court can and should in appropriate circumstances order that the attorneys not go into certain areas of evidence in front of the jury until opposing counsel has had opportunity to make objections and the court has had the opportunity to hear arguments and make a proper ruling. <input type="checkbox"/> 3. The motion in limine is simply a judicial order that certain evidence be brought before the court outside of the jury's presence so that it can be ruled on at the proper point in trial. <input type="checkbox"/> 4. This motion is used by counsel and the court to avoid mistrials and trial by ambush. <input type="checkbox"/> 5. Granting or denying a motion in limine is not a final ruling by the court. <input type="checkbox"/> 6. Regardless of the ruling on the motion in limine, counsel must still tender or object to the evidence at trial to preserve an issue for appeal in a court of record. 	

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A. The Non-Jury Trial (sometimes referred to as a Bench Trial)

☐ Explain defendant's privilege against self-incrimination.

☐ Call case for trial:

☐ Prosecution and defense announce ready for trial, make motions for continuance, or present pretrial motions (e.g., motion for continuance, motion to suppress). Asks the defendant if he or she understands the charge and the rights explained in

represented by an attorney in this case. Since the maximum penalty in this case does not include time in jail, you do not have a right under the law – the Texas or U.S.

Constitutions – to have an attorney appointed. You have the important right to hire legal counsel. An attorney could advise you and help you make important decisions concerning the consequences and alternatives in this case. An attorney would be familiar with trial procedures and rules of evidence. In this trial, you will be held to the same legal standards as if you were an attorney. Do you still wish to proceed representing yourself?"

"You are not required to testify and no one may make you testify. If you decide not to testify, I will not use the fact that you did not testify as evidence against you. Choosing to remain silent cannot be used against you."

"I call the case of State of Texas vs. (Defendant's name)."

your opening statement.

☐ 2. Arraignment.

☐ The prosecutor reads the complaint to the court.

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

[Art. 45.018\(b\), C.C.P.](#)

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

[Art. 45.025, C.C.P.](#)

☐ 3. Defendant enters a plea:

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

☐ The defendant then enters a plea of:

☐ Guilty;

☐ Nolo contendere (no contest);

☐ Not guilty; or

☐ Special plea (double jeopardy).

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

[Art. 45.024, C.C.P.](#)

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

[Art. 45.022, C.C.P.](#)

☐ 4. Place witness under "The Rule":

[Rule 614, T.R.E.](#)

☐ At the request of either the defense or

"All those of you who may

prosecution, or on your own motion, the court may prevent witnesses from hearing the testimony of other witnesses.

- ☐ Determine all possible witnesses.
- ☐ Give oath to witness(es).
- ☐ Admonish witnesses as to the rule.
- ☐ Before a victim, close relative of a victim, or a guardian of a victim can be excluded under the rule, the moving party must show, and the court must determine that:
 - ☐ The victim (or relative or guardian) will testify.
 - ☐ The testimony of the witness/victim would be materially affected if the witness/victim is not excluded under the rule.
- ☐ If either side asks the judge to make an exception for a particular witness (for example, the crime victim or an expert witness), the judge may grant the exception if it is determined that the testimony of the witness will not be tainted or influenced if that person is allowed to remain in the courtroom during the trial and to hear the testimony of the other witnesses in the case.

be witnesses in this case who are now in the courtroom, please stand and raise your right hands."

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

"Ladies and gentlemen, the rule has been invoked."

"The rule means that the witnesses who are not parties to this must remain outside the hearing of the courtroom at all times while testimony is being heard, except when testifying or until discharged. If you are a witness, you must stay close enough so that you may be reached when needed."

"You must not discuss this case among yourselves or allow it to be discussed in your presence except in the presence of your attorney and under the orders of the court. You must not read any report or comment on the testimony in the case while you are under the rule. Please remain outside until called."

☐ 5. Opening statements.

- ☐ Prosecution first.
- ☐ Defense second. (Defense may reserve opening statement until after the state rests its case-in-chief, as long as the defense presents a case.)
- ☐ Should the prosecution waive its opening statement, the defense may not make an opening statement until the defense presents its case-in-chief.

[Art. 36.01\(b\), C.C.P.](#)

☐ 6. Presentation of Evidence.

- ☐ All testimony must be presented under oath.
- ☐ Prosecution's case:
 - ☐ State's direct evidence;
 - ☐ Defendant's cross-examination;
 - ☐ State's redirect examinations;
 - ☐ Defendant's recross-examinations.

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

☐ 7. Prosecution rests.

☐ 8. Motion for directed verdict.

[Art. 45.032, C.C.P.](#)

- ☐ At this point, the defense is permitted to request a motion for directed verdict of acquittal. The motion is based upon the belief of the defense that the state has failed to present evidence proving each and every element of the offense.
- ☐ If the judge believes that the defense is correct, then the judge should return a verdict of not guilty.
- ☐ Granting the motion has the same practical effect of ending the trial in an acquittal. Overruling the motion results in a

continuation of the trial, and the defense would then be allowed to present its case.

☐ 9. Defendant's case:

- ☐ Defendant's direct examination;
- ☐ State's cross-examination;
- ☐ Defendant's redirect examination;
- ☐ State's recross-examination.

☐ 10. Rebuttal evidence, if any:

- ☐ The prosecution may present rebuttal evidence in the same manner as the prosecution's case-in-chief.

☐ 11. Prosecution closes.

- ☐ If the prosecution presents more evidence, the defense may present more evidence if it chooses.

☐ 12. Defense closes.

☐ 13. Closing arguments.

- ☐ Prosecution argues first (may waive).
 - ☐ Defense makes its arguments.
 - ☐ Prosecution has right to argue last.
 - ☐ Equal time should be given to each side.

☐ 14. Decide whether the state proved its case and enter the judgment in the docket.

- ☐ Render judgment in open court. **Form**
 - ☐ All persons are presumed to be innocent, and no person may be convicted of an

offense unless each element of the offense is proven beyond a reasonable doubt.

☐ Enter the verdict orally in court and in the judge's docket.

☐ If you return a verdict of guilty, render judgment by assessing a specific fine amount within the range permitted under the statute under which the defendant was prosecuted. This too should be done orally in court and noted in the judge's docket.

☐ Enter the judgment orally in court and in the judge's docket.

☐ 15. Motion for new trial.

☐ If the defendant is convicted, the defense has 24 hours in which to move for a new trial. If the judge grants the motion for new trial, the judge should reset the case for trial "as soon as practicable" and conduct it as though the first trial never occurred.

☐ 16. Appeal.

☐ If the defendant is found guilty, the judge should inform the defendant of the right to appeal.

☐ The defendant is not required to give notice in open court; however, the notice of appeal

[Art. 45.037, C.C.P.](#)

[SEE CHAPTER 10 - NEW TRIALS AND APPEALS](#)

The procedure may vary for courts of record.

[Article 45.013, C.C.P.](#) enlarges the time to file the motion for new trial if the motion is mailed to the court. If the motion is mailed on or before the due date and received not later than the tenth day after the due date, it is properly filed.

[SEE CHAPTER 10 - NEW TRIALS AND APPEALS](#)

"You have the right to appeal my decision.

and appeal bond must be timely filed within ten (10) days after rendition of judgment.

Appeal is to the County Court. In order to appeal this case, you must give notice of appeal and post a bond in the amount of (calculate and state the amount of twice the fine and cost) within 10 days of today's date."

The procedure may vary for courts of record.

See [Art. 45.013, C.C.P.](#) for enlargement of time period if bond filed by mail.

CHAPTER 8 TRIAL PROCEEDINGS

B. The Jury Trial – Before Trial

For courts that conduct jury trials infrequently, it is recommended that a pre-trial hearing be conducted to assure that the issues are in agreement and that the risk is minimal for procedural surprises during the trial. This is especially true for jury trials involving pro se defendants that may not understand trial processes.

Although many of the following can be done in court on the trial day, it provides a much smoother and efficient flow of the trial if some of them have been done before the day of the trial. Under no circumstances should the pre-trial process be used as a tool to thwart or discourage a person from exercising his or her constitutional right to a trial.

Checklist 38	Script/Notes
<input type="checkbox"/> 1. If a pre-trial hearing was not held, the court may send a “trial packet” to the prosecution and defense: <ul style="list-style-type: none"> <input type="checkbox"/> Copy of complaint; <input type="checkbox"/> Copy of draft jury charge; <input type="checkbox"/> Date and time of trial; <input type="checkbox"/> Notice setting for the deadline for: <ul style="list-style-type: none"> <input type="checkbox"/> Filing motions; <input type="checkbox"/> Filing subpoena lists; <input type="checkbox"/> Filing objections to the complaint; <input type="checkbox"/> Filing recommendations or exceptions to the jury charge; and <input type="checkbox"/> Request for interpreter. 	<p>Coordination and agreement (or the court's ruling) before the day of trial on these issues may assist in eliminating unnecessary long delays for the jury panel.</p> <p>Some judges prefer to prepare the jury charge in advance and allow both sides to comment and recommend revisions. The judge, however, has the final decision on the wording. Both sides have a final opportunity to make recommendations or state exceptions to the charge on the day of trial, but are less likely to do so if given a previous opportunity to respond.</p> <p>Motions cannot per se be prohibited after the deadline date, but they</p>

- ☐ 2. Instruct the clerk to summon a sufficient number of jurors for the type of case. **Form**
- ☐ Consider summoning 30 to 40 persons for a misdemeanor trial.
- ☐ Prospective jurors may be randomly selected from: **Forms**
 - ☐ Driver's license records, if available;
 - ☐ Utility records;
 - ☐ Tax rolls; and
 - ☐ Voter registration rolls.
- ☐ Prospective jurors must live within the city.

can be denied unless good cause is shown for not filing more timely. Some motions must be ruled upon on the trial day, but some can be decided in advance.

Challenges to the complaint need not be considered unless good cause is shown for not filing more timely.

Both sides shall be notified if a witness on the subpoena list cannot be located or if documents are not available.

A written policy should be developed and adopted by the court that details the procedure for jury selection (preparing the jury candidate list, summoning the prospective jurors, etc.); the policy should be on file and available for inspection upon request.

[Sec. 62.501, G.C.](#)

CHAPTER 8 TRIAL PROCEEDINGS

C. The Jury Trial –Trial Day

Checklist 39 begins with calling the jury. Please remember that the court must receive announcements, and explain procedures to the pro-se defendant, even in a jury trial. Please look back to Steps 1 through 3 of [Checklist 37](#) for the procedures. These actions should not take place in front of the jury. If the defendant waives a jury in writing or pleads guilty and waives a jury in writing, the jury is not necessary.

Checklist 39	Script/Notes
<input type="checkbox"/> 1. Instruct the clerk of the court to prepare a jury list containing the name of each juror in the order in which he or she was chosen.	Form
<input type="checkbox"/> 2. Seat jurors in the order in which they were selected.	
<input type="checkbox"/> 3. Distribute a copy of the numbered list of jurors to the prosecutor and the defendant or his or her attorney.	Art. 35.11, C.C.P.
<input type="checkbox"/> The judge may, in his or her discretion, ask each attorney to read and sign an admonishment against distributing juror information contained on the juror information cards to the media.	Art. 35.29, C.C.P.
<input type="checkbox"/> 4. Verify that an absent juror has not established his or her exemption by filing a signed statement with the clerk of the court prior to the appearance date.	Art. 35.04, C.C.P.
<input type="checkbox"/> If desired, assess fines not exceeding one hundred dollars (\$100) and attachments for missing jurors who have not been exempted from appearance.	Art. 45.027, C.C.P.
<input type="checkbox"/> 5. Opening Ceremony and Remarks.	
Opening announcements given by the bailiff or court clerk.	

☐ 6. Judge's opening remarks.

"All rise! The Municipal Court of the City of _____ is now in session. The Honorable _____, Judge Presiding."

"Ladies and gentlemen, I want to welcome you to the _____ Municipal Court. You have been called for jury duty for this Day/week. You will be examined for inclusion on a jury hearing a criminal case. Courtroom hours vary, but are normally from 9:00 a.m. until 5:00 p.m."

"Whether you are selected as a juror today or not, you are performing a significant service that only free people can perform. If you are selected, the case will be tried as expediently as possible consistent with justice, which requires a careful and correct trial."

"If selected on the jury, unless instructed otherwise, you will be permitted to separate at recess, for meals and at night."

☐ 7. The judge should administer the first jury oath to the array.

[Art. 35.02, C.C.P.](#)

"You, and each of you, solemnly swear that you will make true answers to such questions as may be propounded to you by the

- ☐ 8. Ask the array the questions shown to the right.

court, or under its directions, touching your service and qualifications as a juror, so help you God.”

“The law requires that each of you must possess certain qualifications before you may be considered for service as a juror.”

“There are also certain excuses and exemptions that some of you may wish to claim.”

“First, I would like to determine if all of you possess the qualifications for service on a criminal jury.”

“It is very important that you answer these questions truthfully. If you do not, and I or these lawyers discover this fact after you are seated on a jury, the case will have to be retried, and you may be held in contempt of court and placed in jail for up to three (3) days and fined up to \$100.”

“Except for failure to register, are you a qualified voter in this city, county and state under the Constitution and laws of this state?”

“Have you ever been

	convicted of theft or any felony?"
	"Are you under indictment or legal accusation, or on deferred adjudication for theft or any felony?"
	"Are you presently insane?" Arts. 35.19, 35.16(a)(4), C.C.P.
	"Are you 18 years of age or older?"
	"Are you a citizen of Texas and of this city and county?"
	"Are you of sound mind and good moral character?"
	"Are you able to read and write the English language?"
	"Have you served as a petit juror for six (6) days in the preceding three (3) months in a county court, or six (6) days in the preceding six (6) months in a district court?" Sec. 62.102(6), G.C.
<input type="checkbox"/> 9. Immediately excuse any person whose answer to any one of the above questions is inconsistent with the statutory requirements.	Arts. 35.12, 35.16 and 35.19, C.C.P.
<input type="checkbox"/> 10. Determine if anyone who is otherwise qualified to be a juror wishes to claim one of the following legal exemptions:	"You may claim any of the following exemptions if you choose to, but you are not required to claim them."

<input type="checkbox"/> The person is over 70 years of age.	<p>“If one of these applies to you, but you still desire to be considered as a juror, please continue to remain seated.”</p>
<input type="checkbox"/> The person is over 70 years of age.	<p>“Are you over 70 years of age?”</p>
<input type="checkbox"/> The person has legal custody of a child under the age of 10 years and jury service would leave the child or children without adequate supervision.	<p>“Do you have legal custody of a child under the age of 10 years and service on a jury at this time would result in the children not receiving adequate supervision?”</p>
<input type="checkbox"/> The person is a student in a public or private secondary school.	<p>“Are you a student in a public or private high school or secondary school?”</p>
<input type="checkbox"/> The person is enrolled and in actual attendance at an institution of higher education.	<p>“Are you enrolled and in actual attendance at a college or community college?”</p>
<input type="checkbox"/> The person is an officer or employee of the senate, the house of representatives, or any department, commission, board, office, or other agency in the legislative branch of state government.	<p>“Are you an officer or employee of the senate, the house of representatives, or any department, commission, board, office, or other agency in the legislative branch of state government?”</p>
<input type="checkbox"/> The person is the primary caretaker of a person who is an invalid unable to care for himself or herself.	<p>“Are any of you a primary caretaker for an invalid who is unable to care for himself or herself?”</p>
<input type="checkbox"/> In counties with populations over 200,000 people, the person has served on a petit	<p>Sec. 62.106(a)(6), G.C.</p>

jury in the county in the last 24 month period preceding the currently scheduled date for service, unless the county uses a jury plan under Sec. 62.011, G.C. and the period authorized under Sec. 62.011(b)(6), G.C. exceeds two years.

- ☐ Unless the jury wheel in the county has been reconstituted after the date the person served as a petit juror, people in counties with a population of at least 250,000 who have served as a petit juror in the county during the 36 month period preceding the date the person is to appear for jury service may claim an exemption.

- ☐ 11. Hear the exemption and rule accordingly.
- ☐ 12. An exemption must be claimed in person on the date of service, or before the date of service by filing a signed statement of the ground for exemption with the clerk of the court.
- ☐ 13. Call forward any juror who wishes to be excused.
- ☐ 14. The judge may accept or reject any “reasonable” or “sufficient” excuse.
 - ☐ If an excuse is deemed sufficient, the juror may be released or service

“Have you served on a petit jury in this county in the last 24 to 36 months immediately preceding today?”

“If any of these apply to you and you do not desire to serve as a juror, please come up to the bench at this time.”

[Sec. 62.106\(a\)\(8\)-\(b\), G.C.](#)

[Art. 35.04, C.C.P.](#)

[Art. 35.03, Sec. 1, C.C.P.](#)

“If any of you feel there is a reason why you cannot sit as a juror today, please come up to the bench now and I will hear your excuse.”

[Art. 35.03, Sec. 1, C.C.P.; Sec. 62.110\(a\), G.C.](#)

[Art. 35.03, Sec. 3, C.C.P.](#)

postponed to another date.

- ☐ A juror may be excused for observance of a religious holiday upon completing an affidavit as required by [Art. 29.012\(c\), C.C.P.](#)
- ☐ 15. A juror may not be excused for economic reasons without the consent of the parties.
 - ☐ A juror whom, without prompting, articulates an inability to listen to testimony and be fair and impartial may be excused.
- ☐ 16. Hear without delay any challenges to the array from either party.
 - ☐ The only ground for challenge is that the officer summoning the jury has willfully summoned jurors with a view to securing a conviction or an acquittal.
 - ☐ The challenge must be in writing and set forth the ground or grounds.
 - ☐ When made by the defendant, it must be supported by his or her affidavit or the affidavit of any credible person.
- ☐ 17. If the challenge is sustained:
 - ☐ Discharge the array;
 - ☐ Have a new array summoned;
 - ☐ Prohibit the person who summoned or composed the array to bring another array in the case; and
 - ☐ Have another array brought to the courtroom.

[Art. 35.03, Sec. 3, C.C.P.](#)

[Sec. 62.110\(c\), G.C.](#)

[Butler v. State](#), 830 S.W.2d 125 (Tex. Crim. App. 1992)

[Art. 35.07, C.C.P.](#)
“Array” is a term meaning the jury panel as a whole.

[Art. 35.08, C.C.P.](#)

It may be prudent to reschedule the trial to allow sufficient time to summon another array in an orderly manner.

- ☐ 18. After the array is qualified, the prosecutor and defendant or defendant's attorney should be permitted to view them for purposes of requesting a **jury shuffle**.

Discuss the new trial date with both parties and seek consensus for the new date.

Put simply, a "jury shuffle" occurs when one of the parties does not like the order the jury is seated and wants the panel reseated in a new order.

A simple way to do this is to write each juror's name on a card, place the cards in a container and mix them up (shuffle) and randomly draw out each card in sequence. The first name drawn is now juror number one; the second name is juror number two, etc., until all names are drawn. The clerk will prepare the new juror list and they will be seated in the order drawn.

- ☐ 19. The trial judge, on motion of the defendant or his or her attorney, or of the state's attorney shall cause the names of the jurors to be randomly shuffled. The clerk shall deliver a copy of the new juror list to the state's attorney and to the defendant or his or her attorney.

- ☐ Only one shuffle is permissible by law.

[*Williams v. State*](#), 719 S.W.2d 573 (Tex. Crim. App. 1986)

- ☐ 20. The motion must be made before the state's voir dire begins.
- ☐ 21. After a jury shuffle, seat the panel in the order

their names were drawn.

☐ 22. Seating the panel:

- ☐ After considering and determining qualifications, exemptions and excuses, the remaining jurors should be seated. The panel at this stage should consist of no fewer than twelve (12) persons. This will allow the prosecution and the defense to exercise three (3) strikes a piece and still have at least six (6) persons available to serve on the jury.
- ☐ There is no authority for the selection of alternate jurors in municipal court cases.

[Art. 33.01, C.C.P.](#)
[Art. 45.029, C.C.P.](#)

☐ 23. Announcement of the case and introductions.

- ☐ Introduce yourself.
- ☐ Introduce lawyers.
- ☐ Introduce defendant.

“Good morning. My name is _____, and I am the Judge of the _____ Municipal Court. I will be presiding over this trial.”

“At this time, I call the State of Texas vs. _____. What says the state? And the defense? Ladies and gentlemen, allow me to introduce the lawyers in this case.”

“Representing the state in this matter is Assistant City Attorney, Mr(s). _____; representing the defendant is Mr(s). _____.” [If the defendant is representing himself or herself, see also [CHAPTER 4 – PRO SE DEFENDANT.](#)]

“This is a criminal case. It will be tried before six of you selected as the jury. And as jurors, it is your

☐ 24. Preliminary instructions:

- ☐ These are the court's instructions to each juror to follow throughout the trial.

exclusive duty to decide all questions of fact in this case, and, for that purpose, to determine the effect, the value, and the weight of the evidence. The evidence in this case will be the testimony you receive and hear from the witness stand and from that place only.”

“You will not be called upon to decide questions of law. It is my duty as judge to rule upon legal matters and to see that this case is tried in accordance with the rules of law.”

“Both the defendant and the people of this state have a right to expect that you will conscientiously consider and weigh the evidence, apply the law given you to that evidence, and that you will reach a just verdict.”

“In this case, as in all cases, the actions of us all – the judge, the attorneys, the witnesses, parties, and jurors – must be according to law: You must therefore follow all instructions given you, as well as others received as the case progresses.”

“Do not mingle with, nor talk to, the lawyers, the

witnesses, the parties, or any other person who might be connected with or interested in this case, except of course, for casual greetings. They have to follow these same instructions, and you will understand it when they do.”

“Do not accept from, nor give to, any of those persons any favors, however slight, such as food, refreshments or cigarettes.”

“Do not discuss anything about this case, nor mention it to anyone, nor permit anyone to mention it in your presence, until you are discharged as jurors or excused from this case. And if anyone attempts to discuss the case with you, report it to me immediately.”

“The parties, through their attorneys, have the right to direct questions to each of you concerning your qualifications, background, attitudes and experiences.”

“In so questioning, they are not prying into your personal affairs, but are trying to select fair and impartial jurors who will be free from bias or prejudice in this case. If you are

- ☐ 25. The judge, in his or her discretion, may choose to voir dire the jury at this time on general principles of law and the practice and procedure of the court, or permit the prosecutor and the defense to voir dire. The prosecutor has the right to conduct voir dire first, the defense second.
- ☐ 26. Opening voir dire remarks.

selected to serve as a juror, you will be permitted to separate at recesses, unless otherwise instructed by me. Consistent with justice, we will try this case as expediently as possible, but justice requires a careful and correct trial.”

The court will proceed into what is called voir dire.

“Ladies and gentlemen of the jury panel: The case about to be tried is Cause Number _____, styled The State of Texas vs. (Defendant), who is charged by (complaint) with the offense of (name of offense). The range of punishment provided for by law for this offense is a fine between \$_____ and \$_____.” [In addition, identify other sanctions, if any, that apply upon conviction, such as: community service hours, attendance at an education course, and the like.]

“As the jury panel, you have been seated in the order in which your names were selected using a

- ❑ 27. Explain the jury's function and the role of the judge.

purely random process. This is done purposely so that no one can "stack" or in any way manipulate who may sit as a juror on any particular case."

"Some of you may be eliminated because of disqualification or exemption."

"For those that remain, each side will have three (3) peremptory challenges. Peremptory 'strikes' may be exercised for any lawful reason. A peremptory "strike" removes a name from the list of potential jurors. Each side also has an unlimited number of 'strikes' based upon a variety of legal reasons. The first six names remaining after all the 'strikes' have been made will form the jury for this case."

"It is the function of the jury to determine the facts. In doing so, you are the sole and exclusive judge of the credibility of the witnesses and the weight to be given their testimony. Even I, as the judge, am not permitted to influence your evaluation through words or actions during the trial. My job is to decide the law and to be certain that both sides

☐ 28. Explain who has the burden of proof in a criminal trial.

receive a fair trial. When I rule on the admissibility of evidence, or hear other objections, I am not indicating my personal feelings for one side or the other, but simply applying rules of law established by the legislature that govern this trial.”

“There are a few general principles of law that I would like to review with you at this time.”

☐ 29. Explain the presumption of innocence and touch upon the concept of beyond a reasonable doubt.

“The burden of proof in this case rests solely upon the State. The prosecutor must prove each and every element of the offense beyond a reasonable doubt.”

“The defendant is presumed to be innocent until guilt is established by legal evidence, received before you in the trial of this case, beyond a reasonable doubt. If, after you retire to deliberate, each of you believes beyond a reasonable doubt that the defendant is guilty of the offense charged, it will be your duty to return a verdict of ‘Guilty’. If you have a reasonable doubt as to the guilt of the defendant, it will be your duty to return a verdict of ‘Not Guilty’.”

☐ 30. Explain that the defendant is not required to testify in a criminal trial.

“The defendant in any criminal case is not required to prove himself or herself innocent. If the defendant does not choose to testify, you may not consider that fact as evidence of guilt, nor may you, in your deliberations, comment or in any way allude to that fact.”

☐ 31. Explain the purpose of a complaint or citation in a criminal trial.

“The (complaint/citation) in this case is not an indication of the guilt of the defendant. It is simply the legal means by which a person in Texas is brought to trial in municipal court.”

☐ 32. Emphasize the importance of a fair trial.

“The defendant, the prosecutor, the public, and our system of justice, all require that a fair jury, one without bias or prejudice, and free of opinion as to the guilt or innocence of the defendant, be chosen here today. A fair jury is one, not having heard any of the evidence, that is not committed to either side. A fair jury is one that is impartial to both sides and that can and will follow the law as given to it by this court.”

☐ 33. Explain why the attorneys for each side, or the defendant, if pro se, will question them.

“In a moment, the attorneys for each side are going to ask each of you some questions. These questions are not meant

- ☐ 34. Allow prosecutor to proceed with his or her voir dire.
 - ☐ After prosecutor has finished with voir dire, allow defense to proceed with voir dire.
- ☐ 35. After voir dire is completed, allow prosecutor and defense to exercise their peremptory challenges:
 - ☐ The prosecutor and the defense may each exercise as many as three (3) strikes (that is, ask that a potential juror be excused) without having to explain why the strikes were made unless a *Batson* challenge is raised.
 - ☐ Each side takes its jury list supplied by the court and marks through as many as three names.
 - ☐ The two lists are returned to the clerk, who makes a list of the first six names that have not been marked through. Those six persons then take their position in the jury box. The clerk delivers the original list to the judge and gives a copy of the list of six jurors to both the prosecutor and the defendant or the defendant's attorney.

to pry into your personal affairs, or those of your family. The questions are designed to determine if you can be a fair juror, or whether any bias or prejudice you may have about the law in this case or the facts as they may be presented to you, will prevent you from following your oath as a juror."

[Art. 35.21, C.C.P.](#)

[Art. 45.029, C.C.P.](#)

[Art. 33.01, C.C.P.](#)

It is good practice for the judge to compare the attorney's strikes with the juror list prepared by the clerk to assure accuracy. The judge will then direct the clerk to prepare the juror list and make a copy for each side.

- ☐ 36. Seat and administer oath to jury at the conclusion of the voir dire proceedings.
- ☐ 37. Give oath and preliminary instructions to jury at conclusion of voir dire.
 - ☐ Oath.
 - ☐ Preliminary instructions.

For instructions for a “pickup jury,” see [Art. 45.028, C.C.P.](#)

If there is a *Batson* challenge, SEE [CHECKLIST 40](#).

“Members of the jury, will you please stand, raise your right hand, and be sworn.”

[Art. 35.22, C.C.P.](#)

"You and each of you do solemnly swear that in the case of the State of Texas against the defendant, you will a true verdict render according to the law and the evidence, so help you God."

“You may be seated. Ladies and gentlemen of the jury, by that oath which you took as jurors, you have become officials of this court and active participants in the public administration of justice. It is your duty to listen to and consider the evidence and law in this case and to obey all instructions given you.”

“As an additional instruction, I now instruct you not to discuss this case among yourselves

❑ 38. Explain how the trial will proceed.

until after you have heard all the evidence and the attorney's arguments, and until I have sent you to the jury room to deliberate and consider your verdict."

"Ladies and gentlemen, we are now ready to proceed."

"The trial will proceed as follows:

"The prosecutor may make an opening statement."

"The defense attorney/defendant may do so as well, or at a later time."

"The prosecutor will then offer evidence through witnesses."

"The defense attorney/defendant may cross-examine each witness."

"When the prosecutor has finished presenting the state's case, the defense attorney/defendant may or may not present his or her evidence."

"The defendant is never required to prove his or her innocence."

"The prosecutor may cross-examine each defense witness, if any."

- ☐ 39. Have prosecutor read complaint; take defendant's plea:
 - ☐ Prosecutor reads complaint unless defendant waives the right to have the complaint read aloud.
 - ☐ The defendant then enters a plea of:
 - ☐ Guilty;
 - ☐ Nolo contendere (no contest);
 - ☐ Not guilty; or
 - ☐ Special plea (double jeopardy).
- ☐ If the defendant refuses to enter a plea, the court must enter a plea of not guilty for the defendant.
 - ☐ If the defendant pleads guilty or nolo contendere, then the court determines the punishment.
 - ☐ The defendant in a misdemeanor case may be absent and appear by counsel with the consent of the state.
- ☐ 40. Place witnesses under "The Rule."
 - ☐ At the request of either the defense or prosecution, or on the judge's own

"When the defense is finished presenting its witnesses, the prosecutor may put on rebuttal witnesses, and the defense may then do the same."

[Art. 36.01, C.C.P.](#)

[Art. 45.023, C.C.P.](#)

[Art. 45.024, C.C.P.](#)

[Art. 45.022, C.C.P.](#)

[Art. 33.04, C.C.P.](#)

It is rare when the prosecuting attorney will consent to defendant's absence in a jury trial.

motion, the judge may prevent witnesses from hearing the testimony of other witnesses.

☐ Determine all witnesses.

☐ Give oath to witness(es).

☐ Instruct the witness in the language to the right.

☐ Before a victim, close relative of a victim, or a guardian of a victim can be excluded under the rule, the moving party must show, and the court must determine that:

☐ The victim (or relative or guardian) will testify.

☐ The testimony of the witness/victim would be materially affected if the witness/victim is not excluded under the rule.

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

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

[Rule 613 of the Rules of Evidence.](#)

“Ladies and gentlemen, The Rule has been invoked. The Rule means that the witnesses who are not parties to this must remain outside the hearing of the courtroom at all times while testimony is being heard, except when testifying or until discharged. If you are a witness, you must stay close enough so that you may be reached when needed. You must not discuss this case among yourselves or allow it to be discussed in your presence except in the presence of your attorney and under the orders of

the court. You must not read any report, newspaper article, correspondence, or comment on the testimony in the case while you are under the rule. Please remain outside until called."

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

☐ 41. Opening statements.

[Art. 36.01, C.C.P.](#)

- ☐ Prosecution first.
- ☐ Defense second. (Defense may reserve opening statement until after the state rests its case-in-chief.)
- ☐ Should the prosecution waive its opening statement, the defense may not make an opening statement until the prosecution presents its case-in-chief.

☐ 42. Presentation of evidence.

[Art. 36.01, C.C.P.](#)

- ☐ Prosecution's case-in-chief:
 - ☐ State's direct evidence.
 - ☐ Defendant's cross-examination.
 - ☐ State's redirect examinations, if any.
 - ☐ Defendant's recross-examinations, if any.

- ☐ State rests.
- ☐ 43. Motion for directed verdict.
 - ☐ At this point, the defense is permitted to bring a motion for directed verdict of acquittal. The motion is based upon the belief of the defense that the state has failed to bring up some evidence on an element of the offense.
 - ☐ If you believe that the defense is correct, you should instruct the jury to return a verdict of not guilty.
 - ☐ Granting the motion has the same practical effect of ending the trial in an acquittal. Overruling the motion results in a continuation of the trial, and the defense would then be allowed to present its case.
- ☐ 44. Defendant's case.
 - ☐ Defendant's direct examination.
 - ☐ State's cross-examination.
 - ☐ Defendant's redirect examination, if any.
 - ☐ State's recross-examination, if any.
- ☐ 45. Rebuttal evidence.
 - ☐ The prosecution may present rebuttal evidence in the same manner as the prosecution's case-in-chief.
- ☐ 46. Prosecution closes.
 - ☐ If the State presents more evidence, the defense may present more evidence if it chooses.
- ☐ 47. Defense closes.

[Art. 36.01, C.C.P.](#)

- ❑ 48. You must give the jury a charge on the law that applies to the case. The charges may be made orally or in writing, except that the charge must be in writing if required by law. (See next page regarding the definition of reasonable doubt), and municipal courts of record are required to have a written jury charge. The jury charge must be given before closing arguments. See [CHECKLIST 42](#).

[Art. 45.033, C.C.P.](#)

A written charge is preferred by most judges to avoid objections to the oral charge being made in front of the jury. Some judges prepare the charge in advance and provide a copy to the defense and the prosecution for review and objection prior to the trial. This avoids having to review and possibly revise the charge at trial while the jury and others wait. The final version is provided to the prosecution and defense at the trial.

- ❑ 49. Read the charge to the jury.
 - ❑ Do not comment or communicate your views regarding the instructions given by changes in your voice or facial expressions.

[Art. 36.14, C.C.P.](#)

“At this time, ladies and gentlemen, I will read to you the charge of the court containing the law applicable to this case. In continuing to discharge your responsibilities as jurors, you will continue to observe all the instructions that have previously been given to you. These instructions are given to you because your conduct is subject to review the same as that of the witnesses, parties, attorneys, and myself. If it should be found that you have disregarded any of these instructions, it will be jury misconduct and it

- ☐ 50. Closing arguments.
 - ☐ Prosecution argues first (may waive).
 - ☐ Defense makes its argument.
 - ☐ Prosecution has the right to argue last.
- ☐ 51. Submit case to the jury for deliberations.
 - ☐ Instruct the jury.
 - ☐ Provide the jury with:
 - ☐ Jury charge;
 - ☐ Jury instructions; and
 - ☐ Verdict forms.

may require another trial by another jury.”

“If any of you observe one or more of your group violating any of my instructions, you shall immediately warn the violator and caution him or her not to do so again.”

“Please listen carefully as I read the charge to you. The original will be placed on the table in the jury room when you retire to begin your deliberations.”

See also [CHECKLIST 42](#) on preparing a jury charge.

[Arts. 36.07 and 36.08, C.C.P.](#)

[Art. 36.21, C.C.P.](#)

“You must appoint a presiding juror.”

“The verdict must be unanimous.”

“If you find the defendant guilty, you must assess a fine. In setting a fine, you must not compromise or set the fine by chance. It must be an amount set by the free opinion of each

☐ 52. The verdict.

- ☐ The judge should see that the verdict is in the proper form (if guilty, the verdict should include assessment of punishment) and read it in open court.
- ☐ Read the verdict in open court.
- ☐ Enter the verdict on your docket.

individual juror within the range allowed by law.”

“If you find the state did not prove each element of its case and the guilt of the defendant beyond a reasonable doubt, you must return a verdict of ‘Not Guilty’.”

“You will be provided forms to reflect a verdict of either not guilty or guilty. After you have reached your verdict, the presiding juror will complete the appropriate form, sign the form, and notify the bailiff a verdict has been reached.”

“Any communication between the jury and court must be in writing and transmitted by the bailiff.”

“If you cannot reach a verdict within a reasonable time, notify the bailiff of your difficulty or problem.”

[Art. 45.036, C.C.P.](#)

[Art. 45.017, C.C.P.](#)

☐ If the jury is deadlocked, see “Allen Charge.” **Form**

SEE [CHECKLIST 41 \(Step 5\)](#)

☐ If a verdict cannot be reached and it is improbable that an agreement can be reached, the jury should be discharged and the case tried again.

☐ 53. Poll jury on request of prosecution or defense.

[Art. 37.05, C.C.P.](#)

☐ 54. Discharge jury.

CHAPTER 8 TRIAL PROCEEDINGS

D. *Batson* Challenges

Checklist 40	Notes
<input type="checkbox"/> 1. Hold a hearing upon a timely, specific objection or motion, written or oral, by either the state or the defendant, that the opposing party made a peremptory strike based upon: <div style="margin-left: 20px;"> <input type="checkbox"/> Race; or </div> <div style="margin-left: 20px;"> <input type="checkbox"/> Gender. </div>	<p>Art. 35.261(a), C.C.P.; Batson v. Kentucky, 106 S.Ct. 1712 (1986); Georgia v. McCollum, 112 S.Ct. 2348 (1992)</p> <p>J.E.B. v. Alabama ex rel T.B., 511 U.S. 127 (1994)</p>
<input type="checkbox"/> 2. The motion is timely so long as it is made before the jury is impaneled and sworn.	<p>Hill v. State, 827 S.W.2d 860 (Tex. Crim. App. 1992), <i>cert. denied</i>, 113 S.Ct. 297 (1992)</p>
<input type="checkbox"/> 3. Subsequent proceedings are public and should be held in the courtroom.	<p>Salazar v. State, 795 S.W.2d 187 (Tex. Crim. App. 1990)</p>
<input type="checkbox"/> 4. Administer the witness oath to both the prosecutor and defense attorney.	
<input type="checkbox"/> 5. A prima facie case of racial or gender-based discrimination consists of a showing that the opposing party: <div style="margin-left: 20px;"> <input type="checkbox"/> Struck all venire members of the same race or gender; or </div> <div style="margin-left: 20px;"> <input type="checkbox"/> A disproportionate number. </div>	<p>Salazar v. State, 795 S.W.2d 187 (Tex. Crim. App. 1990)</p> <p>Linscomb v. State, 829 S.W.2d 164 (Tex. Crim. App. 1992)</p>
<input type="checkbox"/> 6. The party against whom the objection or	

motion is made is then permitted to offer a reasonable race or gender-neutral explanation for the strike(s).

- ☐ 7. If the party against whom the objection or motion is made fails to offer a reasonable race or gender-neutral reason, the defendant's burden is met.
- ☐ 8. If the party against whom the objection or motion is made offers a reasonable race or gender-neutral explanation, the objecting party has the burden of persuading the judge by a preponderance of the evidence that the allegations of purposeful discrimination are true.
 - ☐ The objecting party may call witnesses, including opposing counsel.
 - ☐ The objecting party's counsel is entitled to examine opposing counsel's notes for purposes of cross-examination.
 - ☐ Objecting counsel may also testify as to what occurred during voir dire.
- ☐ 9. The trial judge must evaluate the reasons given in the light of the circumstances of the trial and decide whether the explanations are valid or a pretext.
 - ☐ In reviewing the rationale for strikes, the judge should look at:
 - ☐ Reasons given not related to facts given;
 - ☐ Lack of questions or meaningful questions;
 - ☐ Disparate treatment of prospective jurors;

[*Williams v. State*](#), 767 S.W.2d 872 (Tex. App.—Dallas 1989, pet. ref'd)

[*Tompkins v. State*](#), 774 S.W.2d 195 (Tex. Crim. App. 1987)

[*Williams v. State*](#), 767 S.W.2d 872 (Tex. App.—Dallas 1989, pet. ref'd)

[*Salazar v. State*](#), 795 S.W.2d 187 (Tex. Crim. App. 1990)

[*Prosper v. State*](#), 788 S.W.2d 625 (Tex. App.—Houston [14th] 1990, pet. ref'd)

- ☐ Disparate questioning to exclude jurors;
- ☐ Bias toward a group or profession where trait is not shown to apply.
- ☐ Reasons held to be racially neutral include but are not limited to:
 - ☐ Juror has family members with criminal problems;
 - ☐ Juror has family member in the penitentiary;
 - ☐ Juror knows defendant or his or her family;
 - ☐ Juror has a criminal history;
 - ☐ Juror previously served on a hung jury;
 - ☐ Juror previously served on a jury that acquitted.
- ☐ 10. The judge should, but is not required, to make findings of fact and conclusions of law.
- ☐ 11. If purposeful discrimination is found, the judge is not required to dismiss the venire, call another, and begin jury selection again. The judge may fashion any remedy he or she deems appropriate consistent with *Batson*, and its progeny.
- ☐ Consider, for example:
 - ☐ Asking the defendant if he or she wishes to execute a jury waiver;
 - ☐ Following Art. 35.261, C.C.P.; or
 - ☐ Seating the struck venireperson.

Lewis v. State, 779 S.W.2d 449 (Tex. App.—Tyler 1989, pet. ref'd)

State ex rel Curry v. Bowman, 885 S.W.2d. 421 (Tex. Crim. App. 1993)

CHAPTER 8 TRIAL PROCEEDINGS

E. The Jury Trial – Jury Deliberation

Checklist 41	Script/Notes
<ul style="list-style-type: none"> <input type="checkbox"/> 1. Have the bailiff assure jury room is ready and equipped with chairs, pencils, writing pads, etc. <input type="checkbox"/> 2. Remand jurors to the bailiff and instruct jurors that they are to follow the bailiff's instructions when not in the jury room. <input type="checkbox"/> 3. The bailiff will advise each juror where he or she will be stationed should he or she be needed. <input type="checkbox"/> 4. Jury questions during deliberation: <ul style="list-style-type: none"> <input type="checkbox"/> If jury communicates with court in writing, use reasonable diligence to secure presence of defendant and defense counsel. <input type="checkbox"/> Show question and proposed answer to defendant and both counsel for objections or exceptions. <input type="checkbox"/> If unable to secure presence of defendant and both counsel, answer appropriately. <input type="checkbox"/> Read written answer in open court unless defendant expressly waives. <input type="checkbox"/> If the jury disagrees as to the testimony of a witness, have read back to them specific portion in dispute. <input type="checkbox"/> If no reporter notes, the witness may be recalled to repeat testimony only as to the point in dispute. <input type="checkbox"/> 5. If the jury is deadlocked and cannot reach a verdict, the court may give an "Allen Charge" 	<p data-bbox="987 974 1393 1171"> Art. 36.28, C.C.P.; Brown v. State, 870 S.W.2d 53 (Tex. Crim. App. 1994); Moore v. State, 874 S.W.2d 671 (Tex. Crim. App. 1994) </p> <p data-bbox="987 1814 1333 1885"> "Now while undoubtedly, members of the jury, the </p>

or “Dynamite Charge”. **Form**

- ☐ Read the charge to them and give the charge to them in writing to take to jury room along with the original instructions.

verdict of a jury should represent the opinion of each individual juror, it by no means follows that opinions may not be changed by conference in the jury room. The very object of the jury system is to secure unanimity by comparison of views and by arguments among the jurors themselves. Every juror should listen with deference to the arguments of the other jurors, and with a distrust of his or her own judgment if he or she finds the larger majority of the jury takes a different view of the case than that which he or she takes. No juror should go to the jury room with a blind determination that the verdict should represent his or her opinion of the case at that moment or that he or she should close his or her eyes to the arguments of the other jurors, who are equally honest and intelligent.”

“So I charge that although the law requires the considered verdict of each individual juror and not a mere acquiescence in the conclusion of his or her fellows, yet you should examine the questions submitted with candor and with a proper regard and deference to the opinions of each other.”

“Now, it is your duty to decide this case, if you can conscientiously do so. No juror is expected to do violence to

<div data-bbox="181 1451 920 1896"> <ul style="list-style-type: none"> <input type="checkbox"/> 6. If a verdict is returned, read in open court. <input type="checkbox"/> 7. Poll the jury on request of prosecution or defense. <input type="checkbox"/> 8. If jury cannot agree, it may be discharged: <ul style="list-style-type: none"> <input type="checkbox"/> When both parties consent to its discharge; or <input type="checkbox"/> The court may in its discretion discharge the </div>	<div data-bbox="977 195 1427 684"> <p>his or her own conscience. You should listen with a disposition to be convinced of each other's arguments. If a much larger number are for conviction, a dissenting juror should consider whether his or her doubt is a reasonable doubt, which made no impression upon the minds of so many men or women equally honest and intelligent as himself or herself."</p> </div> <div data-bbox="977 728 1427 1029"> <p>"If, on the other hand, a majority of you are for acquittal, the minority ought to ask themselves whether they might not reasonably doubt the correctness of a judgment which was not concurred in by the majority."</p> </div> <div data-bbox="977 1073 1427 1411"> <p>"Having given you these additional instructions, it is my hope that you will return to the jury room and endeavor to reach a verdict. And with these instructions in mind, I am now going to ask you to return to the jury room and consider further your verdict."</p> </div> <div data-bbox="977 1451 1078 1486"> <p>Form</p> </div> <div data-bbox="977 1566 1245 1602"> <p>Art. 37.05, C.C.P.</p> </div> <div data-bbox="977 1682 1240 1717"> <p>Art. 36.31, C.C.P.</p> </div>
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jury when it believes that the jury has been kept together for such time as to render it altogether improbable that it can agree.

CHAPTER 8 TRIAL PROCEEDINGS

F. Jury Charge

Checklist 42	Script/Notes
<p><input type="checkbox"/> 1. The judge must charge the jury before either the defense or prosecution presents closing arguments. The charge may be made orally or in writing. However, the charge must be in writing if required by law.</p> <p><input type="checkbox"/> Delete any allegations of alternative means of committing offense for which no evidence was presented.</p> <p><input type="checkbox"/> Obtain copy of complaint and statute or ordinance alleged to be violated.</p> <p><input type="checkbox"/> Request submission of any special requested charges by the parties and make a ruling on each.</p> <p><input type="checkbox"/> Give each party a reasonable time to inspect and object to the charge intended to be given.</p> <p><input type="checkbox"/> 2. Caption.</p> <p><input type="checkbox"/> Insert the:</p> <p><input type="checkbox"/> Case number;</p> <p><input type="checkbox"/> Court; and</p> <p><input type="checkbox"/> Defendant's name.</p> <p><input type="checkbox"/> 3. Commencement.</p> <p><input type="checkbox"/> Insert the:</p> <p><input type="checkbox"/> Name of the offense;</p> <p><input type="checkbox"/> Name of the city;</p> <p><input type="checkbox"/> Date of the offense; and</p> <p><input type="checkbox"/> Defendant's plea.</p>	<p>Art. 45.033, C.C.P.</p> <p>A written jury charge is specifically required in municipal courts of record, Art. 36.14, C.C.P.</p> <p>Art. 36.14, C.C.P.</p> <p>Art. 36.14, C.C.P.</p> <p>CAUSE NUMBER _____</p> <p>THE STATE OF TEXAS</p> <p>§ IN THE MUNICIPAL COURT OF</p> <p>§ _____ (City)</p> <p>§ _____ (County), TEXAS</p> <p>CHARGE TO THE JURY</p> <p>MEMBERS OF THE JURY:</p> <p>The defendant, <u>(Name as appearing on the complaint)</u>, is charged with the offense of _____ alleged to have been committed in the City of <u>(Municipality)</u>, <u>(County)</u>, Texas, on or about the _____</p>

☐ 4. Abstract Charge.

- ☐ Describe the offense as specifically as possible from the statute and complaint.
- ☐ Consider quoting verbatim actual statutory language applicable.

☐ 5. Definitions.

- ☐ Define the culpable mental state, if any.
- ☐ Define any terms which are defined in the code or statute.

☐ Reasonable Doubt.

day of _____, 20___. To this charge the defendant has plead not guilty. You are instructed that the law applicable to this case is as follows:

e.g., A person commits the offense of **assault** if the person intentionally or knowingly causes physical contact with another when the person knows or should reasonably believe that the other will regard the contact as offensive or provocative.

e.g., A person acts intentionally or with intent, with respect to the nature of his or her conduct or to a result of his or her conduct, when it is his or her conscious objective or desire to engage in the conduct or cause the result.

e.g., "Reasonable belief" means a belief that would be held by an ordinary and prudent man in the same circumstances as the actor.

The six paragraphs previously required by *Geesa v. State*, 820 S.W.2d 154 (Tex. Crim. App. 1991) are no longer required under the holding of *Paulson v. State*, 28 S.W.3d 570 (Tex. Crim. App. 2000). If both sides agree it can be included but, if either objects, it inclusion is error.

☐ 6. Application Paragraph.

- ☐ Incorporate complaint or statutory language to include all elements of offense.
- ☐ Delete any manner or means of committing the offense not supported by evidence.
- ☐ Change conjunctive pleadings (“and”) to disjunctive (“or”) where applicable.
- ☐ Apply law without commenting on weight of evidence.

☐ 7. Converse Charge.

- ☐ Insert the converse charge.

☐ 8. Evidentiary Instructions.

- ☐ If evidence has been admitted for a limited purpose such as to impeach a witness, add an instruction to limit jury's consideration to purpose for which offered.
- ☐ If there is a fact issue as to admissibility of evidence or a confession because of illegality in the way it was obtained, submit it to the jury if requested by the defendant.

Therefore, if you believe from the evidence beyond a reasonable doubt that the defendant, (Name of defendant), on or about (Date alleged in the complaint), in the City of _____, Texas, did then and there intentionally or knowingly cause physical contact with (Name of victim/complainant), by (set out facts alleged in complaint), when the defendant knew or should have reasonably believed that the said (Name of victim/complainant) would regard the contact as offensive or provocative you will find the defendant guilty of the offense of assault by contact.

But if you do not so believe or if you have a reasonable doubt thereof you will acquit the defendant and say by your verdict not guilty.

e.g., You are instructed that certain evidence was admitted before you in regard to the defendant having been charged and convicted of an offense or offenses, other than the one for which the defendant is now on trial. Such evidence cannot be considered by you against the defendant as any evidence of guilt in this case. The evidence was admitted for the purpose of aiding you, if it does, in passing upon the credibility of the defendant as a witness in

☐ 9. Defenses.

- ☐ If evidence from any source raises a defense, instruct jury on the law and that it must acquit if state fails to disprove that defense beyond a reasonable doubt.
- ☐ If evidence from any source raises an affirmative defense, instruct jury on the law and that it must acquit if defendant proves it by a preponderance of the evidence.

☐ 10. Presumptions.

- ☐ Add any evidentiary presumption authorized by law.
- ☐ Include the general instructions relating to presumptions found in Sec. 2.05, P.C.

this case, and to aid you, if it does, in deciding on the weight you will give to the defendant's testimony, and you will not consider it for any other purpose.

[Arts. 38.22](#) and [38.23, C.C.P.](#)

[After presumption stated]

The jury is instructed relative to this presumption:

(1) that the facts giving rise to the presumption must be proven beyond a reasonable doubt;

(2) that if such facts are proven beyond a reasonable doubt the jury may find that the element of the offense sought to be presumed exists, but it is not bound to so find;

(3) that even though the jury may find the existence of such element, the state must prove beyond a reasonable doubt each of the other elements of the offense charged; and

(4) that if the jury has a

☐ 11. Range of Punishment.

- ☐ Instruct on the range of punishment for every offense.

reasonable doubt as to the existence of a fact or facts giving rise to the presumption, the presumption fails and the jury shall not consider the presumption for any purpose.

An individual adjudged guilty of _____ shall be punished by a fine not to exceed _____ dollars [or] by a fine of not less than \$_____ nor more than \$_____. Therefore, if you find the defendant guilty you shall access punishment by a fine not to exceed _____ dollars [and not less than \$_____].

☐ 12. General Instructions.

- ☐ Add general instructions.

"You are instructed that the criminal complaint is not evidence of guilt. It is the means whereby a defendant is brought to trial in a misdemeanor prosecution. It is not evidence, nor can it be considered by you in passing upon the innocence or guilt of this defendant.

"During your deliberations in this case, you must not consider, discuss or relate any matters not in evidence before you. You should not consider or mention any personal knowledge or information you may have about any fact or person connected with this case which is not shown by the evidence.

"After you have retired to your

jury room, you should select one of your members as your presiding juror. It is his or her duty to preside at your deliberations, vote with you and, when you have unanimously agreed upon a verdict, to certify to your verdict by signing the same as presiding juror.

"You are the exclusive judges of the facts proved, of the credibility of the witnesses, and of the weight to be given to the evidence, but you are bound to receive the law from the court, which is herein given to you, and be governed thereby.

"A form for your verdict is attached; your verdict must be in writing and signed by your presiding juror. In deliberating on the punishment in this case, you must not refer to or discuss any matter not in evidence before you. You must not arrive at the punishment to be assessed by any lot or chance, or by putting down any figures and doing any dividing.

"Your verdict must be unanimous.

"You are the exclusive judges of the facts proved, of the credibility of the witnesses and of the weight to be given to their testimony, but you are bound to receive the law from the court which is herein given

☐ 13. Verdict form. **Form**

- ☐ Prepare the verdict form on a separate page and include it with the charge.

☐ 14. Submission of Main Charge.

- ☐ Give each party a copy of the charge and allow them a reasonable amount of time to review it.

☐ 15. Objections to the Main Charge.

- ☐ Allow the State, the Defendant or the Defendant's attorney to make objections to the charge.

☐ 16. Make any needed changes to the Charge.

- ☐ Do not indicate in the charge which party requested the instruction.

☐ 17. Read the Charge to the Jury.

you, and be governed thereby."

CAUSE NUMBER _____

THE STATE OF TEXAS

§ IN THE MUNICIPAL COURT OF

§ _____ (City)

§ _____ (County), TEXAS

VERDICT

(Choose one of the following)

We, the Jury, find the defendant not guilty.

Presiding Juror

We, the Jury, find the defendant guilty, and assess a fine of \$ _____.

Presiding Juror

[Art. 36.14, C.C.P.](#)

SEE [CHECKLIST 39, Step 51.](#)

CHAPTER 8 TRIAL PROCEEDINGS

G. The Jury Trial - Master Checklist

Checklist 43	Script/Notes
<input type="checkbox"/> 1. Defendant requests trial by jury (or refuses to waive right to trial by jury in writing).	SEE CHAPTER 7 – PRE-TRIAL PROCEEDINGS
<input type="checkbox"/> 2. Set pre-trial hearing date or trial date if no pre-trial hearing. Form	
<input type="checkbox"/> 3. Issue orders to summons jury panel. Form	
<input type="checkbox"/> 4. Call case for announcements and admonishments to defendant.	
<input type="checkbox"/> 5. Qualify and swear the central jury panel, if a central jury panel system is used.	
<input type="checkbox"/> 6. Swear the jury panel.	
<input type="checkbox"/> 7. Qualify the jury panel.	
<input type="checkbox"/> 8. Seat the panel in the courtroom.	
<input type="checkbox"/> Shuffle the panel if either side requests it. Only one shuffle permitted.	
<input type="checkbox"/> 9. If requested by either party, order the official court reporter to transcribe the voir dire. (Only applicable for courts of record.)	
<input type="checkbox"/> 10. Introductions and administration of the juror oath.	
<input type="checkbox"/> 11. Opening remarks by the court.	
<input type="checkbox"/> 12. Permit the prosecutor to voir dire the panel.	
<input type="checkbox"/> 13. Permit the defendant or, if represented by counsel, the defendant's attorney to voir dire the panel.	

- ☐ 14. Direct the parties to make their peremptory strikes (rule on challenges for cause, if any).
- ☐ 15. The jury is the first six of those left.
- ☐ 16. If requested, hold a hearing on the discriminatory use of peremptory challenges.
- ☐ 17. Seat the jury and administer the oath.
- ☐ 18. Take defendant's plea.
- ☐ 19. At the request of either the defense or prosecution, or on your own motion, you should determine all possible witnesses.
 - ☐ Invoke "The Rule" if requested.
- ☐ 20. Opening statements.
 - ☐ Prosecution first.
 - ☐ Defense second. (Defense may reserve opening statement until after the state rests its case-in-chief.)
 - ☐ Should the prosecution waive its opening statement, the defense may not make an opening statement until the prosecution presents its case-in-chief.
- ☐ 21. Presentation of evidence.
 - ☐ Prosecution's case-in-chief:
 - ☐ State's direct evidence.
 - ☐ Defendant's cross-examination.
 - ☐ State's redirect examinations, if any.
 - ☐ Defendant's recross-examinations, if any.
 - ☐ State rests.

SEE [CHECKLIST 52](#)

- ☐ 22. Motion for directed verdict.
- ☐ 23. Defendant's case.
 - ☐ Defendant's direct examination.
 - ☐ State's cross-examination.
 - ☐ Defendant's redirect examination, if any.
 - ☐ State's recross-examination, if any.
 - ☐ Defendant rests.
- ☐ 24. Rebuttal evidence.
 - ☐ The prosecution may present rebuttal evidence in the same manner as the prosecution's case-in-chief.
- ☐ 25. Prosecution closes.
 - ☐ The defense may present rebuttal evidence if the prosecution did so.
- ☐ 26. Defense closes.
- ☐ 27. Provide a charge to the jury and a copy to prosecution and defense.
- ☐ 28. Read the charge to the jury.
- ☐ 29. Closing arguments.
 - ☐ Prosecution argues first (may waive).
 - ☐ Defense makes its argument.
 - ☐ Prosecution has the right to argue last.
 - ☐ Both sides are given equal time.
- ☐ 30. Submit case to the jury for deliberations.
- ☐ 31. The verdict. **Form**

SEE [CHECKLIST 42](#)

- ☐ You should see that the verdict is in the proper form (if guilty, the verdict should include assessment of punishment) and read it in open court.
 - ☐ Enter the verdict on your docket.
 - ☐ If a verdict cannot be reached and it is improbable that an agreement can be reached, the jury should be discharged and the case tried again.
- ☐ 32. Motion for new trial, if any.
- ☐ 33. The appeal.
- ☐ If the defendant is found guilty, the judge should inform the defendant of the right to appeal. The defendant is not required to give notice in open court. However, the notice of appeal and appeal bond must be filed within ten (10) days of rendition of judgment.

SEE [CHECKLIST 45](#)

SEE [CHAPTER 10 – NEW TRIALS AND APPEALS](#)

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CHAPTER 9 INDIGENT HEARINGS

The 77th Legislature radically changed the procedures for determination of indigence in appointment of counsel by passage of S.B. 7, also known as the “Texas Fair Defense Act.” For the procedures to determine indigence in the context of appointment of counsel as a magistrate, please see [CHECKLIST 8](#).

Checklist 44	Script/Notes
<p><input type="checkbox"/> 1. Give the defendant a financial information sheet. Form</p> <p><input type="checkbox"/> 2. Have the defendant swear to or affirm information on the sheet.</p> <p>Before making a determination of whether a defendant is indigent, the court shall request the defendant to sign under oath a statement substantially in the following form:</p> <p>“On this ____ day of _____, 20____, I have advised the court that I am indigent and am unable to make the bond or pay the fine and cost assessed against me.”</p> <p style="text-align: right;">_____ (Signature of defendant)</p> <p><input type="checkbox"/> 3. Consider the defendant’s income and resources:</p> <p><input type="checkbox"/> Income;</p> <p><input type="checkbox"/> Source of income:</p> <p><input type="checkbox"/> Wages, investment income, checking/savings, child support, social security/disability/welfare income, selling assets/non-exempt property, etc.</p> <p><input type="checkbox"/> Loans, ability to borrow money.</p> <p><input type="checkbox"/> Whether defendant has posted bail (cash bond or surety).</p>	<p>(Defendant raises indigence problem with paying fine/costs, appeal or posting bail.)</p> <p>“Please complete a financial information form.” (After defendant completes form, have defendant sign under oath.)</p> <p>“I’m going to place you under oath before conducting this indigent hearing and reviewing your financial information sheet. Please raise your right hand. Do you swear to tell the truth, the whole truth and nothing but the truth in this matter pending before the court?”</p> <p>(Defendant’s response.)</p>

- ☐ 4. Consider the defendant's expenses:
 - ☐ Number and ages of dependents;
 - ☐ Rent/mortgage payment;
 - ☐ Debts and obligations (car notes, credit cards, etc.);
 - ☐ Personal expenses; and
 - ☐ Illness/incapacity of defendant or spouse.
- ☐ 5. Consider other evidence:
 - ☐ Ability to work.
 - ☐ Spouse's financial condition.
- ☐ 6. Factors not to be considered:
 - ☐ Parents' financial resources and other relatives;
 - ☐ Exempt property including homestead and vehicles (see Texas Property Code);
 - ☐ Attitude.
- ☐ 7. Review financial information sheet with the defendant, if necessary.
- ☐ 8. "Indigent" means a person who is not financially able to meet the financial obligation before the court.
- ☐ 9. Procedural issues:
 - ☐ Truthfulness of indigent affidavit and defendant's testimony;
 - ☐ Court records — payment history, prior indigence hearing;

- ☐ Documentation:
 - ☐ Note on file or computer;
 - ☐ Date and time of hearing or ruling;
 - ☐ Attach or secure all documentation with ruling and place in file.
- ☐ 10. Bail.
 - ☐ When defendant is indigent:
 - ☐ Reduce bail;
 - ☐ Release on personal bond.
- ☐ 11. Unable to pay fine, cost, special expense fee.
 - ☐ Advise of right to appeal.
 - ☐ Appeal:
 - ☐ Grant personal bond for appeal bond;
 - ☐ Send case up.
 - ☐ No Appeal:
 - ☐ Time payment if defendant can obtain funds at a later time:
 - ☐ All payable at a later date;
 - ☐ Payment in periodic installments;
 - ☐ Explain that if the defendant wants time payment or an extension that he or she will have to pay an additional fee of \$25 for each charge where there is a conviction if any part of the fine or court costs is paid on or after the 31st day after

If indigence found:

“You understand that there is a judgment or sentence in your case. I have determined that you are financially unable to pay this judgment. You have the right to appeal your conviction to an appellate court without having to post bond — notice of appeal or a personal appeal bond will be granted — if you wish to appeal.”

“If you do not wish to appeal this conviction, you have the option to request a pay out the judgment on a time-payment schedule or you can perform community service or you could even request that I allow you to sit or lay out the judgment in jail at a rate of \$100 for each period of time.” (“Period of time” is a time specified by the court in the judgment that is not less than eight hours or more than 24 hours. [Art. 45.048, C.C.P.](#))

SEE [CHAPTER 10 – NEW TRIALS AND APPEALS](#).

judgment is entered.	Art. 45.041(b), C.C.P.
	Sec. 51.921, G.C.
<input type="checkbox"/> Community Service. Form - C.S. Order	Form - C.S. Program
<input type="checkbox"/> Each eight hours of service discharges \$100.	Art. 45.049, C.C.P.
<input type="checkbox"/> No more than 16 hours per week, unless court finds that a greater period would not work a hardship.	
<input type="checkbox"/> Court should specify the number of hours to be worked.	
<input type="checkbox"/> Can be used in conjunction with partial payment.	
<input type="checkbox"/> Waiver of Cost and Fine.	Art. 43.03, C.C.P.
<input type="checkbox"/> Court must order immediate payment and the defendant default in payment.	
<input type="checkbox"/> Defendant must be indigent and unable to make time payments.	
<input type="checkbox"/> Community service must impose an undue hardship on defendant.	
<input type="checkbox"/> Note waiver in court records.	
<input type="checkbox"/> Contempt.	SEE CHECKLIST 73
<input type="checkbox"/> Appoint counsel if jail-time is imposed.	Art. 26.04, C.C.P.
<input type="checkbox"/> If the defendant has been given an opportunity to satisfy the judgment through other alternatives and refuses to do so, in violation of a court order, the court could consider imposing penalties of contempt, after a hearing with an attorney being appointed for defendant (maximum 3 days and/or \$100 fine).	Art. 21.002(c), G.C.

CHAPTER 10 NEW TRIALS AND APPEALS

A. Motion for New Trial

Checklist 45	Notes
Not later than 10 days after the date of judgment:	Art. 45.038, C.C.P.
<input type="checkbox"/> 1. A motion for new trial may be granted whenever the judge, for good cause shown, believes that justice has not been served.	
<input type="checkbox"/> 2. A defendant has one day after the rendition of judgment and sentence to file a motion for new trial.	<p>Art. 45.037, C.C.P.</p> <p>See Art. 45.013, C.C.P., for an increase in the amount of time to file the motion for new trial. If the defendant mails the motion for new trial on or before the due date and the clerk receives the motion not later than ten days after the due date, the motion is timely filed. Do not count Saturday, Sunday or legal holidays.</p> <p>Since the judge must rule on the motion by the 10th calendar day after judgment, the motion if filed by mail, may be overruled by operation of law.</p>
<input type="checkbox"/> 3. A defendant may only receive one new trial.	Art. 45.039, C.C.P.
<input type="checkbox"/> 4. The court must hold a second trial as soon as practicable.	Art. 45.039, C.C.P.
<input type="checkbox"/> 5. In no case is the state entitled to a new trial.	Art. 45.040, C.C.P.

CHAPTER 10 NEW TRIALS AND APPEALS

B. Notice of Appeal

Checklist 46	Notes
<input type="checkbox"/> 1. Notice must show the defendant's desire to appeal. It may be in writing or made orally: <ul style="list-style-type: none"> <input type="checkbox"/> Filed with the judge who tried the case. <input type="checkbox"/> Not later than the 10th day after the date the judgment was entered. 	<p>Art. 45.0426(a), C.C.P. No appeal may be dismissed because the defendant failed to give notice of appeal. Art. 45.0426(c), C.C.P.</p>
<input type="checkbox"/> 2. Notice of appeal perfected once appeal bond is filed with the judge. <ul style="list-style-type: none"> <input type="checkbox"/> A bail bond may not be less than double the amount of fine and cost adjudged against the defendant. <input type="checkbox"/> A bail bond must be payable to the "State of Texas." <input type="checkbox"/> In no event shall the bail bond be less than fifty dollars (\$50). 	<p>Art. 45.0425(a), C.C.P.</p> <p>Art. 45.0425(a), C.C.P.</p>
<input type="checkbox"/> 3. The appeal bond shall recite: <ul style="list-style-type: none"> <input type="checkbox"/> The municipal court cause number; <input type="checkbox"/> That the defendant was convicted and appeals; <input type="checkbox"/> A condition that the defendant appear in the county court or pay the amount of bail to the county court; and <input type="checkbox"/> That the defendant appear immediately if the court is in session or state the time and place the defendant is to appear if court is not in session. 	<p>Art. 45.0425(b), C.C.P.</p>

☐ 4. An appeal shall not be dismissed on account of any defect in the transcript.

[Art. 45.0426\(c\), C.C.P.](#)

☐ 5. Types of appeal bonds authorized:

☐ Cash bond. **Form**

☐ Surety bond. **Form**

☐ Personal bond. **Form**

CHAPTER 10 NEW TRIALS AND APPEALS

C. Transcript

Checklist 47	Notes
<p><input type="checkbox"/> 1. The transcript may include the following</p> <ul style="list-style-type: none"> <input type="checkbox"/> The complaint; <input type="checkbox"/> Certified copy of the docket; <input type="checkbox"/> The jury charge and the verdict in a jury trial; <input type="checkbox"/> The judgment; <input type="checkbox"/> The motion for a new trial, if any; <input type="checkbox"/> The notice of appeal; <input type="checkbox"/> Written motions and pleas; <input type="checkbox"/> Written orders of the court; and <input type="checkbox"/> Any bills of exception filed with the court. <p><input type="checkbox"/> 2. Courts of Record:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Any portions of the proceedings may be included if either party requests them. <input type="checkbox"/> Either party may include bills of exception. <input type="checkbox"/> A statement of facts may be in the form of: <ul style="list-style-type: none"> <input type="checkbox"/> A partial transcription and the agreed statement of facts of the case. <input type="checkbox"/> A brief statement of the facts of the case proven at trial as agreed to by the parties. <input type="checkbox"/> A transcript of all or part of the proceedings shown by the notes to have occurred before, during or after the trial, if requested by the defendant. 	<p>Courts of record should Form check Chapter 30, G.C., for specific requirements of the transcript of an appeal.</p> <p>Forms - all appeals forms</p>

CHAPTER 11 CITY ORDINANCES — General Rules

Checklist 48	Notes
<p><input type="checkbox"/> 1. Jurisdiction:</p> <ul style="list-style-type: none"> <input type="checkbox"/> A home-rule city can enact and enforce laws to abate and remove nuisances in the city or within 5,000 feet of the city limits. General law cities can enact and enforce laws to abate and remove nuisances within the city limits. <input type="checkbox"/> A home-rule city can enact and enforce laws that prohibit water pollution that affects its water supply within and outside city limits. <input type="checkbox"/> A municipal court has jurisdiction over any individual or business entity acting within its limits or within the limits of the ordinance's jurisdiction. <input type="checkbox"/> A municipal court has jurisdiction over any individual or business entity causing an effect within the city limits or the limits governed by the ordinance. <input type="checkbox"/> A municipal court has jurisdiction over city ordinance violations that occur on city-owned property in the city's extraterritorial jurisdiction. <input type="checkbox"/> Section 30.00005, G.C. says that municipal courts of record have jurisdiction over city ordinance violations authorized by Sections 215.072, 217.042, 341.903, and 401.002, L.G.C. Those sections provide: <ul style="list-style-type: none"> <input type="checkbox"/> A municipality is permitted to inspect dairies, slaughterhouses or slaughter pens in or outside the municipal limits from which milk or meat is furnished to the residents of the municipality. 	<p>Chapter 54, Secs. 217.042 and 217.022, L.G.C.; <i>Threadgill v. State</i>, 275 S.W. 2d 658 (Tex. Crim. App. 1955)</p> <p>Sec. 29.003, G.C.</p> <p>Sec. 215.072, L.G.C.</p>

❑ A municipality may define and prohibit any nuisance within the limits of the municipality and within 5,000 feet outside the limits and may enforce all ordinances necessary to prevent and summarily abate and remove a nuisance.

[Sec. 217.042, L.G.C.](#)

❑ A home-rule municipality may police the following areas owned by and located outside the municipality: (1) parks and grounds; (2) lakes and land contiguous to and used in connection with a lake; and (3) speedways and boulevards.

[Sec. 341.903, L.G.C.](#)

❑ A home-rule municipality may prohibit the pollution or degradation of the city's water supply and provide protection of and police watersheds. The statute further provides that the authority granted by this statute may be exercised inside the city boundaries and in the extra-territorial jurisdiction only if the city is required to meet certain other state or federal requirements. The authority granted under this statute regarding the protection or recharge areas may be exercised outside the city boundaries within the extra-territorial limits provided that the city has a population greater than 750,000 and the groundwater constitutes more than 75 percent of the city's water supply.

[Sec. 401.002, L.G.C.](#)

❑ The city may grant the municipal court of record, by passing an ordinance, civil jurisdiction for the purpose of enforcing municipal ordinances under [Chapter 214, L.G.C.](#) (Nuisance) and [Chapter 683, T.C.](#) (Junk Vehicles). This jurisdiction is concurrent with district and county courts at law and includes the power to issue search warrants and destruction orders.

- ☐ The city may create by ordinance an administrative procedure for dealing with nuisance violations and junk vehicles appeal to the municipal court.

[Sec. 54.044, L.G.C.](#) and
[Sec. 683.077\(a\), T.C.](#)

☐ 2. Ordinance is **invalid** if:

- ☐ It is inconsistent with the city's charter.
- ☐ It is inconsistent with state law or the Texas Constitution.
- ☐ It is preempted by state or federal law.
- ☐ It is inconsistent with the U.S. Constitution or federal law.
- ☐ It is enacted in violation of the Texas Open Meetings law and not subsequently validated by the legislature.

☐ 3. City Ordinances/Culpable Mental States.

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

A city ordinance on adult businesses was held to require a culpable mental state even though the ordinance was silent as to the issue. Accordingly, an ordinance must contain a culpable mental state "unless the definition of the offense plainly dispenses with any mental element."

☐ 4. Notice:

- ☐ There is no notice requirement in most ordinances;
- ☐ If there is a notice requirement, whether it has been complied with, is a matter to be decided after hearing the testimony;

☐ Notice need not be plead in the complaint.

☐ 5. Judicial Notice:

☐ Judge may take judicial notice of all municipal ordinances.

☐ Some court of record statutes state that the judge **shall** take judicial notice of the ordinances.

☐ A printed ordinance is self-authenticating and a judge **shall** admit it without further proof.

Check procedure in [Chapter 30, G.C.](#), if a court of record.

☐ 6. Warrants:

☐ A magistrate may issue warrants for code inspections based on probable cause.

☐ Requirements for these warrants are found in [Sec. 18.05, C.C.P.](#)

☐ 7. Corporations and Associations.

☐ Definitions.

☐ "Agent" means a director, officer, employee, or other person authorized to act in behalf of a corporation or association.

☐ "Association" means a government or governmental subdivision or agency, trust, partnership, or two or more persons having a joint or common economic interest.

☐ "High managerial agent" means:

☐ an officer of a corporation or association;

- ☐ partner in a partnership; or
- ☐ an agent of a corporation or association who has duties of such responsibility that his or her conduct may reasonably be assumed to represent the policy of the corporation or association.
- ☐ "Person," "he," and "him" include corporation and association.
- ☐ Summoning corporation or association.
 - ☐ The court must summons the corporation or association. The summons is in the same form as a capias. A certified copy of the complaint must accompany the summons.
 - ☐ The corporation or association has until 10:00 a.m. Monday after the 20th day after service to answer.
 - ☐ Service must be by a peace officer on the registered agent or a high managerial agent.
 - ☐ The corporation or association must appear through counsel.
 - ☐ If a corporation or association does not appear in response to summons, or appears but fails or refuses to plead:
 - ☐ It is deemed to be present in person for all purposes; and
 - ☐ The court shall enter a plea of not guilty in its behalf; and
 - ☐ The court may proceed with the trial, judgment and sentencing.
 - ☐ If, having appeared and entered a plea in

[Art. 17A.03, C.C.P.](#)

[Arts. 17A.04 and 17A.05, C.C.P.](#)

[Art. 17A.06, C.C.P.](#)

response to summons, a corporation or association is absent without good cause at any time during later proceedings:

☐ It is deemed to be present in person for all purposes; and

☐ The court may proceed with trial, judgment or sentencing.

☐ If the corporation or association is convicted, the clerk must notify the Attorney General's Office.

☐ A business entity is criminally responsible for conduct of an agent acting in its behalf.

☐ Affirmative defense if agent applied due diligence.

[Secs. 7.22 and 7.23, P.C.](#)

[Sec. 7.24, P.C.](#)

☐ 8. Fines:

☐ Fines may range from any minimum to \$2,000 maximum.

☐ Check the ordinance being enforced for the fine range set by the council.

[Sec. 12.51, P.C.](#)

☐ 9. Appeals:

☐ Appeals from a non-court of record are de novo to the county court.

☐ Appeals from a court of record are on the record.

CHAPTER 12 OATHS AND CEREMONIES

A. Complaints

1. Complaints Filed in Municipal Court

In *Naff v. State*, 946 S.W.2d 529, (Tex. App.–Fort Worth 1997), the court held that a person swearing to a complaint in municipal court may do so based on information contained in the citation. In this case the defendant argued that the complaint filed against him in municipal court was invalid because it was sworn to by the municipal court prosecutor's secretary. The secretary did not have firsthand knowledge of the events in question. She swore to the complaint based upon the information contained in the citation written by the police officer. The court stated that there is no requirement that the person swearing to complaint do so based on firsthand knowledge.

Checklist 49	Notes
<input type="checkbox"/> 1. Affiant reviews complaint. (Affiant - person swearing to an affidavit; must be a credible person worthy of belief.)	Art. 45.019, C.C.P.
<input type="checkbox"/> 2. Affiant and person administering oath both raise their right hand.	
<input type="checkbox"/> 3. Oath is administered.	"Do you solemnly swear (or affirm) that the information contained in this complaint is true and correct (so help you God)?"
<input type="checkbox"/> The following persons have authority to administer this oath: <ul style="list-style-type: none"> <input type="checkbox"/> Municipal court judge; <input type="checkbox"/> Municipal court clerk; <input type="checkbox"/> Deputy court clerk; <input type="checkbox"/> City secretary; <input type="checkbox"/> City attorney; <input type="checkbox"/> Deputy city attorney. 	Art. 45.019(e), C.C.P.
<input type="checkbox"/> 4. Affiant signs complaint.	

- ☐ 5. Person administering oath signs jurat.
(Jurat - certificate of person before whom
writing was sworn to.)
- ☐ 6. Judge or clerk places impress, stamped image,
or electronically created image of municipal
court seal on complaint.
- ☐ 7. If notary public administered oath, notary seal
is also required to be placed on the complaint.

[Art. 45.012\(g\), C.C.P.](#)

Municipal courts of
record are required to
place a seal on
documents now. [Sec.
30.000125, G.C.](#)

CHAPTER 12 OATHS AND CEREMONIES

A. Complaints

2. Complaints Accepted by Judge as a Magistrate (Jailable Misdemeanors and Felonies)

Checklist 50	Notes
<input type="checkbox"/> 1. Affiant reviews complaint. (Affiant - person swearing to an affidavit; must be a credible person worthy of belief.)	Art. 15.04, C.C.P.
<input type="checkbox"/> 2. Affiant and person administering oath both raise their right hand.	
<input type="checkbox"/> 3. Oath is administered.	"Do you solemnly swear (or affirm) that the information contained in this complaint is true and correct (so help you God)?"
<input type="checkbox"/> The following persons have authority to administer this oath: <ul style="list-style-type: none"> <input type="checkbox"/> Municipal court judge; <input type="checkbox"/> Notary public. 	Art. 15.04, C.C.P. and Sec. 602.002, G.C.
<input type="checkbox"/> 4. Affiant signs complaint.	
<input type="checkbox"/> 5. Person administering oath signs jurat. (Jurat - certificate of person before whom writing was sworn to.)	
<input type="checkbox"/> 6. If notary public administers oath, notary seal is required to be placed on the complaint.	

CHAPTER 12 OATHS AND CEREMONIES

B. Other Affidavits

Defendant requests to take a driving safety course - one of the requirements that defendants must meet before being granted that right is to swear to an affidavit that they are not in the process of taking a driving safety course under Art. 45.0511, C.C.P., nor have they completed a course under that section that is not yet reflected on their driver's record as maintained by the Texas Department of Public Safety.

Checklist 51	Notes
<input type="checkbox"/> 1. Affiant (defendant) reviews affidavit.	Art. 45.0511(c)(7), C.C.P.
<input type="checkbox"/> 2. Defendant and person administering oath both raise their right hand.	Form - DSC (b)(1) Form - DSC (b)(2)
<input type="checkbox"/> 3. Oath is administered.	<p>“Do you solemnly swear (or affirm) that the information contained in this affidavit is true and correct (so help you God)?”</p>
<input type="checkbox"/> The following persons have authority to administer this oath: <ul style="list-style-type: none"> <input type="checkbox"/> Municipal judge or clerk in a matter pertaining to a duty of the court; <input type="checkbox"/> Municipal court judge of a court of record; <input type="checkbox"/> Municipal court clerk of a court of record; <input type="checkbox"/> Notary public; <input type="checkbox"/> Peace officer may administer an oath when engaged in performance of duties and oath pertains to duties; and <input type="checkbox"/> Municipal court clerk where a home-rule municipality has established the “office of municipal court clerk.” 	<p>Sec. 602.002, G.C.</p> <p>Sec. 29.007(f), G.C.</p>
<input type="checkbox"/> 4. Defendant signs affidavit.	

- ☐ 5. Person administering oath signs jurat.
(Jurat - certificate of person before whom
writing was sworn to.)
- ☐ 6. If notary public administers oath, notary public
seal required to be placed on affidavit.

CHAPTER 12 OATHS AND CEREMONIES

C. Oaths Administered During Trial - Jurors and Witnesses

Checklist 52	Notes
<input type="checkbox"/> 1. Jury. <ul style="list-style-type: none"> <input type="checkbox"/> Summoned jurors. Form (Jurors are required to answer questions about their qualifications; this is called a voir dire.) <input type="checkbox"/> Ask jurors to raise right hand. <input type="checkbox"/> Person administering oath raises right hand. <input type="checkbox"/> Oath is administered. <ul style="list-style-type: none"> <input type="checkbox"/> The following persons have authority to administer this oath: <ul style="list-style-type: none"> <input type="checkbox"/> Municipal court judge; <input type="checkbox"/> Municipal court clerk. <input type="checkbox"/> Six persons selected to hear the case. <input type="checkbox"/> Ask jurors to raise right hand. <input type="checkbox"/> Judge raises right hand. <input type="checkbox"/> Oath is administered. 	<p>Art. 35.02, C.C.P.</p> <p>“You, and each of you solemnly swear that you will make true answers to such questions as may be propounded to you by the court, or under its directions, touching your service and qualifications as a juror (so help you God).”</p> <p>Arts. 35.22 and 45.030, C.C.P.</p> <p>“You and each of you do solemnly swear that in the case of the State of Texas against the defendant, you will a true verdict render according to the law and the evidence, so help you God.”</p>

- ☐ The following persons have authority to administer this oath:
 - ☐ Municipal court judge;
 - ☐ Notary public;
 - ☐ Clerk;
 - ☐ Anyone the judge directs to administer the oath.
- ☐ 2. Witnesses.
 - ☐ Before testifying, every witness shall be required to declare that he or she will testify truthfully by oath or affirmation in a form calculated to awaken the witness conscience and impress the witness's mind with the duty to do so.
 - ☐ Both the judge and witness should raise their right hands.
 - ☐ Oath is administered.
 - ☐ Invoking "The Rule."
 - ☐ At the request of a party, or the court may on its own motion, order witnesses excluded so that they cannot hear the testimony of other witnesses. This is commonly called "The Rule." If "The Rule" is invoked, all witnesses should be sworn before being directed to wait outside the courtroom.
 - ☐ Both the judge and witness should raise their right hand.
 - ☐ Oath is administered.

Arts. 35.22 and 45.030,
C.C.P. and Sec. 602.002,
G.C.

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

Rule 614, T.R.E.

"All those of you who may be witnesses in this case who are now in the

courtroom, please stand and raise your right hands.

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

See [CHECKLIST 37](#) for exceptions to "The Rule."

CHAPTER 12 OATHS AND CEREMONIES

D. Interpreters

Interpreters are required to be appointed by the court when either a defendant or witness does not understand the English language.

If a defendant or witness is deaf or hearing impaired, the court is required to appoint an interpreter. The 77th Legislature added [Chapter 57 of the Government Code](#) requiring state-operated licensing and certification of court interpreters. Certification is required by January 1, 2002. Interpreters who previously acted before courts may be certified without examination. An exception to these requirements is made for courts in counties with a population of less than 50,000. Interpreters in those counties must be qualified under Texas Rules of Evidence, be at least 18 years old, and not be a party to the case.

In [Aleman v. State](#), 957 S.W.2d 592 (Tex. App.—El Paso 1997), the court stated that the role of interpreter is not merely to translate and explain the proceedings to a non-English speaking defendant, but also to provide a defendant with voice that can be heard and understood during the criminal proceedings.

The Texas Commission for the Deaf and Hard of Hearing is responsible for interpreters for the deaf and sign interpreters. The Texas Department of Licensing and Regulation is responsible for language interpreters and can be reached at (512) 463-6599. If a juror is deaf or hearing impaired, the court shall appoint a qualified interpreter, or the deaf or hearing-impaired juror may request an auxiliary aid or service.

Two companies offer language interpretation services, although they may not be state certified. They may be contacted at:

ATT Language Line Services
1 Lower Ragsdale Drive, Building 2
Monterrey, CA 93940-9880
(1-800-752-0093)
www.att.com/language

Language Learning Enterprises
1100 17th Street NW, Suite 900
(202-775-0444 or 888-464-8553)
www.lle-inc.com

Checklist 53	Notes
<p><input type="checkbox"/> 1. Interpreter for foreign language.</p> <ul style="list-style-type: none"> <input type="checkbox"/> Interpreter raises right hand. <input type="checkbox"/> Judge raises right hand. <input type="checkbox"/> Oath is administered. <p><input type="checkbox"/> The following persons have authority to administer this oath:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Municipal court judge; <input type="checkbox"/> Notary public; <input type="checkbox"/> Clerk. <p><input type="checkbox"/> 2. Interpreter for deaf or hearing-impaired.</p> <ul style="list-style-type: none"> <input type="checkbox"/> Interpreter raises right hand. <input type="checkbox"/> Judge raises right hand. <input type="checkbox"/> Oath is administered. 	<p>Art. 38.30, C.C.P. and Rule 604, T.R.E.</p> <p>“Do you solemnly swear or affirm that you will truly and correctly interpret for the court, jury, attorneys, defendant, and the person being examined all of the proceedings in this case into the language that the witness (or the accused) understands and you will repeat the statements made by said witness (or said accused) into the English language to the best of your skill and judgment (so help you God)?”</p> <p>Art. 38.30, C.C.P., Rule 604, T.R.E., and Sec. 602.002, G.C.</p> <p>Art. 38.31(e), C.C.P., and Rule 604, T.R.E.</p> <p>“Do you solemnly swear or affirm that you will make a true interpretation to the person being examined (or the person accused, or the</p>

☐ The following persons have authority to administer this oath:

- ☐ Municipal court judge;
- ☐ Notary public;
- ☐ Clerk.

juror), who is deaf, of all the proceedings in the case in a language that he/she understand, and that you will repeat said deaf person's answers to questions to counsel, court or jury, in the English language, to the best of your skill and judgment (so help you God)?"

[Art. 38.31\(e\), C.C.P., Rule 604, T.R.E., and Sec. 602.002, G.C.](#)

An official court reporter must take the oath of office required of other officers of this state. In addition to the official oath, each official court reporter must sign an oath administered by the district clerk.

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- ☐ 4. Court reporter signs oath.
- ☐ 5. Person administering oath signs jurat.
(Jurat - certificate of person before whom
writing was sworn to.)
- ☐ 6. If notary public administered oath, notary seal
is also required to be placed on the complaint.

CHAPTER 12 OATHS AND CEREMONIES

F. Appointed and Elected Officials

All appointed or elected officials are required to subscribe to an anti-bribery statement and then take an oath of office. The anti-bribery statement must be made before taking the oath or affirmation of office.

1. Appointed Officials

Checklist 55	Notes
<input type="checkbox"/> 1. All appointed officials, including judges, court clerks, court reporters, must: <ul style="list-style-type: none"> <input type="checkbox"/> Swear to an anti-bribery statement; <input type="checkbox"/> File with the City Secretary or Clerk of the Court. 	<p>Art. XVI, Sec. 1, Tex. Const.</p> <p>Form</p> <p>An amendment to the Constitution effective January 1, 2002 altered the previous requirement of this section that the oath be sent to the Secretary of State.</p>
<input type="checkbox"/> 2. Both appointed official and person administering oath raise their right hand.	<p>“I, _____, do solemnly swear (or affirm) that I have not directly or indirectly paid, offered, or promised to pay, contributed, or promised to contribute any money, or valuable thing or promised any public office or employment, as a reward to secure my appointment or confirmation thereof, (so help me God).”</p>
<input type="checkbox"/> 3. Oath is administered. <ul style="list-style-type: none"> <input type="checkbox"/> The following persons have authority to administer this oath: <ul style="list-style-type: none"> <input type="checkbox"/> Municipal court judge of a court of record; <input type="checkbox"/> Municipal court clerk of a court of record; 	<p>Sec. 602.002, G.C.</p>

- ☐ Notary public; and
- ☐ Municipal court clerk where a home-rule municipality has established the “office of municipal court clerk”.
- ☐ 4. Appointed official signs statement.
 - ☐ Person administering oath signs jurat. (Jurat - certificate of person before whom writing was sworn to.)
 - ☐ If notary public administers oath, notary's seal is placed on oath.
- ☐ 5. Oath of office. **Form**
 - ☐ Both appointed official and person administering oath raise their right hand.
 - ☐ Oath is administered.
- ☐ The following persons have authority to administer this oath:
 - ☐ Municipal court judge of a **court of record**;
 - ☐ Municipal court clerk of a **court of record**;
 - ☐ Notary public; and

[Sec. 29.007\(f\), G.C.](#)

[Art. XVI, Sec. 1, Tex. Const.](#)

“I, _____, do solemnly swear (of 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).”

[Sec. 602.002, G.C.](#)

[Sec. 29.007\(f\), G.C.](#)

- ☐ Municipal court clerk where a home-rule municipality has established the “office of municipal court clerk”.
 - ☐ Appointed official signs oath.
 - ☐ Person administering oath signs jurat .(Jurat - certificate of person before whom writing was sworn to.)
 - ☐ If notary public administers oath, notary's seal is placed on oath.
-
- ☐ 6. File oath of office with city secretary.

CHAPTER 12 OATHS AND CEREMONIES

F. Appointed and Elected Officials

2. Elected Officials

Checklist 56	Notes
<input type="checkbox"/> 1. All elected officials, including judges and clerks, must: <ul style="list-style-type: none"> <input type="checkbox"/> Swear to an anti-bribery statement. <input type="checkbox"/> Send or fax statement to Office of Secretary of State. 	Art. XVI, Sec. 1, Tex. Const.
<input type="checkbox"/> 2. Both elected official and person administering oath raise their right hand.	<p>Form</p> <p>Send or fax Statement of Appointed Officer to: Office of Secretary of State Statutory Documents Section, P.O. Box 12887, Capitol Station, Austin, Texas 78711-2887 Fax: (512) 463-0873 Telephone: (512) 463-0872</p>
<input type="checkbox"/> 3. Oath is administered.	<p>“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).”</p>
<input type="checkbox"/> The following persons have authority to administer this oath: <ul style="list-style-type: none"> <input type="checkbox"/> Municipal court judge of a court of record; <input type="checkbox"/> Municipal court clerk of a court of record; 	<p>Sec. 602.002, G.C.</p>

- ☐ Notary public; and
- ☐ Municipal court clerk where a home-rule municipality has established the "office of municipal court clerk."
- ☐ 4. Elected official signs statement.
- ☐ 5. Person administering oath signs jurat. (Jurat - certificate of person before whom writing was sworn to.)
 - ☐ If notary public administers oath, notary's seal is placed on oath.
- ☐ 6. Oath of office.
 - ☐ Both elected official and person administering oath raise their right hand.
 - ☐ Oath is administered. **Form**
- ☐ The following persons have authority to administer this oath:
 - ☐ Municipal court judge of a **court of record**;
 - ☐ Municipal court clerk of a **court of record**;
 - ☐ Notary public; and
 - ☐ Municipal court clerk where a home-rule

[Sec. 29.007\(f\), G.C.](#)

"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)."

[Sec. 602.002, G.C.](#)

[Sec. 29.007\(f\), G.C.](#)

municipality has established the "office of municipal court clerk."

- ☐ Elected official signs oath.
 - ☐ Person administering oath signs jurat. (Jurat - certificate of person before whom writing was sworn to.)
 - ☐ If notary public administer oath, notary's seal is placed on oath.
- ☐ 7. File oath with city secretary.

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CHAPTER 13 JUVENILE AND MINOR PROCEEDINGS

A. Traffic and Other Motor Vehicle Misdemeanors

Checklist 57	Notes
<input type="checkbox"/> 1. Determine age of offender at the time of the offense.	
<input type="checkbox"/> A juvenile offender is defined as a person who is younger than 17 years of age.	Sec. 729.001, T.C.
<input type="checkbox"/> 2. Identify the traffic law that is alleged to have been violated.	
<input type="checkbox"/> Traffic laws include the following statutes:	Sec. 729.001, T.C.
<input type="checkbox"/> Transportation Code Chapter 502 (Registration of Vehicles), other than Secs. 502.282, 502.408(b), 502.409, or 502.412;	
<input type="checkbox"/> Transportation Code Chapter 521 (Driver's Licenses and Certificates);	
<input type="checkbox"/> Transportation Code Chapters 541-600, Subtitle C (Rules of the Road), other than an offense under Sec. 550.021, 550.022 or 550.024;	
<input type="checkbox"/> Transportation Code Chapter 601 (Motor Vehicle Safety Responsibility Act);	
<input type="checkbox"/> Transportation Code Chapter 621 (General Provisions Relating to Vehicle Size and Weight);	
<input type="checkbox"/> Transportation Code Chapter 661 (Protective Headgear for Motorcycle Operators and Passengers); and	
<input type="checkbox"/> Transportation Code Chapter 681 (Privileged Parking).	

- ☐ 3. Parent or guardian must be present during all proceedings.
 - ☐ The court is required to issue a summons to compel the defendant's parent, guardian or managing conservator to be present during all proceedings in the case. **Form**
 - ☐ The court, however, may waive the requirement of the presence of the parents, guardian or managing conservator if, after diligent effort, the court cannot locate them or compel their presence.

- ☐ 4. Determine whether the juvenile offender is going to hire an attorney.
 - ☐ If an attorney is going to be hired, reset the case to the next available plea docket and inform the juvenile offender and parent or guardian to have the attorney present for the date and time to which the case is rescheduled.
 - ☐ Provide the specific:
 - ☐ Date;
 - ☐ Place; and
 - ☐ Time of the resetting.
 - ☐ If an attorney is not going to be hired, proceed in taking the juvenile offender's plea or set bail, if applicable.

[Sec. 729.003\(a\) T.C.](#)

[Art. 45.0215, C.C.P.](#)

Should the court waive this requirement, it would be advisable to document in the offender's file what action the court employed to compel the parent's presence. If the parent, guardian or managing conservator fails to respond to the summons, it is punishable as a Class C misdemeanor. [Art. 45.057\(e\), C.C.P.](#)

- ☐ In setting bail, the provisions of the Code of Criminal Procedure relating to release of a defendant on bail apply to a defendant who is a minor charged with a traffic offense in the same manner as those provisions apply to an adult charged with a traffic offense.
- ☐ Juveniles charged with traffic offenses pursuant to Chapter 729, T.C. are subject to the same laws as adults with regard to bail. In addition, a juvenile “may be incarcerated upon failure to make bond”; however, any juvenile so detained must be segregated from adult detainees.
- ☐ 5. Take the juvenile offender’s plea. It must be:
 - ☐ In open court;
 - ☐ In the presence of a parent or guardian, unless waived; and
 - ☐ Before a judge.
 - ☐ Juvenile offenders charged pursuant to Chapter 729, T.C. may not dispose of the charge by paying a predetermined fine without an appearance in open court with a parent or guardian.
- ☐ 6. On a plea of **not guilty**, determine whether the juvenile offender wants:
 - ☐ A non-jury trial; or
 - ☐ A trial by jury.
 - ☐ Set the case according to the juvenile offender’s request.
 - ☐ Inform both the juvenile offender and his or her parent or guardian of the date, time and place of the trial.

[Sec. 729.003\(b\) T.C.](#)

[Atty. Gen. Op. No. H-1020 \(1977\)](#)

“How do you plead to the charge of _____ brought against you? ‘Guilty’, ‘No Contest’, or ‘Not Guilty’.”

[Sec. 729.003, T.C.](#)

[Atty. Gen. Op. No. H-1020 \(1977\)](#)

SEE [CHECKLIST 37](#)

SEE [CHECKLIST 38](#) and [39](#)

- ☐ 7. On a plea of “guilty” or “no contest”, inform the juvenile offender and his or her parent or guardian of the possible options to dispose of the case:

- ☐ Driving safety, if applicable.

Form - DSC (b)(1) Form - DSC (b)(2)

- ☐ Teen court, if applicable. **Form**

- ☐ Deferred disposition, if applicable. **Form**

- ☐ Community service in lieu of a fine. **Form**

See [CHECKLISTS 25](#) or [26](#)

[Art. 45.052, C.C.P.](#)

See [CHECKLIST 27](#)

[Secs. 729.003\(f\) and 729.001\(c\), T.C.](#)

- ☐ 8. Set the fine.

- ☐ A traffic law as defined by Sec. 729.001(a), T.C., is punishable by the fine or other sanction, other than confinement or imprisonment, authorized by statute for violation of the traffic law.

[Sec. 729.001\(c\), T.C.](#)

- ☐ 9. No right to expunction on Transportation Code offenses or traffic ordinances.

[Art. 45.0216, C.C.P.](#) provides for expunction of offenses described by [Section 8.07\(a\)\(4\) or \(5\), Penal Code](#). [Section 8.07\(a\)\(2\) and \(3\), Penal Code](#) list Transportation Code offenses and traffic ordinances respectively, thereby excluding them from the expunction provisions.

- ☐ 10. Default in payment of fines.

- ☐ The court imposing such fine **shall** report the default to the Department of Public Safety.

- ☐ To report this violation, fill out a **DIC-81** form. (You may request a copy of this from DPS.)

[Sec. 729.003\(e\), T.C.](#)

Mail to:
Driver Improvement &
Control
Box 4087

<ul style="list-style-type: none"> <input type="checkbox"/> The court, after filing this report, must report back to the Department of Public Safety on the final disposition of the case. <input type="checkbox"/> In no event, after conviction or plea of guilty and imposition of fine, may a juvenile offender be committed to any jail in default of payment of fine. <input type="checkbox"/> See CHECKLIST 74 for contempt of juveniles. <input type="checkbox"/> 11. Non-appearance. <ul style="list-style-type: none"> <input type="checkbox"/> A court shall report to the Department of Public Safety any minor charged with a traffic offense under this chapter who does not appear before the court as required by law. <input type="checkbox"/> A court that has filed a report under this section shall report to the Department of Public Safety on final disposition of the case. <input type="checkbox"/> To report this violation, fill out a DIC-81 form. (You may request a copy of this form from DPS.) 	<p>Austin, TX 78773</p> <p>Art. 45.050, C.C.P.</p> <p>Sec. 729.003(d), T.C.</p> <p>Mail to: Driver Improvement & Control Box 4087 Austin, TX 78773</p>
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1. General Offenses and Proceedings.

- 1) Purchase of Alcohol by a Minor, [Sec. 106.02, A.B.C.](#)
- 2) Attempt to Purchase Alcohol by a Minor, [Sec. 106.025, A.B.C.](#)
- 3) Consumption of Alcohol by a Minor, [Sec. 106.04, A.B.C.](#)
- 4) Possession of Alcohol by a Minor, [Sec. 106.05, A.B.C.](#)
- 5) Misrepresentation of Age by a Minor, [Sec. 106.07, A.B.C.](#)
- 6) Public Intoxication, [Sec. 49.02, P.C.](#) (under age 21 and at least age 17).

The new punishments for these alcohol-related offenses are found in [Section 106.071, A.B.C.](#) Note, however, that the offense of Driving Under the Influence of Alcohol by Minor carries its own penalty provisions. ([Art. 106.041, A.B.C.](#)) **Form**

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<ul style="list-style-type: none"> <input type="checkbox"/> An alcoholic beverage. <input type="checkbox"/> It is not an offense if the minor purchases an alcoholic beverage under the immediate supervision of a commissioned peace officer engaged in enforcing the provisions of this code. <input type="checkbox"/> Upon conviction, the penalties for this violation are provided in Sec. 106.071, A.B.C. <input type="checkbox"/> In addition to any penalty assessed, the court upon first conviction shall require the defendant to attend an alcohol awareness program. <input type="checkbox"/> Attempt to Purchase Alcohol by a Minor. 	<p>SEE CHECKLIST 59 Form</p> <p>SEE CHECKLIST 61 Sec. 106.115, A.B.C.</p> <p>Sec. 106.025, A.B.C.</p>
<ul style="list-style-type: none"> <input type="checkbox"/> Elements of this offense are: <ul style="list-style-type: none"> <input type="checkbox"/> A minor; <input type="checkbox"/> With specific intent to purchase alcohol; <input type="checkbox"/> Does an act amounting to more than mere preparation; <input type="checkbox"/> That tends but fails to commit the offense. <input type="checkbox"/> Upon conviction, the penalties for this violation are provided in Sec. 106.071, A.B.C. <input type="checkbox"/> In addition to any penalty assessed, the court upon first conviction shall require the defendant to attend an alcohol awareness program. 	<p>SEE CHECKLIST 59 Form</p> <p>SEE CHECKLIST 61 Sec. 106.115, A.B.C.</p>
<ul style="list-style-type: none"> <input type="checkbox"/> Consumption of Alcohol by a Minor. <input type="checkbox"/> Elements of this offense are: <ul style="list-style-type: none"> <input type="checkbox"/> A minor; <input type="checkbox"/> Consumes; 	<p>Sec. 106.041, A.B.C.</p>

<ul style="list-style-type: none"> <input type="checkbox"/> An alcoholic beverage. <input type="checkbox"/> It is an affirmative defense if the minor consumed an alcoholic beverage in the visible presence of the minor's: <ul style="list-style-type: none"> <input type="checkbox"/> Adult parent; <input type="checkbox"/> Guardian; or <input type="checkbox"/> Spouse. <input type="checkbox"/> Upon conviction, the penalties for this violation are provided in Sec. 106.071, A.B.C. <input type="checkbox"/> In addition to any penalty assessed, the court upon first conviction shall require the defendant to attend an alcohol awareness program. 	<p>SEE CHECKLIST 59 Form</p> <p>SEE CHECKLIST 61 Sec. 106.115, A.B.C.</p>
<ul style="list-style-type: none"> <input type="checkbox"/> Driving Under the Influence of Alcohol by a Minor. <input type="checkbox"/> Elements of this offense are: <ul style="list-style-type: none"> <input type="checkbox"/> A minor; <input type="checkbox"/> Operates a motor vehicle; <input type="checkbox"/> In a public place; <input type="checkbox"/> With any detectable amount of alcohol in his or her system. <input type="checkbox"/> Upon conviction, the penalties for this violation are provided in Sec. 106.041, A.B.C. <input type="checkbox"/> Juvenile DUI is not a lesser included offense under Sec. 49.04, Penal Code, which is the more serious offense of Driving While Intoxicated. <input type="checkbox"/> In addition to any penalty assessed, the court upon first conviction shall require the defendant to attend an alcohol awareness program. 	<p>Sec. 106.041, A.B.C.</p> <p>Sec. 106.041, A.B.C.</p> <p>SEE CHECKLIST 60 Form</p> <p>Sec. 106.041(g), A.B.C.</p> <p>SEE CHECKLIST 61 Sec. 106.115, A.B.C.</p>

☐ **Possession of Alcohol by a Minor.**

[Sec. 106.05, A.B.C.](#)

☐ Elements of this offense are:

- ☐ A minor;
- ☐ Possesses;
- ☐ An alcoholic beverage.

☐ It is an exception to an offense under this section if the minor possesses an alcoholic beverage:

- ☐ In the course and scope of his or her employment provided that such employment is not prohibited by this code;
- ☐ In the presence of an adult parent, guardian or spouse; or
- ☐ In the immediate supervision of a commissioned peace officer engaged in enforcing the provisions of this code.

☐ Upon conviction, the penalties for this violation are provided in [Sec. 106.071, A.B.C.](#)

SEE CHECKLIST 59
Form

☐ In addition to any penalty assessed, the court upon first conviction **shall** require the defendant to attend an alcohol awareness program.

SEE CHECKLIST 61
[Sec. 106.115, A.B.C.](#)

☐ **Misrepresentation of Age by a Minor.**

[Sec. 106.07, A.B.C.](#)

☐ Elements of this offense are:

- ☐ A minor;
- ☐ Falsely states;
- ☐ That he or she is 21 years of age or older;
- ☐ To a person selling or serving;
- ☐ Alcoholic beverages.

☐ Upon conviction, the penalties for this

SEE CHECKLIST 59

violation are provided in Sec. 106.071, A.B.C.	
<input type="checkbox"/> In addition to any penalty assessed, the court upon first conviction shall require the defendant to attend an alcohol awareness program.	SEE CHECKLIST 61
<input type="checkbox"/> Public Intoxication (under age 21 but at least age 17).	Sec. 106.115, A.B.C.
<input type="checkbox"/> Elements of the offense are:	
<input type="checkbox"/> Younger than 21 years of age (minor);	Sec. 49.02(e), P.C.
<input type="checkbox"/> Appears in a public place;	
<input type="checkbox"/> Intoxicated to a degree that the person is:	Sec. 49.02(a), P.C.
<input type="checkbox"/> A danger to themselves; or	
<input type="checkbox"/> A danger to another.	
<input type="checkbox"/> Defense to prosecution is alcohol or other substance administered for therapeutic purposes as part of medical treatment administered by licensed physician.	Sec. 49.02(b), P.C.
<input type="checkbox"/> Upon conviction punishment is in the same manner as if the minor committed an offense to which Sec. 106.071, A.B.C. applies.	Sec. 49.02(e), P.C.
<input type="checkbox"/> 3. All minors must appear in open court before a judge. If the minor is under age 18, the minor must appear in open court with a parent or guardian.	Sec. 106.10, A.B.C.
<input type="checkbox"/> 4. Ensure that a parent or a guardian is present during all proceedings when the minor is younger than 18 years of age.	Sec. 106.11, A.B.C.
<input type="checkbox"/> Summon the parent or guardian if they live	Art. 45.0215, C.C.P.

within the jurisdiction of the court.

- ☐ Send written notice to the parent or guardian if they live outside the jurisdiction of the court and inform of the charge pending against the minor.
 - ☐ The court, however, may waive the requirement of the presence of the parent or guardian if, after diligent effort, the court cannot locate or compel their presence.
- ☐ 5. Determine whether the minor wishes to hire an attorney.
- ☐ If an attorney is going to be hired, reset the case to the next available plea docket and inform the minor and parent to have the attorney present for when the case is rescheduled.
 - ☐ Provide the specific:
 - ☐ Date;
 - ☐ Place; and
 - ☐ Time of the resetting.
 - ☐ If an attorney is not going to be hired, proceed in taking the minor's plea or set bail.
- ☐ 6. Take the minor's plea. **Form**
- ☐ No minor may plead guilty to an offense under this chapter except in open court before a judge.
 - ☐ If minor will not plead, enter a not guilty plea

Should the court waive this requirement, it would be advisable to document in the minor's file what action the court employed to compel the parent's presence.

"How do you plead to the charge of _____ brought against you? 'Guilty' or 'No Contest' or 'Not Guilty'."

[Sec. 106.10, A.B.C.](#)

for him or her.

- ☐ 7. On a plea of **not guilty**, determine whether the minor wants:

- ☐ A non-jury trial; or
- ☐ A trial by jury.
- ☐ Set the case according to the minor's request.
- ☐ Inform both the minor and his or her parent or guardian of the date, time and place of the trial.

SEE [CHECKLIST 37](#)

SEE [CHECKLIST 38](#) and [39](#)

- ☐ 8. On a plea of "guilty" or "no contest", inform the minor and his or her parent of the possible options to dispose of the case:

- ☐ Teen court, if applicable. **Form**
- ☐ Deferred disposition, if applicable. **Form**
- ☐ Community service, if applicable. **Form**
- ☐ Payment of the fine. **Form**

[Sec. 45.052, C.C.P.](#)

SEE [CHECKLIST 27](#)

[Art. 45.049, C.C.P.](#)

- ☐ 9. Set the fine and order other sanctions required by this code.

SEE [CHECKLISTS 59](#) and [60](#)

- ☐ In addition, the court may be required to order that the minor attend an alcohol awareness course.
- ☐ Warn the defendant that failure to pay the fine may result in suspension of his or her driver's license or refusal to issue a driver's license by the Department of Public Safety.

SEE [CHECKLIST 61](#)

- ☐ 10. Default in payment of fines.

- ☐ The court imposing such fine may report the default to the Department of Public Safety; but only if the minor was under 17 years of age when the offense was

Mail to:
Driver Improvement &
Control
Box 4087
Austin, TX 78773

committed.

- ☐ The court, after filing this report, must report back to the Department of Public Safety on the final disposition of the case.
- ☐ See [CHECKLIST 74](#) for contempt for juveniles.
- ☐ 11. Reports to be furnished to the Alcoholic Beverage Commission.
 - ☐ The clerk of court shall furnish upon request a report to the Commission that includes:
 - ☐ Notice of conviction for offense under [Chapter 106, A.B.C.](#); or
 - ☐ Notice of adjudication under Title 3, Family Code.
 - ☐ Report shall be in form prescribed by Commission.
- ☐ 12. Reports to be furnished to the Department of Public Safety (DPS).
 - ☐ Each court shall furnish to DPS a notice of each:
 - ☐ Offense under [Chapter 106, A.B.C.](#);
 - ☐ Adjudication under [Title 3, Family Code](#);
 - ☐ A Conviction Order;
 - ☐ A Deferred Disposition Order; and
 - ☐ An Acquittal Order for offense under [Sec. 106.041, A.B.C.](#)
 - ☐ Notice must be in form prescribed by DPS and must contain driver's license number if defendant has a driver's license.
 - ☐ Chapter 58 of the Family Code and other law limiting collection, reporting and destruction of confidential information on

[Sec. 106.116, A.B.C.](#)

Statute does not indicate whether or not clerk may charge a fee.

[Sec. 106.117, C.C.P.](#)

[Sec. 58.007, F.C.](#)

juveniles or minors does not apply to
information reported or maintained under
this section.

CHAPTER 13 JUVENILE AND MINOR PROCEEDINGS

B. Alcoholic Beverage Code Offenses

2. General Penalty Provision, [Sec. 106.071, A.B.C.](#)

Checklist 59	Notes
<input type="checkbox"/> 1. Section 106.071, A.B.C. , provides the punishment scheme for the following violations: <ul style="list-style-type: none"> <input type="checkbox"/> Purchase of Alcohol by a Minor. <input type="checkbox"/> Attempt to Purchase Alcohol by a Minor. <input type="checkbox"/> Consumption of Alcohol by a Minor. <input type="checkbox"/> Possession of Alcohol by a Minor. <input type="checkbox"/> Misrepresentation of Age by a Minor. <input type="checkbox"/> Public Intoxication under the Age of 21. 	Sec. 106.115, A.B.C.
<input type="checkbox"/> 2. A first conviction is punishable as a Class C misdemeanor--maximum fine of \$500. <ul style="list-style-type: none"> <input type="checkbox"/> The court is required to order: <ul style="list-style-type: none"> <input type="checkbox"/> An alcohol awareness program. <input type="checkbox"/> Eight to 12 hours of alcohol-related community service. 	<p>Form</p> <p>Sec. 106.115, A.B.C.</p> <p>Sec. 106.071(e), A.B.C.</p> <p>Community service ordered must be related to education about or prevention of misuse of alcohol if programs and services are available in the community. If educational programs and services are not available, the court may order community service that it</p>

<p><input type="checkbox"/> DPS to suspend or deny issuance of the minor's DL or permit for 30 days.</p> <p><input type="checkbox"/> 3. A second conviction is punishable as a Class C misdemeanor--maximum fine of \$500.</p> <p><input type="checkbox"/> The court is required to order:</p> <p><input type="checkbox"/> 20-40 hours of alcohol-related community service.</p>	<p>considers appropriate for rehabilitative purposes.</p> <p>The driver's license suspension takes effect on the 11th day after the date the minor is convicted. Sec. 106.071(h), A.B.C. Form</p>
<p><input type="checkbox"/> DPS to suspend or deny issuance of the minor's DL or permit for 60 days.</p>	<p>Community service ordered must be related to education about or prevention of misuse of alcohol if programs and services are available in the community. If educational programs and services are not available, the court may order community service that it considers appropriate for rehabilitative purposes.</p> <p>The driver's license suspension takes effect on the 11th day after the date the minor is convicted. Sec. 106.071(h), A.B.C.</p>
<p><input type="checkbox"/> The alcohol awareness program is optional.</p> <p><input type="checkbox"/> 4. If it is shown at trial that a minor (17 to 20 years of age) has two prior convictions under this section, the offense is punishable by:</p>	<p>If the state prosecutor wants to seek the more serious penalty provided by this section, the municipal court does not have jurisdiction because the penalty includes the possibility of jail-time.</p>

- ☐ A fine of not less than \$250 or more than \$2000;
- ☐ Confinement in jail of not more than 180 days; or
- ☐ Both fine and confinement; plus,
- ☐ 180 days suspension or denial of DL or permit.
- ☐ If person is under 17 years of age and has two prior convictions under this section, then the court must transfer the case to juvenile court.
- ☐ 5. For purposes of enhancing the punishment a minor receives upon conviction of an offense to which this section applies, the Code provides that:
 - ☐ An adjudication under Title 3, Family Code, that the minor engaged in conduct described by this section is considered a conviction under this section; and
 - ☐ An order of deferred disposition for an offense alleged under this section is considered a conviction of an offense under this section. **Form**

[Sec. 51.08, F.C.](#)

An exception is made in [Sec. 51.08\(d\), F.C.](#) for courts that have created juvenile case managers under [Art. 45.054, C.C.P.](#)

[Sec. 106.071\(f\), A.B.C.](#)

See [Art. 45.051\(e\), C.C.P.](#) which provides “[i]f a complaint is dismissed under this article, there is not a final conviction and the complaint may not be used against the person for any purpose.”

CHAPTER 13 JUVENILE AND MINOR PROCEEDINGS

B. Alcoholic Beverage Code Offenses

3. General Penalty Provision, [Sec. 106.041, A.B.C.](#) - Minor D.U.I.

Checklist 60	Notes
<input type="checkbox"/> 1. Section 106.041, A.B.C. , provides the punishment for: <ul style="list-style-type: none"> <input type="checkbox"/> Driving Under the Influence of Alcohol by a Minor. 	Sec. 106.041, A.B.C.
<input type="checkbox"/> 2. A first conviction is punishable as a Class C misdemeanor--maximum fine of \$500. <ul style="list-style-type: none"> <input type="checkbox"/> The court is required to order: <ul style="list-style-type: none"> <input type="checkbox"/> An alcohol awareness program. <input type="checkbox"/> 20 to 40 hours of alcohol-related community service. 	Form Sec. 106.115, A.B.C. Community service ordered must be related to education about or prevention of misuse of alcohol. Administrative DL suspension is a separate proceeding. Municipal court does not order this suspension. See Chapters 524 and 724, T.C.
<input type="checkbox"/> 3. A second conviction is punishable as a Class C misdemeanor--maximum fine of \$500. <ul style="list-style-type: none"> <input type="checkbox"/> The court is required to order: <ul style="list-style-type: none"> <input type="checkbox"/> 40-60 hours of alcohol-related community service. 	Community service ordered must be related to education about or

- ☐ The alcohol awareness program is optional.
- ☐ 4. If it is shown at trial that a minor (17 to 20 years of age) has two prior convictions under this section, the offense is punishable by:
 - ☐ A fine of not less than \$250 or more than \$2000;
 - ☐ Confinement in jail of not more than 180 days; or
 - ☐ Both fine and confinement.
 - ☐ Remember, if person is under 17 years of age and has two prior convictions under this section, then the court must transfer the case to juvenile court.
- ☐ 5. For purposes of enhancing the punishment a minor receives upon conviction of an offense to which this section applies, the Code provides that:
 - ☐ An adjudication under [Title 3, Family Code](#), that the minor engaged in conduct described by this section is considered a conviction under this section; and

prevention of misuse of alcohol.

Administrative DL suspension is a separate proceeding. Municipal court does not order this suspension.

See [Chapters 524 and 724, T.C.](#)

If the state prosecutor wants to seek the more serious penalty provided by this section, the municipal court does not have jurisdiction because the penalty includes the possibility of jail-time.

An exception is made in [Sec. 51.08\(d\), F.C.](#) for courts that have created juvenile case managers under [Art. 45.054, C.C.P.](#)

|

- ❑ An order of deferred disposition for an offense alleged under this section is considered a conviction of an offense under this section. **Form**

See, however, [Art. 45.051\(e\), C.C.P.](#) which provides “[i]f a complaint is dismissed under this article, there is not a final conviction and the complaint may not be used against the person for any purpose.”

CHAPTER 13 JUVENILE AND MINOR PROCEEDINGS

B. Alcoholic Beverage Code

4. Alcohol Awareness Course.

Checklist 61	Notes
<input type="checkbox"/> 1. A court, on a first conviction or on placement of deferred disposition of a minor, shall require that the minor attend an alcohol awareness program for the following offenses:	Sec. 106.115, A.B.C.
<input type="checkbox"/> Purchase of Alcohol by a Minor;	Sec. 106.02, A.B.C.
<input type="checkbox"/> Attempt to Purchase Alcohol by a Minor;	Sec. 106.025, A.B.C.
<input type="checkbox"/> Consumption of Alcohol by a Minor;	Sec. 106.04, A.B.C.
<input type="checkbox"/> Driving Under the Influence of Alcohol by a Minor;	Sec. 106.041, A.B.C.
<input type="checkbox"/> Possession of Alcohol by a Minor;	Sec. 106.05, A.B.C.
<input type="checkbox"/> Misrepresentation of Age by a Minor;	Sec. 106.07, A.B.C.
<input type="checkbox"/> Public Intoxication (under age 21 but at least age 17).	Sec. 49.02(e), P.C.
<input type="checkbox"/> In addition, the court may require that the parent or guardian of the minor attend the alcohol awareness program when the minor is younger than 18 years of age.	
<input type="checkbox"/> Court may order the parent or guardian of the minor to do any act or refrain from doing any act if court determines that the doing or refraining from doing the act will increase the likelihood that the minor will complete the alcohol awareness course.	Sec. 106.115(d)(2), A.B.C. If the court places the minor on deferred disposition, the court must require an alcohol awareness course.

<input type="checkbox"/> Court order on parents may be enforced by contempt.	<p><i>Ex parte Powell</i>, 883 S.W.2d 775 (Tex. App. – Beaumont 1994)</p>
<input type="checkbox"/> Punishment on the parents: up to 3 days in jail and a fine up to \$100.	<p>Sec. 21.002(c), G.C.</p>
<input type="checkbox"/> 2. A court, on a subsequent conviction of a minor, may require that the minor attend an alcohol awareness program for the following offenses:	<p>Sec. 106.115, A.B.C.</p>
<input type="checkbox"/> Purchase of Alcohol by a Minor;	<p>Sec. 106.02, A.B.C.</p>
<input type="checkbox"/> Attempt to Purchase Alcohol by a Minor;	<p>Sec. 106.025, A.B.C.</p>
<input type="checkbox"/> Consumption of Alcohol by a Minor;	<p>Sec. 106.04, A.B.C.</p>
<input type="checkbox"/> Driving Under the Influence of Alcohol by a Minor;	<p>Sec. 106.041, A.B.C.</p>
<input type="checkbox"/> Possession of Alcohol by a Minor;	<p>Sec. 106.05, A.B.C.</p>
<input type="checkbox"/> Misrepresentation of Age by a Minor;	<p>Sec. 106.07, A.B.C.</p>
<input type="checkbox"/> Public Intoxication (under age 21 but at least age 17).	<p>Sec. 49.02(e), P.C.</p>
<input type="checkbox"/> In addition, the court may require that the parent or guardian of the minor attend the alcohol awareness program when the minor is younger than 18 years of age.	
<input type="checkbox"/> Court may order the parent or guardian of the minor to do any act or refrain from doing any act if court determines that the doing or refraining from doing the act will increase the likelihood that the minor will complete the alcohol awareness course.	<p>Sec. 106.115(d)(2), A.B.C.</p> <p>If the court places the minor on deferred disposition, the court must require an alcohol awareness course.</p>
<input type="checkbox"/> Court order on parents may be enforced by contempt.	<p><i>Ex parte Powell</i>, 883 S.W.2d 775 (Tex. App. – Beaumont 1994)</p>

- | | |
|---|--------------------------------|
| <p><input type="checkbox"/> Punishment on the parents: up to 3 days in jail and a fine up to \$100.</p> | <p>Sec. 21.002(c), G.C.</p> |
| <p><input type="checkbox"/> 3. The minor has 90 days from the date of final conviction to submit to the court evidence of satisfactory completion of the alcohol awareness program.</p> <p style="padding-left: 40px;"><input type="checkbox"/> For good cause, the court may extend this period by not more than 90 days.</p> | <p>Sec. 106.115(c), A.B.C.</p> |
| <p><input type="checkbox"/> 4. If the defendant presents evidence of successful completion of the course in a timely manner, the court may reduce the assessed fine to an amount equal to no less than one-half of the amount of the initial fine.</p> | <p>Sec. 106.115(c), A.B.C.</p> |
| <p><input type="checkbox"/> 5. Failure by the defendant to present evidence of completion within the prescribed time period obligates the court to order the Department of Public Safety to suspend the defendant's driver's license or permit, or, if the defendant does not have a driver's license or permit, to deny the issuance of a license or permit for a period not to exceed six months in either event.</p> | <p>Sec. 106.115(d), A.B.C.</p> |

CHAPTER 13 JUVENILE AND MINOR PROCEEDINGS

B. Alcoholic Beverage Code Offenses

5. Expungement

Municipal courts do not have jurisdiction in expungement proceedings generally. However, the Alcoholic Beverage Code specifically grants the court that originally heard and convicted a minor for an offense under this code the authority to expunge the conviction. Alcoholic Beverage Code offenses are specifically excluded from the general juvenile expunction procedures in [Art. 45.0216, C.C.P.](#)

Checklist 62	Notes
<input type="checkbox"/> 1. Any person convicted of not more than one violation of this code while a minor may, on attaining 21 years of age, file an application with the court that convicted him or her to have the conviction expunged. Form	Sec. 106.12, A.B.C.
<input type="checkbox"/> 2. The application shall contain the applicant's sworn statement that he or she was not convicted of any violation of this code except for the one that he or she seeks to have expunged.	
<input type="checkbox"/> 3. The court, upon finding that the applicant's statement is true, shall prepare an order that requires all disabilities resulting from the conviction be removed from the applicant's record. Form	
<input type="checkbox"/> 4. Give the clerk the order.	The order should contain a list of agencies, officials and persons who are subject to the order. The clerk sends by certified mail/return receipt a copy of the order to all that are subject to the order.
<input type="checkbox"/> 5. After entry of the order, the conviction may not be shown or made known for any purpose.	

CHAPTER 13 JUVENILE AND MINOR PROCEEDINGS

C. Other Fine-Only Misdemeanor Offenses: Jurisdiction and Proceedings

Municipal courts in 1991 were given jurisdiction over fine-only misdemeanor offenses, excluding public intoxication, committed by juvenile offenders. Section 8.07, Penal Code, provides the authority for municipal courts to proceed against certain juvenile offenders for finable misdemeanors. The Legislature in 1997 provided that a court must take a person's (someone younger than 17 years of age) plea in open court and issue a summons to compel the person's parent, guardian or managing conservator to be present during all proceedings in the case. Additionally, the Legislature in 1997 provided that failure of the parent to respond to the summons is a Class C misdemeanor.

Title 3 of the Juvenile Justice Code of the Family Code was substantially rewritten in 1995. Additional changes were made by the Legislature in 1997 providing juvenile offenders procedural and statutory safeguards not afforded adult defendants. However, Title 3 only has limited applicability to municipal court proceedings. When a Title 3 provision applies to a municipal court proceeding, it will be noted in the relevant section of the checklist.

Checklist 63	Notes
<p><input type="checkbox"/> 1. Determine the age of the offender at the time of the offense.</p> <p><input type="checkbox"/> A municipal court has jurisdiction over a person between 10 years of age and 17 years of age for the following types of offenses:</p> <p><input type="checkbox"/> A violation of a traffic law;</p> <p><input type="checkbox"/> A violation of a motor vehicle traffic ordinance;</p> <p><input type="checkbox"/> A misdemeanor punishable by fine only <i>other than public intoxication</i>; and</p> <p><input type="checkbox"/> A violation of a penal ordinance.</p>	<p>Secs. 51.02(2)(A), F.C., 51.03(f), F.C. and Sec. 8.07, P.C.</p>

☐ 2. Identify the code provision that the person is alleged to have violated.

- ☐ Alcoholic Beverage Code offenses;
- ☐ City ordinance offenses;
- ☐ Education Code offenses;
- ☐ Health and Safety Code offenses;
- ☐ Penal Code offenses; or
- ☐ Transportation Code offenses.

SEE [CHECKLIST 58](#)

SEE [CHECKLIST 65](#)

SEE [CHECKLIST 57](#)

☐ 3. Parent, guardian or managing conservator must be present during all proceedings.

- ☐ The court is required to issue a summons to compel the person's parent, guardian or managing conservator to be present during all proceedings in the case.
- ☐ The court may, however, waive the requirement of the presence of the parent, guardian or managing conservator if, after diligent effort, the court is unable to compel their presence.

[Art. 45.0215\(a\), C.C.P.](#)
Form

[Art. 45.0215\(b\), C.C.P.](#)

Should the court waive this requirement, it would be advisable to document in the offender's file what action the court employed to compel the parent's presence. If the parent, guardian or managing conservator fails to respond to the summons, it is punishable as a Class C misdemeanor. See [Art. 45.057\(e\), C.C.P.](#)

☐ 4. Determine whether the person wishes to hire an attorney.

- ☐ If an attorney is going to be hired, reset the case to the next available plea docket and inform the person and/or parent to have the attorney present for when the case is rescheduled.

<p><input type="checkbox"/> Provide the specific:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Date; <input type="checkbox"/> Place; and <input type="checkbox"/> Time of the resetting. <p><input type="checkbox"/> If an attorney is not going to be hired, proceed in taking the person's plea or set bail, if applicable.</p> <p><input type="checkbox"/> 5. Take the person's plea. It must be: Form</p> <ul style="list-style-type: none"> <input type="checkbox"/> In open court; <input type="checkbox"/> In the presence of a parent or guardian, unless waived; and <input type="checkbox"/> Before a judge. <p><input type="checkbox"/> 6. On a plea of not guilty, determine whether the person wants:</p> <ul style="list-style-type: none"> <input type="checkbox"/> A non-jury trial; or <input type="checkbox"/> A trial by jury. <input type="checkbox"/> Set the case according to the person's request. <input type="checkbox"/> Inform both the person and his or her parent or guardian, if applicable, of the date, time and place of the trial. <input type="checkbox"/> All trials are presumed to be open to the public. <p><input type="checkbox"/> 7. On a plea of "guilty" or "no contest", inform the person and his or her parent of the possible options to dispose of the case:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Teen court, if applicable. Form <input type="checkbox"/> Deferred disposition, if applicable. Form <input type="checkbox"/> Community service, if applicable. Form 	<p>"How do you plead to the charge of _____ brought against you? 'Guilty', 'No Contest', or 'Not Guilty'."</p> <p>SEE CHECKLIST 37</p> <p>SEE CHECKLIST 38 and 39</p> <p>Art. 1.24, C.C.P.</p> <p>Art. 45.052, C.C.P.</p> <p>Art. 45.051, C.C.P. SEE CHECKLIST 27</p> <p>Art. 45.049, C.C.P.</p>
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- ☐ Payment of the fine.
- ☐ 8. Set the fine.
 - ☐ The minimum and maximum fines vary depending on the code provision and the classification of the offense. Moreover, fines may vary depending on whether it is a first or subsequent offense. Thus, a court must look to the specific statute to determine the permissible fine range.
- ☐ 9. In addition to any fine and upon finding that the child committed a fine-only misdemeanor other than a traffic offense or public intoxication, the municipal or justice court **may**:
 - ☐ Refer the child or the child's parents, managing conservators or guardians for services under Sec. 264.302, F.C.; or
 - ☐ Parent may be ordered to refrain from conduct that may encourage the child to violate court order.
 - ☐ Parent may be ordered to attend parenting class or parental responsibility program.
 - ☐ Require that the child attend a special program that the court determines to be in the best interest of the child:

[Art. 45.057, C.C.P.](#)

[Art. 45.057\(b\)\(3\), C.C.P.](#)

Form

Programs include: rehabilitation, counseling, self-esteem and leadership, work and job skills training, job interviewing and work preparation, self-improvement, parenting, manners, violence avoidance, tutoring, sensitivity training, parental responsibility, community service, restitution, advocacy, and a mentoring program.

<input type="checkbox"/> The program must be approved by the county commissioners if county funds are expended.	Art. 45.057(b)(2), C.C.P.
<input type="checkbox"/> The court may not order a parent, managing conservator or guardian of a child to pay an amount greater than \$100 for the costs of the program.	Art. 45.057(c), C.C.P.
<input type="checkbox"/> The court may require that a person required to attend this program submit proof of attendance to the court.	Art. 45.057(d), C.C.P.
<input type="checkbox"/> A municipal or justice court shall endorse on the summons issued to a parent, managing conservator or a guardian an order to personally appear at the hearing with the child. Form	Art. 45.057(e), C.C.P.
<input type="checkbox"/> An order under this section involving a child is enforceable as contempt under Art. 45.050, C.C.P. Form - Contempt	Art. 45.057(f), C.C.P. SEE CHECKLIST 74 Form - Addendum
<input type="checkbox"/> 10. Failure to appear in court. <input type="checkbox"/> A court may report a person under 17 years of age who fails to appear in court to the Department of Public Safety. <input type="checkbox"/> The court, after filing this report, must report to the Department of Public Safety the final disposition of the case.	Secs. 521.201, T.C. Mail to: Driver Improvement & Control Box 4087 Austin, TX 78773 512/424-2000
<input type="checkbox"/> 11. Default in payment of fines.	SEE CHECKLIST 74
<input type="checkbox"/> 12. Notification of right to expunction (when offense occurs when person under age 17): <input type="checkbox"/> In open court; <input type="checkbox"/> Provide with a copy of Art. 45.0216, C.C.P.	Art. 45.0216, C.C.P. SEE CHECKLIST 71

CHAPTER 13 JUVENILE AND MINOR PROCEEDINGS

D. Transfer from Municipal Court to Juvenile Court

It would be prudent for the municipal court judge and other interested officials to meet with the juvenile court judge in your respective jurisdiction to devise a system of transfer that is acceptable to both courts.

Checklist 64	Notes
<input type="checkbox"/> 1. A municipal court may enter an “order of waiver of jurisdiction” and transfer the juvenile defendant to juvenile court whenever a complaint is pending against a juvenile for any fine-only offense other than a traffic offense, or a tobacco offense under Sec. 161.252, H.S.C.	Secs. 51.08(b)(2), F.C. and 161.257, H.S.C. Form
<input type="checkbox"/> 2. A municipal court shall enter an “order of waiver of jurisdiction” and transfer the juvenile defendant to juvenile court when the juvenile has previously been convicted of: <ul style="list-style-type: none"> <input type="checkbox"/> Two or more misdemeanors punishable by fine only other than traffic, public intoxication or tobacco; <input type="checkbox"/> Two or more violations of a penal ordinance of a political subdivision other than a traffic; or <input type="checkbox"/> One or more of each of the types of misdemeanors described above. 	Sec. 161.257, H.S.C.
<input type="checkbox"/> 3. A municipal court may elect not to enter an “order of waiver of jurisdiction” for a third or other subsequent violation if the court employs case managers for juvenile cases under Art. 45.054, C.C.P.	Sec. 51.08(d), F.C.
<input type="checkbox"/> 4. Notice to Juvenile Court. <ul style="list-style-type: none"> <input type="checkbox"/> A municipal court is required to notify the juvenile court of any pending complaint 	Sec. 51.08(c), F.C. A letter addressed to the juvenile court judge or the

against a juvenile except for:

- ☐ A traffic offense; or
- ☐ Public intoxication.

- ☐ The municipal court is to notify the juvenile court of the county in which the municipal court is located.
- ☐ In addition, the municipal court must furnish the juvenile court a copy of the final disposition of any matter in which the court does not waive jurisdiction.

appropriate designee of the juvenile court should contain the following information:

- 1) the name of the court;
- 2) the name of the defendant;
- 3) the name of the judge;
- 4) the offense charged; and
- 5) the cause number assigned to the case.

CHAPTER 13 JUVENILE AND MINOR PROCEEDINGS

E. Failure to Attend School

Juvenile justice in Texas is historically rooted in English common law and the concept of *parens patrie* (which allows the government to act in the authoritative capacity as a parent for children). Traditionally, the focus of the juvenile justice system was not to punish, but rather to rehabilitate children. The goal of rehabilitating children was better suited to family law and the civil justice system (specifically, juvenile courts). When a child did not attend school as required by law, the state would initiate a civil petition alleging truancy (defined as “willful and unjustified failure to attend school by one who is required to attend”).¹

Despite popular belief, truancy is not, and has never been, a criminal matter in Texas. While children who engaged in truancy could be ordered to attend school, they could not be convicted or punished by the imposition of a fine.

This perceived shortcoming in the civil truancy law led policymakers to create a separate criminal school attendance offense in 1993. Codified in the Education Code, an individual who is subject to the State’s compulsory school attendance law may be charged with *Failure to Attend School* ([Section 25.094, Education Code](#)), a Class C misdemeanor.

While initially, juvenile courts adjudicated all matters involving delinquency, by 1995 the growing number of juveniles entering the judicial system forced the State to fundamentally reconsider its approach to juvenile justice. To alleviate congested juvenile court dockets, the Legislature gave the municipal and justice courts jurisdiction of all Class C misdemeanor cases involving juveniles (with the exception of public intoxication). Additionally, juvenile courts were authorized, with permission, to transfer civil truancy cases to the municipal court and justice courts.

Differences in procedure and various related laws made the processing of civil truancy cases in municipal courts cumbersome. Differences in the civil and criminal law were often the source of confusion.

In the Fall 2000 the Texas Senate Education Committee assembled a workgroup of judges, school officials, educators, and attorneys to address perceived deficiencies in the State’s school attendance laws. The final product of the workgroup was S.B. 1432. The bill set out to accomplish the following objectives:

1. Relieve municipal and justice courts from processing civil truancy cases.
2. Distinguish the authority of peace officers acting as school attendance officers from non-peace officers.

¹ Black Law Dictionary, 6th Edition (1990).

3. Assure that school districts refer truant students into the judicial system in a timely manner.
4. Provide municipal and justice courts more discretion and resources to handle non-attendance cases.

Effective September 1, 2001, [Section 54.021 of the Family Code](#) now specifies that regardless if a juvenile court permissively waives its jurisdiction of civil truancy to the municipal court, the case must be filed as a complaint alleging a criminal matter (specifically, *Failure to Attend School*, [Section 25.094, Education Code](#)).

In essence, the changes made to the law in 2001 assure municipal courts that they will no longer adjudicate civil truancy matters. Rather, municipal courts now only adjudicate criminal allegations of *Failure to Attend School*.

Checklist 65

☐ 1. Compulsory School Attendance Law

[Sec. 25.085, E.C.](#)

The following are required to attend school each school day for the entire period the program of instruction is provided:

- ☐ A child who is at least six years of age, or who is younger than six years of age and has previously been enrolled in first grade, and who has not yet reached the child's 18th birthday, unless exempt under [25.086, E.C.](#);
- ☐ A child enrolled in either prekindergarten or kindergarten;
- ☐ A person who voluntarily enrolls in school or voluntarily attends school after the person's 18th birthday shall attend school each school day for the entire period the program of instruction is offered. A school district may revoke for the remainder of the school year the enrollment of a person who has more than five absences in a semester that are not excused under [Section 25.087](#). A person whose enrollment is revoked under this subsection may be considered an unauthorized person on school district

Note: This provision makes it clear that individuals 18 years of age or older who enroll to attend school are required to attend.

grounds for purposes of [Section 37.107, E.C.](#)

☐ 2. Exemptions from Compulsory Attendance

A defendant is exempt from attendance if he or she:

- ☐ attends a private or parochial school that includes in its course of study of good citizenship;
- ☐ is eligible to participate in a school district's special education program under Section 29.003 and cannot be appropriately served by the resident district;
- ☐ has a physical or mental condition of a temporary and remediable nature that makes the child's attendance infeasible and holds a certificate from a qualified physician specifying the temporary condition, indicating the treatment prescribed to remedy the temporary condition, and covering the anticipated period of the child's absence from school for the purpose of receiving and recuperating from that remedial treatment;
- ☐ is expelled in accordance with the requirements of law in a school district that does not participate in a mandatory juvenile justice alternative education program;
- ☐ is at least 17 years of age and:
 - ☐ (A) is attending a course of instruction to prepare for the high school equivalency examination, and (1) has the permission of the child's parent or guardian to attend the course; (2) is required by court order to attend the course; (3) has established a residence separate and apart from the child's parent, guardian, or other person having lawful control of the child; or (4) is homeless as defined by [42 U.S.C. Section 11302](#); or

[Sec. 25.086, E.C.](#)

Note: Marriage is neither an exemption for compulsory attendance, nor is it a defense for Failure to Attend School.

- ☐ (B) has received a high school diploma or high school equivalency certificate;
- ☐ is at least 16 years of age and is attending a course of instruction to prepare for the high school equivalency examination, if:
 - ☐ (A) the child is recommended to take the course of instruction by a public agency that has supervision or custody of the child under a court order; or
 - ☐ (B) the child is enrolled in a Job Corps training program under the Job Training Partnership Act ([29 U.S.C. Section 1501 et seq.](#)),
- ☐ is enrolled in the Texas Academy of Mathematics and Science;
- ☐ is enrolled in the Texas Academy of Leadership in the Humanities; or
- ☐ is specifically exempted under another law.

☐ 3. Applicable Procedures.

[Sec. 25.0952, E.C.](#)

Effective September 1, 2001, school attendance violations prosecuted in municipal court against either the student or the parent/guardian are adjudicated pursuant to Chapter 45 of the Code of Criminal Procedure.

☐ 4. Elements of Failure to Attend School.

Note: Arrest for this offense requires affidavit showing probable cause. [Sec. 25.094 \(d\), E.C.](#)

- ☐ The individual is required to attend school under [Sec. 25.085, E.C.](#) (See item 1 of this checklist.)
- ☐ The individual fails to attend school 10 or more days or parts of days within six months

[Sec. 25.094\(a\)\(1\), E.C.](#)

[Sec. 25.094\(a\)\(2\), E.C.](#)

in the same school year or on three or more days within a four week period.

- ☐ It is an affirmative defense to the offense that:
 - ☐ The absence was excused by a school official or should be excused by the court. The burden is on the defendant to prove this by the preponderance of the evidence standard;
 - ☐ One or more of the absences required to be proven was involuntary. The burden is on the defendant to prove this by the preponderance of the evidence standard.

☐ 5. Failure to Attend Proceedings

A. Summons of Parents or Guardian

- ☐ Unless the defendant has had the disability of minority removed, the defendant's guardian or managing conservator must be present during all proceedings.
- ☐ The court is required to issue a summons to compel the person's parent, guardian or managing conservator to be present during all proceedings in the case. **Form**
- ☐ After receiving notice, failure to attend the hearing as required is a Class C misdemeanor
- ☐ The court may, however, waive the requirement of the presence of the parent, guardian or managing conservator if, after diligent effort, the court is unable to compel their presence.

[Sec. 25.094\(f\), E.C.](#)

[Art. 45.0215\(a\), C.C.P.](#), [Art. 45.054\(c\), C.C.P.](#)

Note: While marriage is not a defense or an exemption to attendance. It does remove the disability of minority. Thus, the parents of defendants who are younger than 17 years of age and who are married need not be summoned. See [Sec. 1.104, F.C.](#)

[Arts. 45.0215\(a\) and 45.054\(c\) C.C.P.](#)

[Art. 45.054\(d\), C.C.P.](#)

[Art. 45.0215\(a\), C.C.P.](#)

Note: Should the court waive this requirement, it would be advisable to document in the

offender's file what action
the court employed to
compel the parent's
presence.

B. Right to Counsel

- ☐ Determine whether the person wishes to hire an attorney.
- ☐ If an attorney is going to be hired, reset the case to the next available plea docket and inform the person and/or parent to have the attorney present for when the case is rescheduled. Provide the specific:
 - ☐ Date;
 - ☐ Place; and
 - ☐ Time of the resetting.
- ☐ If an attorney is not going to be hired, proceed in taking the person's plea.

Note: The right to counsel should not be confused with the right to have counsel appointed. Like other fine-only offenses, there is no right to the appointment of counsel.

C. Expunction Rights

- ☐ On the commencement of proceedings, the court shall inform the defendant and the parent in open court of the individual's expunction rights and provide the individual and individual's parent with a written copy of [Art. 45.055, C.C.P.](#) **Form**

[Art. 45.054\(e\), C.C.P.](#)

D. Taking the Plea

- ☐ Take the person's plea. It must be:
 - ☐ In open court;
 - ☐ In the presence of a parent or guardian, unless waived (if defendant is under 17 years of age); and
 - ☐ Before a judge.
- ☐ On a plea of not guilty, determine whether the person wants:

"How do you plead to the charge of _____ brought against you? 'Guilty', 'No Contest', or 'Not Guilty'."

- | | |
|--|--|
| <input type="checkbox"/> The individual attend a preparatory class for the high school equivalency exam, if court determines child is too old to do well in formal classroom environment. | Art. 45.054(a)(1)(B), C.C.P. |
| <input type="checkbox"/> If the individual is at least 16 years of age, he or she may also be ordered to take the high school equivalency examination administered under Sec. 7.111, E.C. | Art. 45.054(a)(1)(C), C.C.P. |
| <input type="checkbox"/> The individual attend a special program court determines to be in best interest of the individual, including: <ul style="list-style-type: none"> <input type="checkbox"/> Alcohol or drug abuse program; <input type="checkbox"/> Rehabilitation; <input type="checkbox"/> Counseling, including self-improvement counseling; <input type="checkbox"/> Training in self-esteem and leadership; <input type="checkbox"/> Work and job skills training; <input type="checkbox"/> Training in parenting, including parental responsibility; <input type="checkbox"/> Training in manners; <input type="checkbox"/> Training in violence avoidance; <input type="checkbox"/> Sensitivity training; and <input type="checkbox"/> Training in advocacy and mentoring. | Art. 45.054(a)(2), C.C.P. |
| <input type="checkbox"/> The individual's parents, managing conservator or guardian attend a class for students at risk of dropping out. | Art. 45.054(a)(3), C.C.P.
Note: This order is enforceable by contempt see, Art. 45.054 (b), C.C.P.

The term "parent" includes anyone standing in parental relation. Art. 45.054(h), C.C.P. |
| <input type="checkbox"/> The individual complete reasonable community service requirements, or participate in tutoring provided by the school for the courses in which the defendant is enrolled, or | Art. 45.054(a)(4), C.C.P. |
| <input type="checkbox"/> The individual participate in a tutorial program provided by the school, in academic subjects for which child is enrolled, for a total number | Art. 45.054(a)(5), C.C.P. |

of hours ordered by the court.

- ☐ The individual have driver's license suspended or denied for up to 365.
- ☐ A dispositional order may not extend beyond 180 days or the end of the school year, whichever period is longer.

[Art. 45.054\(f\), C.C.P.](#)

[Art. 45.054\(g\), C.C.P.](#)

G. General Optional Orders Applicable to Juveniles.

[Art. 45.054\(b\)\(1\), C.C.P.](#)

- ☐ In addition to any fine and upon finding that the child committed a fine-only misdemeanor other than a traffic offense or public intoxication, the municipal or justice court may: **Form**

Note: This provision only applies to a defendant who is a "child" as defined by Art. 45.058(g) (*i.e.*, "at least 10 years of age and younger than 17 years of age" and charged with or convicted of an offense that a municipal or justice court has jurisdiction.

- ☐ Refer the child or the child's parents, managing conservators or guardians for services under [Sec. 264.302, F.C.](#); or

[Art. 45.057\(b\)\(1\), C.C.P.](#)

- ☐ Parent may be ordered to refrain from conduct that may encourage the child to violate court order.

[Art. 45.057\(b\)\(3\), C.C.P.](#)

- ☐ Parent may be ordered to attend parenting class or parental responsibility program.

- ☐ Require that the child attend a special program that the court determines to be in the best interest of the child:

Programs include: rehabilitation, counseling, self-esteem and leadership, work and job skills training, job interviewing and work preparation, self-improvement, parenting, manners, violence avoidance, tutoring, sensitivity training, parental responsibility, community service, restitution,

	advocacy, and a mentoring program. Art. 45.057(b)(2), C.C.P.
<input type="checkbox"/> The program must be approved by the county commissioners;	Art. 45.057(b)(2), C.C.P.
<input type="checkbox"/> The court may not order a parent, managing conservator or guardian of a child to pay an amount greater than \$100 for the costs of the program;	Art. 45.057(c), C.C.P.
<input type="checkbox"/> The court may require that a person required to attend this program submit proof of attendance to the court;	Art. 45.057(d), C.C.P.
<input type="checkbox"/> A municipal or justice court shall endorse on the summons issued to a parent, managing conservator or a guardian an order to personally appear at the hearing with the child.	Art. 45.057(e), C.C.P.
<input type="checkbox"/> The summons must note that failure to appear is a Class C misdemeanor.	
<input type="checkbox"/> An order under this section involving a child is enforceable under Art 45.050 C.C.P. See CHECKLIST 72 .	Art. 45.057(f), C.C.P.
<input type="checkbox"/> An order under this section not involving a child is enforceable by contempt.	Art. 45.057(h), C.C.P. SEE CHECKLIST 73.

Code of Criminal Procedure Article 45.058 provides the procedure for handling juvenile offenders taken into custody for fine-only misdemeanor offenses.

A child who is at least 10 years of age but younger than 17 years of age and taken into custody must be taken to a place of nonsecure custody or before the municipal court, or released to a parent, guardian or other responsible adult. If the child is taken to a place of nonsecure custody (designated by the head of the law enforcement with custody of the child), the child cannot be detained for longer than six (6) hours.

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- ☐ Not used as a secure detention area or part of a secure detention area.
- ☐ 2. A place of nonsecure custody must observe the following procedures:
 - ☐ A child may not be secured physically to a cuffing rail, chair, desk, or other stationary object.
 - ☐ The child may be held in the nonsecure facility only long enough to accomplish the purpose of identification, investigation, processing, release to parents, or the arranging of transportation to the appropriate juvenile court, juvenile detention facility, municipal court, or justice court.
 - ☐ Residential use of the area is prohibited.
 - ☐ The child shall be under continuous visual supervision by a law enforcement officer or facility staff person during the time the child is in nonsecure custody.
 - ☐ The child may not be detained in a place of nonsecure custody for more than six hours.
- ☐ 3. A child taken into custody may be released to the child's parent, guardian, custodian, or other responsible adult as provided in [Section 52.02\(a\)\(1\), F.C.](#) for:
 - ☐ a traffic offense;
 - ☐ an offense other than public intoxication punishable by fine only; or
 - ☐ as a status offender or nonoffender.
- ☐ 4. A child cannot be incarcerated for contempt. For details about contempt for juveniles see [CHECKLIST 74](#).

CHAPTER 13 JUVENILE AND MINOR PROCEEDINGS

G. Children Taken into Custody for Violation of Juvenile Curfew

The purpose of [Code of Criminal Procedure Art. 45.059](#) is to provide a place of non-secure custody for juvenile curfew offenders. In addition, the juvenile curfew processing office under this section is not subject to the approval of the juvenile board. Instead, the head of the law enforcement agency having custody of the juvenile is responsible for designating a juvenile curfew processing office. This section provides flexibility to the city in handling its juvenile curfew violators while establishing procedures to be followed once the juvenile is taken into custody.

The procedures that follow place the responsibility of ensuring compliance with this section on the peace officer who takes into custody a person under 17 years of age for a juvenile curfew offense.

Checklist 67	Notes
<input type="checkbox"/> 1. A peace officer who takes into custody a person under 17 years of age for a violation of a juvenile curfew ordinance shall , without unnecessary delay: <ul style="list-style-type: none"> <input type="checkbox"/> Release the person to the person's parent, guardian or custodian; <input type="checkbox"/> Take the person before a municipal or justice court to answer the charge; or <input type="checkbox"/> Take the person to a place officially designated as a juvenile curfew processing office. 	Art. 45.059(a), C.C.P.
<input type="checkbox"/> 2. A juvenile curfew processing office must observe the following procedures: <ul style="list-style-type: none"> <input type="checkbox"/> The office must be an unlocked, multipurpose area that is not designated, set aside or used as a secure detention area or part of a secure detention area. 	Art. 45.059(b), C.C.P.

- ☐ The person may not be secured physically to a cuffing rail, chair, desk, or stationary object.
- ☐ The person may not be held longer than necessary to accomplish the purposes of identification, investigation, processing, release to parents, guardians or custodians, and arrangement of transportation to school or court.
- ☐ A juvenile curfew processing office may not be designated or intended for residential purposes.
- ☐ The person must be under continuous visual supervision by a peace officer or other person during the time the person is in the juvenile curfew processing office.
- ☐ A person may not be held in a juvenile curfew processing office for more than six (6) hours.
- ☐ 3. A juvenile curfew office, if so designated, may also be used as a place of nonsecure custody for children taken into custody for:
 - ☐ Traffic offenses;
 - ☐ Other fine-only misdemeanor offenses; or
 - ☐ As a status offender.
- ☐ 4. The court shall notify the juvenile court or its designated official of any pending complaint against a child alleging a violation of a fine-only misdemeanor other than a traffic offense or the offense of public intoxication. **Form**
 - ☐ Upon final disposition of any matter that the court did not waive its original jurisdiction, the court shall furnish the juvenile court or its designated official a copy of the final disposition of the case.

SEE [CHECKLIST 66](#)

[Sec. 51.08\(c\), F.C.](#)

CHAPTER 13 JUVENILE AND MINOR PROCEEDINGS

H. Juvenile Magistration - Magistrate's Warning for a Written or Oral Juvenile Confession, [Sec. 51.095, Family Code](#)

The Legislature in 1997 streamlined what is required of a magistrate concerning the warnings that must be administered to a juvenile before an oral or written statement/confession may be taken by law enforcement officer. Of significance, a magistrate is no longer required to admonish the juvenile regarding discretionary transfer and determinate sentencing possibilities. All that is required for offenses committed after September 1, 1997 is the basic Texas *Miranda* warning. The magistrate must still certify, however, that the juvenile understands the nature and contents of the statement and has knowingly, intelligently, and voluntarily waived his or her rights.

The Legislature additionally in 1997 provided that a juvenile's confession may be taken by an electronic recording device—video or tape recording. To be admissible the following requirements must be satisfied: 1) the juvenile must be given the Texas *Miranda* warning by a magistrate; 2) the confession must be taken in juvenile processing office; 3) the magistrate's warning must be part of the video or tape recording; 4) the juvenile must knowingly, intelligently and voluntarily waive each right stated in the warning; 5) the recording device must be capable of making an accurate recording; 6) the person operating the recording device must be competent; 7) each voice on the recording must be identified; 8) the recording device may not be altered; and 9) not later than the 20th day before the proceeding, the juvenile's attorney must be given a complete and accurate copy of each recording of the juvenile.

In 1999, Subsection (d) was added to clarify that children in the custody of the Texas Department of Protective and Regulatory Services are effectively in police custody when being questioned as suspects. They are therefore entitled to the protections in [Sec. 51.095, Family Code](#). Subsection (d) of Sec. 51.095 also authorizes a referee or master to perform magistrate duties under Sec. 51.095 without the approval of the juvenile court if the juvenile board of the county has so authorized.

Checklist 68	Notes
<input type="checkbox"/> 1. Identify yourself to the juvenile.	"My name is _____. I am the Judge of _____ Court."

- ☐ 2. Determine if the juvenile sufficiently understands the English language or possesses any impairments.
- ☐ 3. If necessary, swear a person to act as an interpreter.
- ☐ 4. If the juvenile is deaf, obtain the services of an interpreter as provided by Art. 38.31, C.C.P., to interpret the warning.
- ☐ 5. All activities must take place in a setting approved by the juvenile court. This means the juvenile processing office, or the office or official designated by the juvenile court as required in Sec. 52.02 of the Family Code.
 - ☐ Be sure that you know the policy set out by your local juvenile court or juvenile board as to where a juvenile might be taken for receipt of a statement.
- ☐ 6. Advise the juvenile of the following: **Form**
 - ☐ "You may remain silent and not make any statement at all and that any statement that you make may be used in evidence against you".
 - ☐ "You have the right to have an attorney present to advise you either prior to any questioning or during the questioning".
 - ☐ "If you are unable to employ an attorney, you have the right to have an attorney appointed to counsel with you before or during any interviews with peace officers or attorneys representing the State".
 - ☐ "You have the right to terminate the interview at any time."
- ☐ 7. Advise the juvenile that: **Form**
 - ☐ "You will not be penalized for not making a

[Art. 38.30, C.C.P.](#)

[Art. 15.17\(c\), C.C.P.](#)
SEE [CHECKLIST 53](#)

A "juvenile processing office" should **not** be confused with the "juvenile curfew processing office" found in [Sec. 45.059\(b\) of the Code of Criminal Procedure](#) or a "place of nonsecure custody" described in [Sec. 52.027 of the Family Code](#).

[Sec. 51.095\(a\)\(1\)\(A\), F.C.](#)

statement."

- ☐ "Any prior oral statements made by you are not admissible except if the statement contains assertions of facts or circumstances that are found to be true, and which tends to establish your guilt."
- ☐ 8. Sign the written warning noting the date and time.
- ☐ 9. After the statement is reduced to writing, a magistrate must again give a proper warning to the child before the written statement is signed by the juvenile in the presence of the magistrate.
- ☐ 10. No law enforcement official or prosecuting attorney can be present **except** that a magistrate may require a bailiff or law enforcement officer to be present to insure the safety of the magistrate and other court personnel.
- ☐ The bailiff or law enforcement officer may **not** carry a weapon in the presence of the child.
- ☐ 11. The magistrate must certify in writing that he or she is convinced that the juvenile understands the nature and contents of the statement and signs it voluntarily. **Form**

CHAPTER 13 JUVENILE AND MINOR PROCEEDINGS

I. Health & Safety Code

1. Tobacco Use by Minors.

Minors convicted of tobacco offenses are subject to a unique set of penalty provisions. The Legislature in 1997 added Subchapter N to Chapter 161 of the Health and Safety Code creating new offenses and penalties for unlawful tobacco use by minors. The offenses and maximum fine amount are found in [Sec. 161.252, H.S.C.](#), and tobacco awareness classes and community service requirements are found in [Sec. 161.253](#).

[Sec. 161.257, H.S.C.](#), provides that Title 3, Family Code does not apply to a proceeding under Subchapter N (Tobacco Use by Minors). This means that minors charged with tobacco offenses may not be transferred to juvenile court.

Definitions:

[Sec. 161.251, H.S.C.](#), incorporates the definitions of "cigarette" and "tobacco product" found in the Tax Code.

"**Cigarette**" is defined in [Sec. 154.001, Tax Code](#), as "a roll for smoking:

- (A) that is made of tobacco or tobacco mixed with another ingredient and wrapped or covered with a material other than tobacco; and
- (B) that is not a cigar.

"**Tobacco product**" is defined in [Sec. 155.001, Tax Code](#), as

- (A) a cigar;
- (B) smoking tobacco, including granulated, plug-cut, crimp-cut, ready-rubbed, and any form of tobacco suitable for smoking in a pipe or as a cigarette;
- (C) chewing tobacco, including Cavendish, Twist, plug, scrap, and any kind of tobacco suitable for chewing;
- (D) snuff or other preparations of pulverized tobacco; or
- (E) an article or product that is made of tobacco or a tobacco substitute and that is not a cigarette.

Checklist 69	Notes
<input type="checkbox"/> 1. Determine age of defendant at the time of the offense. <input type="checkbox"/> A person must be younger than 18 years of age to commit the offenses described in Sec. 161.252, H.S.C.	 Sec. 161.252(a), H.S.C.

☐ 2. Identify the code provision that is alleged to have been violated.

☐ Possession, Purchase, Consumption or Acceptance of Cigarettes or Tobacco Products by a Minor.

☐ Elements of this offense are:

☐ an individual younger than 18;

☐ (select one):

☐ possesses;

☐ purchases;

☐ consumes;

☐ accepts.

☐ (select one)

☐ a cigarette;

☐ tobacco product (specify the product).

☐ False Proof of Age by a Minor to Obtain Cigarette or Tobacco Product.

☐ Elements of this offense are:

☐ an individual younger than 18;

☐ falsely represents himself or herself to be 18 or older;

☐ by displaying a proof of age that is false;

☐ in order to (select one):

☐ obtain possession of;

☐ purchase;

☐ receive.

☐ (select one)

☐ a cigarette;

☐ a tobacco product (specify the product).

☐ Exceptions:

☐ It is an exception if the defendant possessed the cigarette or tobacco product in the presence of an adult

[Sec. 161.252\(a\)\(1\), H.S.C.](#)

To give defendant adequate notice of the offense charged, complaint must allege only one specific violation, *i.e.*, "possessed a cigarette" or "purchased a cigar." A complaint alleging defendant "possessed, purchased or received" or alleging "a tobacco product" is subject to being quashed.

[Sec. 161.252\(a\)\(2\), H.S.C.](#)

To give defendant adequate notice of the offense charged, complaint must allege only one specific violation, *i.e.*, "to obtain possession of a cigarette" or "to purchase chewing tobacco". A complaint alleging "to obtain possession of, purchase or receive" or alleging "a tobacco product" is subject to being quashed.

The parent, guardian or spouse exception applies only to possession. [Sec. 161.252\(b\)\(1\), H.S.C.](#)

parent or guardian or spouse.

- ☐ It is an exception if the defendant is in the presence of an employer, if possession or receipt is required as part of defendant's duties as an employee.
- ☐ It is an exception if the defendant is participating in an inspection or test of compliance in accordance with [Sec. 161.088, H.S.C.](#)
- ☐ Upon conviction, the penalties are provided in Secs. 161.252(d) and 161.253, H.S.C.
- ☐ 3. If the defendant is younger than 17 years of age, ensure that a parent or a guardian is present during all proceedings.
 - ☐ Summon the parent or guardian to appear with the defendant if defendant is under 17.
 - ☐ The court, however, may waive the requirement of the presence of the parent or guardian if the court is unable to secure their presence by issuing a summons.
 - ☐ If defendant resides in a county other than the county where offense occurred, defendant may, with leave of court, enter a plea before a justice in the county where defendant resides.
- ☐ 4. Determine whether the defendant wishes to hire an attorney.
 - ☐ If an attorney is going to be hired, reset the case to the next available plea docket.

The employee exception applies only to possession or receipt by a minor. [Sec. 161.252\(b\)\(2\), H.S.C.](#)

This is sometimes known as "the minor sting operation" exception and applies to all Sec. 161.252 offenses. [Sec. 161.252\(c\), H.S.C.](#)

[Art. 45.0215, C.C.P.](#)

Form

If the court waives this requirement, document in the defendant's file what action the court employed to compel the parent's or guardian's presence.

[Art. 45.0215\(c\), C.C.P.](#)

<ul style="list-style-type: none"> <input type="checkbox"/> Inform defendant (and parent if defendant is under age 17) to have the attorney present when the case is rescheduled. <input type="checkbox"/> Provide the specific: <ul style="list-style-type: none"> <input type="checkbox"/> Date; <input type="checkbox"/> Place; and <input type="checkbox"/> Time of the resetting. <input type="checkbox"/> If an attorney is not going to be hired, proceed in taking the defendant's plea. 	<p>If defendant is under 17, require parents' presence at all proceedings even if defendant is represented by an attorney.</p>
<ul style="list-style-type: none"> <input type="checkbox"/> 5. Take the defendant's plea. <input type="checkbox"/> No person under age 17 may plead guilty to an offense except in open court before a judge. <input type="checkbox"/> If defendant will not plead, enter a not guilty plea for him or her. 	<p>"How do you plead to the charge of _____ brought against you? 'Guilty' or 'No Contest' or 'Not Guilty'."</p> <p>Art. 45.0215, C.C.P.</p> <p>Art. 45.024, C.C.P.</p>
<ul style="list-style-type: none"> <input type="checkbox"/> 6. On a plea of not guilty, determine whether the defendant wants: <ul style="list-style-type: none"> <input type="checkbox"/> A non-jury trial; or <input type="checkbox"/> A trial by jury. <input type="checkbox"/> Set the case accordingly. <input type="checkbox"/> If defendant will not choose jury or non-jury trial, set case for jury trial. <input type="checkbox"/> Inform the defendant (and parent if 	<p>SEE CHECKLIST 37</p> <p>SEE CHECKLIST 38 and 39</p> <p>If defendant is under age</p>

defendant is under age 17) of the date, time and place of the trial.	17, require parents' presence at trial and all other proceedings, even if defendant has an attorney.
<input type="checkbox"/> 7. On a plea of "guilty" or "no contest," inform the defendant (and parent if defendant is under age 17) of the possible options to dispose of the case:	
<input type="checkbox"/> Teen court, if applicable. Form	Sec. 45.052, C.C.P.
<input type="checkbox"/> Deferred disposition, if applicable.	SEE CHECKLIST 27
<input type="checkbox"/> For first conviction, suspension of fine and dismissal of case if defendant completes tobacco awareness course or tobacco-related community service.	Sec. 161.253(f)(2), H.S.C.
<input type="checkbox"/> For subsequent conviction, court may reduce fine by half if defendant completes tobacco awareness course or tobacco-related community service.	Sec. 161.253(f)(1), H.S.C.
<input type="checkbox"/> Payment of the full fine and suspension or denial of driver's license if awareness course or community service not completed on time.	Maximum fine is \$250. Sec. 161.252(d), H.S.C. Driver's license suspension or denial up to 180 days. Sec. 161.254(a), H.S.C.
<input type="checkbox"/> 8. Set the fine and order other sanctions required by this code.	
Warn the defendant that failure to complete awareness course or community service on time will result in suspension of his or her driver's license or refusal to issue a driver's license by the Department of Public Safety.	Sec. 161.254(a), H.S.C.
<input type="checkbox"/> 9. Default in payment of fines.	
<input type="checkbox"/> The court may report failure to pay fine to the Department of Public Safety; but only if the minor committed the offense while under	

17 years of age.

- ☐ Use DIC-81 form to report failure to pay fine. (You may request a copy of this form from DPS).

Mail to:
Driver Improvement &
Control
Box 4087
Austin, TX 78773

SEE [CHECKLIST 74](#) for
general juvenile contempt
procedures.

- ☐ The court, after filing this report, should report back to the Department of Public Safety on the final disposition of the case.
- ☐ Use DIC-81 form to report final disposition. (You may request a copy of this form from DPS).

Mail to:
Driver Improvement &
Control
Box 4087
Austin, TX 78773

CHAPTER 13 JUVENILE AND MINOR PROCEEDINGS

I. Health & Safety Code

2. Penalties for Tobacco Use by Minors. [Sec. 161.253, H.S.C.](#)

Checklist 70	Notes
<input type="checkbox"/> 1. Section 161.253, H.S.C. , provides the punishments for the following violations committed by a person under 18 years of age: <ul style="list-style-type: none"> <input type="checkbox"/> Possesses, purchases, consumes, or accepts a cigarette or tobacco product; <input type="checkbox"/> Falsely represents self to be 18 or older by displaying a false proof of age in order to possess, purchase or receive a cigarette or tobacco product. 	<p>Sec. 161.252(a)(1), H.S.C.</p> <p>Sec. 161.252(a)(2), H.S.C.</p>
<input type="checkbox"/> 2. A conviction is punishable by a fine not to exceed \$250. <ul style="list-style-type: none"> <input type="checkbox"/> The court is required to: <ul style="list-style-type: none"> <input type="checkbox"/> Suspend execution of sentence; and <input type="checkbox"/> Determine if a tobacco awareness program approved by the Health Department is readily available where defendant resides. <input type="checkbox"/> Defendant may request a tobacco awareness program be taught in a language other than English. <input type="checkbox"/> If approved tobacco awareness program is available, order defendant to complete program by the 90th day after 	<p>Sec. 161.252(d), H.S.C.</p> <p>Sec. 161.253, H.S.C.</p> <p>Call Office of Tobacco Prevention and Control, Texas Department of Health, 1-800-345-8647, for list of approved providers or check TMCEC website (www.tmcec.com).</p> <p>Sec. 161.253(b), H.S.C.</p> <p>Sec. 161.253(a) and (e), H.S.C.</p>

conviction.

- ☐ If tobacco awareness program is not readily available, order defendant to complete 8 to 12 hours of tobacco-related community service by the 90th day after conviction.
- ☐ Court may order parent or guardian to attend tobacco awareness program with the defendant.
- ☐ Defendant to present to court, in the manner required by the court, evidence of completion of the awareness course or of the community service.
- ☐ If defendant presents evidence on time:
 - ☐ On **first conviction**: judge shall dismiss the case.
 - ☐ On **subsequent conviction**: case not dismissed, but judge has discretion to reduce fine to not less than half the fine imposed.
- ☐ If defendant fails to present evidence on time, the court shall:
 - ☐ Order DPS to suspend or deny drivers license or permit.
 - ☐ Specify period of suspension or denial, up to a maximum of 180 days after date of the order.

[Sec. 161.253\(c\) and \(e\), H.S.C.](#)

[Sec. 161.253\(a\), H.S.C.](#)

[Sec. 161.253\(e\), H.S.C.](#)

[Sec. 161.253\(f\)\(2\), H.S.C.](#)

[Sec. 161.253\(f\)\(1\), H.S.C.](#)

[Sec. 161.254, H.S.C.](#)

[Sec. 161.257, H.S.C.](#), provides that Title 3, Family Code does not apply to these proceedings. Therefore the court cannot refer tobacco use by minor offenses to juvenile court. Commentors, however, do not believe that [Sec. 161.257, H.S.C.](#) means that a municipal court cannot enforce its orders by referring a juvenile to juvenile court for contempt (which is considered delinquent

- ☐ Use **DIC-15** form to report failure to complete awareness program or community service. (You may request a copy of this form from DPS).
- ☐ 3. **Expungement of conviction.** Individual convicted for an offense under Sec. 161.252, H.S.C., may apply to court to have conviction expunged.
 - ☐ Defendant must apply to court; and
 - ☐ Court must find defendant satisfactorily completed tobacco awareness program or tobacco-related community service ordered by the court.
 - ☐ If above satisfied, court shall order that the conviction may not be shown or made known for any purpose and order the following expunged from the record:
 - ☐ Conviction;
 - ☐ Complaint;
 - ☐ Verdict;
 - ☐ Sentence; and
 - ☐ Any other document relating to the offense.
 - ☐ Mail certified copies of order to:
 - ☐ DPS;
 - ☐ County sheriff;
 - ☐ Chief of your city's police; and
 - ☐ County attorney.

conduct by [Sec. 51.03\(a\)\(3\), F.C.](#)).

Mail to:
Driver Improvement &
Control
Box 4087
Austin, TX 78773

[Sec. 161.255, H.S.C.](#)

There is no requirement that defendant have achieved a certain age or have only one conviction under [Sec. 161.252](#) to qualify for expungement.

General expungement procedures found in [Art. 45.0216, C.C.P.](#) do not apply to tobacco violations.

CHAPTER 13 JUVENILE AND MINOR PROCEEDINGS

J. Expunction

The 77th Legislature repealed Art. 58.01, C.C.P., which required municipal courts follow the sealing provisions of the juvenile courts set out in [Sec. 58.003, F.C.](#) The sealing provisions of the Family Code still apply to offenses that occurred before September 1, 2001. (For those procedures, please see CHECKLIST 72 of version 3.5 of the *TMCEC Bench Book*.) For offenses occurring after September 1, 2001, the expunction provisions found in [Art. 45.0216, C.C.P.](#) apply

It is important to note that these provisions do not apply to Transportation Code or traffic ordinance cases. [Art. 45.0216\(b\), C.C.P.](#) This procedure also does not apply to Alcoholic Beverage Code, failure to attend or tobacco violations because those offenses have their own independent expunction provisions.

1. Eligibility

Checklist 71	Notes
<input type="checkbox"/> 1. Determine if the offense is covered by Art. 45.0216, C.C.P.	Art. 45.0216(b), C.C.P.
<input type="checkbox"/> Offenses described by Sec. 8.07(a)(2), P.C. (Transportation Code offense) and Sec. 8.07(a)(3), P.C. (traffic ordinances) are not covered.	Art. 45.0216(g)(1), C.C.P. SEE CHECKLIST 57
<input type="checkbox"/> Status offenses under Alcoholic Beverage Code have a separate provision in Sec. 106.12, A.B.C. and are not covered.	Art. 45.0216(b), C.C.P.
<input type="checkbox"/> Tobacco offenses under Health and Safety Code have a separate provision in Sec. 161.252, H.S.C. and are not covered.	Art. 45.0216(g)(2), C.C.P. SEE CHECKLISTS 69 and 70
<input type="checkbox"/> Offenses for failure to attend under the Education Code have a separate provision in Art. 45.055, C.C.P. and are not covered.	Art. 45.054(e), C.C.P. SEE CHECKLIST 65
<input type="checkbox"/> All other statutory or ordinance violations except public intoxication are controlled by these procedures.	Art. 45.0216(b), C.C.P. Sec. 8.07(a)(4) and (5), P.C.

- ☐ 2. Applies only to conviction and dismissals pursuant to [Art. 45.051](#) (deferred disposition) or [Art. 45.052](#) (teen court).
 - ☐ Chapter 55 of the Code of Criminal Procedure grants authority for other expunction to district courts.
 - ☐ Arrest and acquittal expunctions can be in municipal court, but are pursuant to Chapter 55 of the Code of Criminal Procedure.
- ☐ 3. Defendant must not have been convicted of more than one offense covered by these provisions.
- ☐ 4. Defendant must be at least 17 years of age.
- ☐ 5. Offense must have been committed before turning 17.
- ☐ 6. All eligible offenders must be informed of their rights under these provisions.
 - ☐ In open court.
 - ☐ The person and any parent.
 - ☐ Must provide a copy of Art. 45.0216, C.C.P.

[Art. 45.0216\(h\), C.C.P.](#)

SEE [CHECKLIST 82](#)

[Art. 45.0216\(e\), C.C.P.](#)

Form

CHAPTER 13 JUVENILE AND MINOR PROCEEDINGS

J. Expunction

2. Procedures

Checklist 72	Notes
<input type="checkbox"/> 1. Procedure is instigated by request of defendant. <ul style="list-style-type: none"> <input type="checkbox"/> In writing; <input type="checkbox"/> Identifying the case to be expunged; <input type="checkbox"/> Stating that the person has not been convicted of another offense under these provisions; and <input type="checkbox"/> Made under oath. 	
<input type="checkbox"/> 2. The court cannot order the payment of a fee or cost.	Art. 45.0216(i), C.C.P.
<input type="checkbox"/> 3. The provisions do not require notice or a hearing	
<input type="checkbox"/> 4. If the court finds the person was not convicted of any other covered offense while the person was a child, the court shall order the following items expunged: <ul style="list-style-type: none"> <input type="checkbox"/> Conviction; <input type="checkbox"/> Complaints; <input type="checkbox"/> Verdicts; <input type="checkbox"/> Sentences; <input type="checkbox"/> Prosecutorial records; <input type="checkbox"/> Law enforcement records; and <input type="checkbox"/> Any other documents related to the offense. 	Art. 45.0216(f), C.C.P.
<input type="checkbox"/> 5. Order the appropriate entities to return the relevant records to the court or to destroy them.	

- ☐ 6. Serve the order on the appropriate entities.
- ☐ 7. Destroy the records and delete computer references.
- ☐ 8. Further order that the person is released from all disabilities resulting from the conviction and that the conviction may not be shown or made known.
- ☐ 9. Provide a copy of the order to the movant/defendant.
- ☐ 10. Seal the order and make no computer or index reference to it.

CHAPTER 14 CONTEMPT OF COURT

A. General Contempt

Contempt of court is presumed not to exist and must be proven. The contempt power should be used sparingly. A person accused of contempt has the rights of a criminal defendant, regardless of whether the contempt is considered civil or criminal (discussed below). **Form - Adult plea Form - Contempt for disobedience to court order**

Checklist 73	Notes
<p><input type="checkbox"/> 1. Definitions:</p> <p>“Contemnor” is a person held in contempt.</p> <p>“Contempt.” There is no statutory definition of contempt. Common law defines it as conduct that tends to impede the judicial process by disrespectful or uncooperative behavior in open court or by unexcused failure to comply with clear court orders.</p> <p>Contempt can be direct or indirect:</p> <p>“Direct contempt” means an act which occurs in the judge’s presence and under circumstances that require the judge to act immediately to quell disruption, violence, disrespect or physical abuse. “Presence of the court” does not necessarily mean in the immediate presence of the judge or court. It could mean, among other things:</p> <p><input type="checkbox"/> A physical altercation occurring at the door of the courtroom although the court was not able to see the physical act itself;</p> <p><input type="checkbox"/> Disruptive acts or events done in the courtroom or just outside it while court is in session;</p> <p><input type="checkbox"/> Refusal to rise on the entrance and exit of</p>	<p><i>Ex parte Norton</i>, 191 S.W.2d 713 (Tex. 1946)</p> <p><i>Ex parte Chambers</i>, 898 S.W.2d 257 (Tex. 1995)</p> <p><i>Ex parte Daniels</i>, 722 S.W.2d 707 (Tex. Crim. App. 1987)</p> <p><i>Ex parte Knable</i>, 818 S.W.2d 811 (Tex. Crim. App. 1991)</p> <p><i>Ex parte Daniels</i>, 722 S.W.2d 707 (Tex. Crim. App. 1987)</p> <p><i>Ex parte Aldridge</i>, 334 S.W.2d 161 (Tex. Crim. App. 1959)</p> <p><i>Ex parte Krupps</i>, 712</p>

the judge;

- ☐ Tampering with jurors in the jury room;
- ☐ Abusive letter delivered to the judge in chambers while trial was in short recess;
- ☐ Refusal to answer questions in court;
- ☐ Affront to judges' personal sensibilities should not be confused with obstruction to the administration of justice, and offensive comments even though spoken in open court are not contemptuous unless they are disruptive or boisterous.

In most instances, direct contempt is punished summarily by the offended court at the time the contemptuous act occurs. However, there is no requirement that direct contempt be punished immediately; a judge has discretion to set the matter for hearing at a later time.

"Indirect contempt" is an act that occurs outside the court's presence:

- ☐ Failure to comply with a valid court order.
- ☐ Failure to appear in court.
- ☐ Attorney being late for trial.
- ☐ Offensive papers filed in court.

Indirect contempt requires the contemnor to be notified of the charges, the right to trial or hearing in open court and the right to counsel.

S.W.2d 144 (Tex. Crim. App. 1986)

Ex parte Flournoy, 312 S.W.2d 488 (Tex. 1958)

In re Bell, 894 S.W.2d 119 (Tex. 1995)

Ex parte Gordon, 584 S.W.2d 686 (Tex. 1979)

Ex parte Cooper, 657 S.W.2d 435 (Tex. Crim. App. 1983)

Ex parte Hill, 52 S.W.2d 367 (Tex. 1932)

Ex parte O'Fiel, 246 S.W. 664 (Tex. Crim. App. 1923)

Contempt can be civil or criminal:

Civil contempt.

- ☐ Willfully disobeying a court order or decree.

Ex parte Powell, 883 S.W.2d 775 (Tex. App.—Beaumont 1994)

Criminal contempt.

- ☐ Acts that disrupt court proceedings, obstruct justice, directly against the dignity of the court or that bring the court into disrepute.

See Step 8: Sentencing Goals

☐ 2. Statutory Authority for Contempt Proceedings.

- ☐ In municipal courts, contempt is generally punishable by up to three (3) days confinement in jail and/or a fine up to \$100.
- ☐ Some statutes provide for specific contempt fines and do not allow confinement in jail:
 - ☐ Failure by sheriff or officer to execute summons, subpoena or attachment is punishable for contempt by a fine of \$10 to \$200.
 - ☐ Failure to appear for jury duty is punishable for contempt by a maximum fine of \$100.

Sec. 21.002(c), G.C.

Art. 2.16, C.C.P.

Art. 45.027(c), C.C.P.

☐ 3. Special Procedures for Officers of the Court.

- ☐ Is the contemnor an officer of the court?
 - ☐ YES.

Officers of the court include attorneys, peace officers, clerks, bailiffs, court reporters, interpreters, and others on whom the court relies for its operation and enforcement of its orders.

- ☐ On proper motion, release contemnor on personal recognizance bond.

Sec. 21.002(d), G.C.

<p><input type="checkbox"/> Refer case to the presiding judge of the administrative district where alleged contempt occurred.</p> <p><input type="checkbox"/> An officer of the court is essentially entitled to a trial de novo on request.</p>	<p>The presiding judge will assign a judge to conduct a contempt hearing. (You may be called as a witness.)</p> <p><i>Ex parte Avila</i>, 659 S.W.2d 443 (Tex. Crim. App. 1983)</p>
<p><input type="checkbox"/> NO.</p>	<p>Note, the defendant and witnesses are not officers of the court.</p> <p>A justice or municipal court, moreover, may not punish by contempt a person who engages in conduct that violates an order of the court if the conduct is delinquent conduct under Sec. 51.03(a)(3), F.C. The court shall refer the person to the juvenile court for engaging in the delinquent conduct. Sec. 21.002(h), G.C.</p>
<p><input type="checkbox"/> An attorney may be held in direct contempt primarily for misconduct at trial:</p> <p><input type="checkbox"/> Expressing indifference to what court may hold or do on account of his or her improper remarks and misconduct.</p> <p><input type="checkbox"/> Making continuous frivolous objections amounting to obstruction of the orderly progress of the trial.</p>	<p><i>Ex parte Norton</i>, 191 S.W.2d 713 (Tex. 1946)</p> <p><i>Ex parte Crenshaw</i>, 259 S.W.587 (Tex. Crim. App. 1924)</p>
<p><input type="checkbox"/> 4. Determine whether act constitutes direct or indirect contempt.</p> <p><input type="checkbox"/> Direct contempt:</p>	

<ul style="list-style-type: none"> <input type="checkbox"/> Act occurred in the presence of the court or in its immediate vicinity while the court was in session. Judge is aware of all facts constituting contempt. <input type="checkbox"/> Immediate action is necessary to quell disruption, violence, disrespect, or to allow trial or proceeding to continue. <input type="checkbox"/> Indirect contempt: <ul style="list-style-type: none"> <input type="checkbox"/> Act occurred outside the presence of the court. Judge does not personally witness act. <input type="checkbox"/> Immediate action is not required to quell disruption, violence, disrespect, or physical abuse. <input type="checkbox"/> Act requires testimony or production of evidence to establish its existence. <input type="checkbox"/> Most common violation — disobeying a court order: <ul style="list-style-type: none"> <input type="checkbox"/> Court order must be in effect at time of act; <input type="checkbox"/> Contemnor must be aware of the order; <input type="checkbox"/> A written order must be served on the contemnor. <input type="checkbox"/> None of the Above. 	<p>If both of these conditions are met, summary proceedings are authorized and you may go to Step 5: Direct Contempt Procedure below.</p> <p>Due process requires notice and hearing. Go to Step 6: Indirect Contempt Procedure below.</p> <p>Probably not contempt. Skip rest of this section.</p>
<ul style="list-style-type: none"> <input type="checkbox"/> 5. Direct Contempt Procedure. <ul style="list-style-type: none"> <input type="checkbox"/> If the act is in disobedience to a court order or admonishment, and the contemnor disobeys or fails to cease the undesirable conduct: 	<p>Example: Any act that disrupts court proceeding or offends the dignity of the court. Contemnor argues combatively, uses curse words or threatening acts.</p>

<ul style="list-style-type: none"> <input type="checkbox"/> Announce that contemnor is in contempt of court. Form <input type="checkbox"/> Optional: Give contemnor opportunity to explain: <ul style="list-style-type: none"> <input type="checkbox"/> If explanation is not accepted or if conduct persists, contempt exists. <input type="checkbox"/> If explanation is accepted, no contempt. 	<p>Factors to consider: egregious conduct; danger if contemnor not immediately removed.</p> <p>Announce “You are in contempt of court.”</p> <p>Sec. 21.002(c), G.C.</p> <p>See Step 8: Sentencing Goals below.</p> <p>Skip rest of this section.</p>
<ul style="list-style-type: none"> <input type="checkbox"/> 6. Indirect Contempt Procedure. <ul style="list-style-type: none"> <input type="checkbox"/> Notice to contemnor. <ul style="list-style-type: none"> <input type="checkbox"/> If alleged disobedience to court order, notice must: <ul style="list-style-type: none"> <input type="checkbox"/> Contain the order; <input type="checkbox"/> Specify when and how contemnor was notified of order; <input type="checkbox"/> Specify contemnor’s alleged act in disobedience of order; <input type="checkbox"/> Specify when and where act occurred; and <input type="checkbox"/> Specify that the act took place after the contemnor became aware of the order. <input type="checkbox"/> Otherwise, notice must: <ul style="list-style-type: none"> <input type="checkbox"/> Specify contemnor’s alleged contemptuous act; and 	

<ul style="list-style-type: none"> <input type="checkbox"/> Specify when and where act occurred. <input type="checkbox"/> Is contemnor indigent? <ul style="list-style-type: none"> <input type="checkbox"/> NO — Contemnor has right to have counsel represent him or her. <input type="checkbox"/> YES — Appoint counsel to represent contemnor. 	<p>Appoint counsel if jail time is imposed as part of contempt punishment. <i>Ex parte Goodman</i>, 742 S.W.2d 536 (Tex. App.—Fort Worth 1987) Appointed counsel is not necessary for contempt punishment limited to fine-only sanctions under Arts. 2.16 and 45.027(c), C.C.P.</p>
<ul style="list-style-type: none"> <input type="checkbox"/> 7. Contempt Hearing. <ul style="list-style-type: none"> <input type="checkbox"/> An act of direct contempt occurring in the presence of the court generally requires neither notice nor hearing since there is no factual dispute concerning the contemptuous conduct. Contemnor may be convicted and sentenced for the direct contempt as it occurs. <input type="checkbox"/> Summary punishment is permissible on the theory that immediate action is necessary to control courtroom proceedings. If the court postpones conviction and punishment until after the trial, for example, the justification for dispensing with due process requirements disappears. <input type="checkbox"/> Indirect Contempt. <ul style="list-style-type: none"> <input type="checkbox"/> Since an indirect contempt involves an offense not observed by the court, due process requires the contemnor to be given notice and hearing. 	<p><i>Ex parte Krupps</i>, 712 S.W.2d 144 (Tex. Crim. App. 1986)</p> <p><i>Ex parte Smith</i>, 467 S.W.2d 411 (Tex. Crim. App. 1971)</p>

- ☐ If disobedience to court order alleged:
 - ☐ Provide evidence contemnor was properly notified of order;
 - ☐ Provide evidence contemnor willfully disobeyed order after notified of it; and
 - ☐ Provide evidence for no satisfactory explanation or defense for disobedience.

Possible defenses include: court lacks personal or subject matter jurisdiction; order of court lacked clarity or specificity or was ambiguous; contemnor not given adequate notice; order not based on same acts set forth in charge of contempt.

- ☐ If court order not involved:
 - ☐ Provide evidence contemnor committed the alleged act; and
 - ☐ Evidence for no satisfactory explanation or defense for act.
- ☐ Ensure contemnor's constitutional rights are protected:
 - ☐ Right to counsel;
 - ☐ Right to confront and cross-examine witnesses;
 - ☐ Privilege against self-incrimination;
 - ☐ Protection against double jeopardy; and
 - ☐ Right to public trial.

There is no right to trial by jury in most contempt hearings. Texas courts

❑ 8. Sentencing Goals.

❑ Civil Contempt (Remedial).

- ❑ Purpose of civil contempt is remedial and coercive in nature. Judgment of civil contempt exerts the judicial authority of the court to persuade the contemnor to obey some order of the court where such obedience will benefit an opposing litigant.

❑ Criminal Contempt (Punitive).

- ❑ The sentence is not conditioned upon some promise of future performance because the contemnor is being punished by fine and imprisonment for some completed act that affronted the dignity and authority of the court.

generally have the right to adjudicate contempt proceedings without jury.
Ex parte Werblud, 536 S.W.2d 542 (Tex. 1976)

Contemnor is entitled to jury trial if the contempt is classified as a serious rather than petty offense. One factor in determining whether offense should be treated as serious or petty is the amount of the fine imposed. Generally, the imposition of a minor fine does not elevate the offense from the classification of petty to a serious crime.

Ex parte Werblud, 536 S.W.2d 542 (Tex. 1976)

Ex parte Werblud, 536 S.W.2d 542 (Tex. 1976)

Ex parte Werblud, 536 S.W.2d 542 (Tex. 1976)

Examples: disruptive conduct that prevents trial from proceeding; attempting to bias jury

☐ 9. Order and Commitment. **Form**

☐ Describe the act found to be in contempt.

☐ If act disobeyed a court order:

☐ Include written order or reduce verbal order to writing.

☐ Specify when and how contemnor was notified of the order.

☐ Specify that the act was in disobedience of the order.

☐ State that the act was committed after contemnor was aware of the order.

☐ Remedial Sanction:

☐ Specify exactly what contemnor must do to purge the contempt.

☐ Order sheriff or chief of police to place person in jail.

☐ If contemnor purges self of contempt, order his or her release.

☐ Punitive Sanction:

☐ Specify the punishment.

☐ If jail time is part of punishment, order sheriff or chief of police to place contemnor in jail for specified time.

☐ If fine is part of punishment, order contemnor to pay fine by a specific date.

panel by handing them pamphlets.

Order and commitment must be in writing, but may be combined into one document.

No particular form is required for commitment. Directive that a person be placed in jail and detained may be contained in an authenticated copy of the court's order. *Ex parte Barnett*, 600 S.W.2d 252 (Tex. 1980)

Normally, maximum punishment is three (3) days and \$100. Check specific statutes; some authorize fine-only. See [Arts. 2.16](#) and [45.027\(c\), C.C.P.](#)

- ☐ If more than one act of contempt, specify a separate punishment for each act.

Punishment should be assessed for each act even if sentences run concurrently. If one punishment is assessed for multiple acts and one of those acts is not contempt, the entire judgment is void.

Ex parte Lee, 704 S.W.2d 15 (Tex. 1986)

CHAPTER 14 CONTEMPT OF COURT

B. Juveniles

The 77th Legislature moved many provisions of the Family Code to Chapter 45, Code of Criminal Procedure. Also, they amended Art. 45.050 creating a more detailed procedure for contempt proceedings for juveniles

Checklist 74	Notes
<input type="checkbox"/> 1. Special rules apply if the defendant is a child: <ul style="list-style-type: none"> <input type="checkbox"/> 10 to 17 years of age <input type="checkbox"/> Charged or convicted of a fine-only offense. 	Art. 45.050, C.C.P. Art. 45.058(h), C.C.P.
<input type="checkbox"/> 2. Court may NOT order confinement for: <ul style="list-style-type: none"> <input type="checkbox"/> Failure to pay a fine; <input type="checkbox"/> Contempt of another order of court. 	
<input type="checkbox"/> 3. The court may do any of the following: <ul style="list-style-type: none"> <input type="checkbox"/> Refer the child to juvenile court for delinquent conduct, that being contempt of the court's order. <input type="checkbox"/> Retain jurisdiction and fine the child up to \$500 for contempt. <input type="checkbox"/> Order DPS to suspend or deny a child a driver's license until the child complies with the court's order. 	

CHAPTER 15 EVIDENCE

A. What is Evidence?

Checklist 75	Notes
<ul style="list-style-type: none"> <input type="checkbox"/> 1. Evidence is the proof necessary to establish the facts that are found by the judge or jury in a court of law. <input type="checkbox"/> 2. Not all facts, recollections, records, opinions, or physical items are evidence. Each of the heretofore mentioned proofs must meet certain legal standards before they are deemed to constitute evidence. <input type="checkbox"/> 3. In determining whether an offered proof is evidence, the court must determine whether it is legally admissible, the factual credibility of the evidence is to be determined by the fact finder after hearing all the evidence. The court determines if the proofs meet the legal threshold of admissibility, not whether they are conclusive, credible, believable or true. <input type="checkbox"/> 4. The most common form of evidence is oral statements of witnesses based on personal knowledge. Evidence can, in limited circumstance, be opinions of a witness. <input type="checkbox"/> 5. Evidence can also be physical items, such as records, photos, recordings, and the like. <input type="checkbox"/> 6. Demonstrative evidence is those proofs offered as demonstrations of the witness' recollections and perceptions. This includes physical demonstrations by the witness, drawings created during or before testimony, experiments, lists, items that are introduced that look like items observed by the witness or any other item that demonstrates other properly introduced evidence. <input type="checkbox"/> 7. The court in certain circumstances may take judicial notice of particular evidence. 	<p>Rules 104 and 1008, T.R.E.</p>

CHAPTER 15 EVIDENCE

B. When do the Texas Rules of Evidence Apply?

Checklist 76	Notes
<input type="checkbox"/> 1. The rules of evidence apply in all trials before the court or a jury.	Art. 45.011, C.C.P.
<input type="checkbox"/> They apply in all adversary hearings before the court except:	
<input type="checkbox"/> Preliminary hearings to determine if competency is an issue.	Art. 46.02, C.C.P. and Rule 101(d)(1)(D), T.R.E.
<input type="checkbox"/> Initial appearance before a magistrate for a hearing and setting of bail.	Rule 101(d)(1)(E), T.R.E. , McVickers v. State , 874 S.W.2d 662 (Tex. Crim. App. 1993)
<input type="checkbox"/> Applications for search or arrest warrants.	Rule 101(d)(1)(G), T.R.E.
<input type="checkbox"/> Pre-trial hearings on the admissibility of confessions or other evidence outside the presence of the jury.	Rule 104(c), T.R.E.
<input type="checkbox"/> 2. The rules of privilege always apply. A right of privilege is the right to refuse to testify or answer certain questions. The privileges recognized by the rules of evidence, in addition to the constitutional privilege against self incrimination include:	
<input type="checkbox"/> The lawyer-client privilege.	Rule 503, T.R.E.
<input type="checkbox"/> Attorneys, their staff and clients of an attorney; all may refuse to answer questions concerning lawyer-client communications made pursuant to lawful representation.	
<input type="checkbox"/> The marital privilege.	Rule 504, T.R.E.
<input type="checkbox"/> The spouse has a privilege not to take	Art. 38.10, C.C.P.

the stand except in cases of domestic violence. The spouse can also refuse to answer questions concerning communications made during the marriage, unless they were made in furtherance of a crime or in cases of domestic violence. The marital communications privilege survives both death and divorce.

- ☐ The clerical or confessor privilege.
- ☐ 3. Certain information as well as certain communications are privileged:
 - ☐ A person's vote in any election is privileged.
 - ☐ Privileges created by statutes that require certain records be kept.
- ☐ 4. Special statutory rules of evidence are used in hearings on punishment, sentencing or revocation.

Rule 505, T.R.E.

Rule 506, T.R.E.

Rules 502, 507 (Trade Secrets) and 508 (Police Informants), T.R.E.

Arts. 42.12 and 38.37, C.C.P.

CHAPTER 15 EVIDENCE

C. Ways to Prove a Fact

Checklist 77	Notes
<p><input type="checkbox"/> 1. Judicial notice.</p> <p><input type="checkbox"/> Certain matters may be deemed by the court to be self-evident, well known or conclusively proven that the court can simply declare them established by “judicial notice” at the request of a party or on its own initiative.</p> <p><input type="checkbox"/> The court may take judicial notice when:</p> <p><input type="checkbox"/> A fact is “generally known in the jurisdiction”.</p> <p><input type="checkbox"/> A fact is “capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned”.</p> <p><input type="checkbox"/> The fact in issue is the existence or wording of a municipal or county ordinance or other such government regulation, provided a party present the court with a proper copy of such ordinance.</p> <p><input type="checkbox"/> The court may allow both sides to be heard when taking judicial notice.</p> <p><input type="checkbox"/> 2. By the testimony of competent witnesses.</p> <p><input type="checkbox"/> 3. By the introduction of properly predicated and introduced records or other physical evidence.</p> <p><input type="checkbox"/> 4. Argument by attorneys, parties, witnesses or any statements by others not sworn and examined are not evidence and not to be considered by the fact finder as evidence.</p>	<p>Rule 201(c and d), T.R.E.</p> <p>Rule 201(b), T.R.E.</p> <p>Rule 204, T.R.E.</p> <p>Rules 201(e) and 204, T.R.E.</p>

- ❑ 5. Plea bargains, plea negotiations and plea discussions are not admissible.

[Rule 410, T.R.E.](#)

CHAPTER 15 EVIDENCE

D. How Objections are Made and Ruled on by the Court

Checklist 78	Notes
<p><input type="checkbox"/> 1. Objections.</p> <p><input type="checkbox"/> Objections must be made by a party and not a witness, or the court.</p> <p><input type="checkbox"/> The objection is made to the court and not to the opposing party, witness or jury.</p> <p><input type="checkbox"/> The objection should be respectful and not argumentative.</p> <p><input type="checkbox"/> State the legal basis for objection to the proffered question or answer.</p> <p><input type="checkbox"/> The objection should be timely made.</p> <p><input type="checkbox"/> The objection must be made when the objectionable question or answer is made or given.</p> <p><input type="checkbox"/> Objections must be made every time a matter is raised to preserve the matter for review on appeal unless the court grants a "running objection" on the record, outside the presence of the jury.</p> <p><input type="checkbox"/> It is appropriate and preferred that, if an objection raises matters not proper for the jury to hear, but important for the court's ruling, the objection be made outside of the jury's hearing or presence.</p>	<p>Rule 103(d), T.R.E. A defendant cannot object if represented by counsel</p> <p>Rule 103(a), T.R.E. Proper objection: "Your honor, I object to that (<u>question/answer</u>) because it is (<u>hearsay/not relevant/a leading question/ etc.</u>)."</p> <p>Ethington v. State, 819 S.W.2d 854 (Tex. Crim. App. 1991)</p> <p>Rule 103(c), T.R.E.</p> <p>Rule 103, T.R.E.</p>

- ☐ This removal may be made at either party's request or on the court's own suggestion.

☐ 2. Responses.

- ☐ The court has broad discretion in ruling on objections.
- ☐ The court has no obligation to listen to responses, but should do so if they would make it even slightly more likely that the court will make a proper ruling.
- ☐ Remember that responses are often best made outside of the jury's hearing.

Rule 103, T.R.E.

Proper response:

"Your honor, may I respond to the objection?"

☐ 3. Offers of proof.

- ☐ To properly consider excluded evidence on appeal, the reviewing court must be able to study that evidence.
- ☐ The party tendering the excluded evidence is responsible for getting the excluded evidence into the record.
- ☐ The offer of proof is always made outside the presence of the jury.
- ☐ The party making the offer of proof may be granted substantial latitude in the means of producing said evidence.
- ☐ The offer of proof may be made by:
 - ☐ Sworn statement;
 - ☐ Placement in the record of a physical object not admitted into evidence;

Dopico v. State, 752 S.W.2d 212 (Tex. App.—Houston [1st Dist.] 1988, pet. ref'd); and Rule 103(a)(2), T.R.E.

- ☐ Questions to and answers of a witness; and
- ☐ A summary by counsel of the questions and answers expected.
- ☐ Offers of proof do not have to be made at the time of the objection and may be made at any time during the trial, so as to facilitate an orderly presentation of the evidence at trial.

This is obligatory if requested. [Rule 103\(b\)](#), [T.R.E.](#)

CHAPTER 15 EVIDENCE

E. Hearsay

Checklist 79	Notes
<input type="checkbox"/> 1. Hearsay is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.	Rule 801(d), T.R.E.
<input type="checkbox"/> 2. Hearsay testimony is not admissible unless it falls under an exception to the hearsay rule.	Rule 802, T.R.E.
<input type="checkbox"/> 3. Hearsay includes non-verbal conduct if intended as a substitute for verbal expression.	Rule 801(a), T.R.E.
<input type="checkbox"/> 4. To be hearsay, the statement must be offered to prove the content of the statement. If the statement is offered to prove that the statement was made and not that the statement is true, it is not hearsay.	
<input type="checkbox"/> 5. The following types of statements are defined by the rules as not hearsay: <input type="checkbox"/> Prior statements by the witness. <input type="checkbox"/> Statements by a party offered against that party.	Rule 801(e), T.R.E.
<input type="checkbox"/> 6. The following types of statements are hearsay, but admissible under an exception to the hearsay rule: <input type="checkbox"/> Excited utterances. <input type="checkbox"/> A present sense impression. <input type="checkbox"/> A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition.	Rule 803(2), T.R.E. Rule 803(1), T.R.E. Rule 803(3), T.R.E.

<input type="checkbox"/> A prior written record by the witness about matters that he or she once had personal knowledge, but now is unable to recall if such a record was reliably created when the matters were fresh in his or her mind.	<p>Rule 803(5), T.R.E.</p>
<input type="checkbox"/> Regularly kept business, public, official, medical, commercial, or family records. These records must: <ul style="list-style-type: none"> <input type="checkbox"/> Be kept in the regular course of these other enterprises; <input type="checkbox"/> Be recorded by persons with personal knowledge; and <input type="checkbox"/> Have some indicia of trustworthiness. 	<p>Rule 803 (4,5,6,7,8,9,10, 11,12,13,14,15,17), T.R.E.</p>
<input type="checkbox"/> Authenticated documents over 20 years old.	<p>Rule 803(16), T.R.E.</p>
<input type="checkbox"/> Learned treatises when used to question experts.	<p>Rule 803(18), T.R.E.</p>
<input type="checkbox"/> Reputation testimony.	<p>Rule 803(21), T.R.E.</p>
<input type="checkbox"/> Judgments of previous conviction.	<p>Rule 803(22), T.R.E.</p>
<input type="checkbox"/> Statements made by the declarant that were against his or her monetary, legal or social interest.	<p>Rule 803(24), T.R.E.</p>
<input type="checkbox"/> 7. Some hearsay statements are admissible only if the declarant is not available as a witness due to privilege, refusal to testify, lack of memory, death or infirmity, or lack of the witness's attendance at trial due to no fault of the party seeking the testimony: <ul style="list-style-type: none"> <input type="checkbox"/> Former testimony where both parties were able to fully cross-examine the witness. <input type="checkbox"/> Dying declarations of the declarant. <input type="checkbox"/> Statement of personal or family history. 	<p>Rule 804, T.R.E.</p>
	<p>Rule 804(b), T.R.E.</p>

- ☐ 8. If a hearsay statement comes into evidence, the credibility of the declarant of the hearsay statement is put in issue and may be challenged by other evidence.
- ☐ 9. An exception must be provided for each layer of hearsay.

Rule 806, T.R.E.

CHAPTER 15 EVIDENCE

F. Objections Concerning Nature of Questions, Answers, or Courtroom Behavior

Checklist 80	Notes
<p><input type="checkbox"/> 1. Leading questions are questions that suggest the answer desired by the questioner. Leading questions are proper and preferred during cross-examination or during any examination of a hostile witness.</p>	<p>Rule 611(c), T.R.E.</p>
<p><input type="checkbox"/> 2. Narrative answers - All examinations should be done in a question and answer format. Failure to follow this format causes opposing counsel to be unable to object to particular matters. Testimony that moves from topic to topic without interspersed questions is narrative and improper. However, in some situations, the court may permit narrative responses.</p>	
<p><input type="checkbox"/> 3. Badgering the witness - A trial should be a formal and civilized proceeding. Undue dramatics, improper aggression, or just plain bad manners may be controlled by the court on a proper objection. The court, if necessary, may act on its own to stop certain conduct.</p>	<p>Rule 611(a), T.R.E.</p>
<p><input type="checkbox"/> 4. Sidebar comments and arguing with the witness - During testimony, the attorney's and/or pro se defendant's role is to ask questions; they are not sworn and they may not testify. Counsel and pro se defendants should not be allowed to comment on witness' answers, opposing counsel's questions or the court's rulings in a verbal or non-verbal fashion. Counsel and pro se defendants must convey the ideas they wish to express to the jury through proper questions and during closing arguments. Objections, as noted earlier, should be to the court and not to the witness, opposing counsel or pro se defendant, or jury.</p>	<p>An example of sidebar comments would include:</p> <p>"Oh, I'm sure that is what you saw."</p> <p>"Please your honor, that is such a stupid question."</p> <p>"Objection . . . Like he's ever going to sustain one of my objections."</p>

- ❑ 5. Non-responsive answers - The court should require witnesses to answer proper, clearly stated questions as asked. During cross-examination, witnesses should be limited to answering questions as asked.
- ❑ 6. The court shall exercise reasonable control over witnesses and the presentation of evidence. The efficient presentation of evidence and actual ascertainment of the truth should be the constant goals of the court.

To properly make this objection, counsel must ask clear, simple questions that do not call for an explanation.

[Rule 611, T.R.E.](#)

CHAPTER 15 EVIDENCE

G. Objections to the Introduction of Physical Evidence

Checklist 81	Notes
<p><input type="checkbox"/> 1. Predicate - Before introduction of a piece of physical evidence, the party offering the evidence must establish certain preliminary facts:</p> <p><input type="checkbox"/> That the item is authentic; and</p> <p><input type="checkbox"/> If the item is perishable or alterable, the party offering the evidence must show either that the evidence has been in a secure “chain of custody” or that the item has not been altered or changed since it was gathered.</p> <p><input type="checkbox"/> 2. Photographs and recordings must be shown to accurately reflect what the witness initially observed. If such testimony is not available, photographs and recordings are admissible under the rules in Step 1 above.</p> <p><input type="checkbox"/> 3. Demonstrative evidence need only be shown to be helpful to the jury, and is explained by the witness.</p>	<p>For a quick and complete listing of proper predicates, please refer to <i>Predicate Manual</i> published by the Texas District and County Attorneys Association (512/474-2436).</p>

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CHAPTER 16 EXPUNCTION – Chapter 55, C.C.P.

The 76th Legislature amended Chapter 55 of the Code of Criminal Procedure to provide that a person who is arrested and then acquitted at trial can petition the trial court, including municipal court, for an expunction of all records and files relating to the arrest. The municipal court conducts a hearing to determine if these records are eligible for expungement.

Although Chapter 55 does not define arrest, [Art. 15.22, C.C.P.](#), states that a person is arrested when he or she has been actually placed under restraint or taken into custody by an officer or person executing a warrant of arrest or arresting without a warrant. Case law also provides guidance regarding when a person is under arrest. Courts have determined that an arrest occurs when: (1) a person's liberty of movement is restricted or when the person has been placed under restraint ([Torres v. State](#), 868 S.W.2d 798 (Tex. Crim. App. 1993); (2) a person is taken into custody legally or physically under the control of law enforcement ([McCrary v. State](#), 643 S.W.2d 725, 726 n.3 (Tex. Crim. App. 1982); (3) a person's liberty or movement is substantially or significantly restricted or restrained ([Amores v. State](#), 816 S.W.2d 407 (Tex. Crim. App. 1991); and (4) a person is not physically detained, but reasonably believes that he or she is not free to leave ([United States v. MendeHall](#), 446 U.S. 544 (1980). This article and cases apply to Fourth Amendment issues and analysis. The law related to the Fifth Amendment often references “full” or “custodial” arrest.

It is unclear what level of arrest Chapter 55 contemplates. The issue of whether an arrest was made is a fact determination to be made by the court.

See [Checklist 72](#) concerning expunction of juvenile convictions.

The expunction hearing is a complicated process and courts should be aware of a defendant's right to this process and the requirements of conducting the proceeding.

Checklist 82	Script/Notes
<input type="checkbox"/> 1. Defendant is acquitted at trial after an arrest.	
<input type="checkbox"/> 2. Upon acquittal, admonish defendant of the right to an expunction. Provide written admonishment.	Form
<input type="checkbox"/> 3. If defendant requests an expunction, provide him or her with a form to submit the information listed in Item 6. The petition must be under oath.	Form
<input type="checkbox"/> 4. Set a hearing with 30 days of acquittal.	
<input type="checkbox"/> 5. Advise city attorney and defendant of hearing	

date, and provide a copy of the petition. **Form**

☐ 6. Advise city attorney of hearing date.

☐ 7. On hearing, find as follows:

☐ That defendant has provided all necessary information:

- ☐ Name;
- ☐ Sex;
- ☐ Race;
- ☐ Date of birth;
- ☐ Driver's license number;
- ☐ Social security number;
- ☐ Address at time of arrest;
- ☐ Offense charged;
- ☐ Date the offense was committed;
- ☐ Date of arrest;
- ☐ Name of county where arrested;
- ☐ Name of city where arrested;
- ☐ Case number and court;
- ☐ TRN (tracking incident number) assigned by DPS;
- ☐ All officials and agencies maintaining information relating to the arrest and prosecution;
- ☐ If defendant is a juvenile, include juvenile probation department of juvenile courts;

☐ That the offense did not arise out of criminal episode; and defendant was not convicted of, or remains subject to prosecution for at least one other offense occurring during the criminal episode.

A person is not entitled to an expunction after acquittal if the offense for which the person is charged arose out of a criminal episode as defined by [Sec. 3.01 of the P.C.](#) and the person remains subject to prosecution for at least one other offense occurring during the criminal episode. The Penal Code defines "criminal episode" to mean "the commission

of two or more offenses, regardless of whether the harm is directed toward or inflicted upon more than one person or item of property, under the following circumstances: (1) the offenses are committed pursuant to a same transaction or pursuant to two or more transactions that are connected or constitute a common scheme or plan; or (2) the offenses are the repeated commission of the same or similar offense."

The court may provide in its order that the law enforcement agency and the prosecuting attorney responsible for investigating the offense may retain any records and files necessary for investigation. [See Art. 55.02\(4\), C.C.P.](#) for more information on exceptions to expunction.

- ☐ Grant order requiring expunction. **Form**
- ☐ Attach copy of Judgment of Acquittal to the order.
- ☐ Send copy of order by certified mail, return receipt requested, to each official or agency maintaining records or files on the case.

Defendant's petition should contain a list of agencies, officials and

- ☐ Collect all return receipts from notices of the hearing, if any, and delivery of order in the file.
- ☐ Collect all records and files returned to the court, and notifications of obliteration of records, and maintain in the file.
- ☐ Print a copy of the electronic docket and other case information maintained in municipal court information system and file with case.
- ☐ Delete all index references to the case.
- ☐ Separate the file and all records, and maintain in a place where public inspection is prohibited.

persons who have records or files on this case.

The court may not give a person subject to the expunction order the records collected under this order. However, the court may allow the person subject to the order to inspect the records.