



TEXAS JUSTICE COURT TRAINING CENTER

# NEWSLETTER

## Summer 2017

### MESSAGE FROM THE EXECUTIVE DIRECTOR

First and foremost – our thoughts and concerns go out to all the counties affected by the wrath that was Hurricane Harvey. We know so many of you are the front lines of support for others in your community yet were dealing with the damage to your property as well. Hopefully, by now, your lives are starting to get back to normal.

We just completed another outstanding education year. This year, the Texas Justice Court Training Center answered 2,455 legal board questions and calls. Our attorney and volunteer faculty provided over 1,100 hours of live education reaching 3,793 participants.

TJCTC also had a significant impact via on-line education through our webinars. Over 1,000 judges and court clerks participated in our live webinars. We are pleased to announce that the Rules of Judicial Education will now allow certification credit for up to 4 hours of education by electronic means even if not watched live. That means that archived webinars and other electronic education resources will now count towards the required 20 hours.

We have some updates to our staff at TJCTC. Congratulations to Jessica Foreman who has been promoted to Education Manager. She will now oversee the curriculum development for the judge, constable, and court personnel programs. The program administrator for the constables, Heather Hidalgo, retired this summer and received a great send-off at the JPCA Annual Conference honoring her 26-years of service to TJCTC. Jen Morales, who supported the clerk committee, has also moved on to TxDOT. We wish both of them well.

We have already hired one new program administrator. Let me introduce you to Travon Earl. Travon comes from another grant at Texas State University - ALERRT – which is a rapid response system for active shooters. He comes to us with strong experience and lots of enthusiasm. We hope you'll look for him at our education seminars and take the time to visit.

We are grateful to the Court of Criminal Appeals and the Justices of the Peace and Constables Association for their support. We could not possibly present the volume of education we do without our dedicated volunteer faculty. And of course, we are thankful to all of you for your participation.

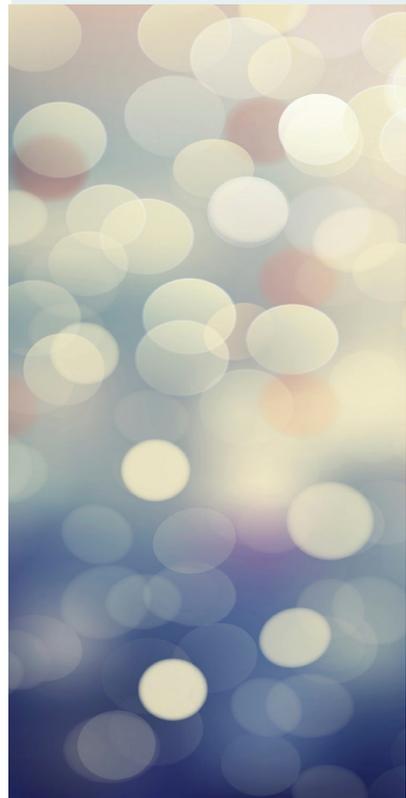
We look forward to providing you with the information and resources you need to continue to serve the people of Texas.

Very Truly Yours,

Thea D. Whalen

### INSIDE THIS ISSUE

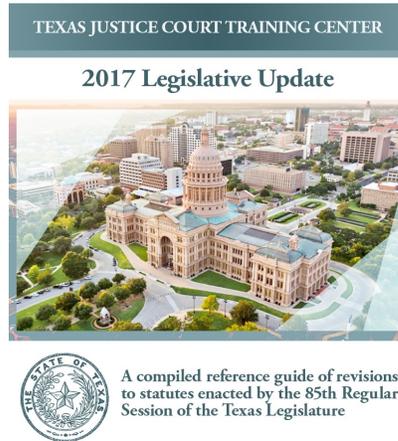
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# HIGHLIGHTS FROM THE 85<sup>th</sup> LEGISLATIVE SESSION

By Randall L. Sarosdy  
General Counsel

Here are some highlights from the 85<sup>th</sup> Regular Session of the Texas State Legislature which concluded on May 29, 2017. (Governor Abbott called a Special Session that met from July 17 through August 16 but no bills passed in the Special Session that directly affect justice courts.) We hope you have been able to attend one of the seven Legislative Updates seminars we conducted across the state from July 17 through August 21. If you were not able to attend one of those seminars, please be on the lookout for a webinar we hope to do this fall.



## SB 1913 and HB 351 (Indigency)

This bill: (1) requires a judge, before issuing an arrest warrant for a defendant's failure to appear, to provide a notice to the defendant that includes certain information, including alternatives to the full payment of any fine or costs if the defendant is unable to pay that amount, and a new appearance date; (2) limits a judge's authority to require an appearance bond other than a personal bond under Art. 45.016; (3) requires a judge, before imposing a fine or court costs following a plea in open court, to make a determination that the defendant has sufficient resources or income to pay all or part of the fine and costs; (4) requires a court, before issuing a *capias pro fine*, to hold a hearing on the defendant's ability to satisfy the judgment; (5) allows a judge to waive all or part of a fine or costs if the court determines that the defendant does not have sufficient resources or income to pay all or part of the fine or costs or that the waiver is in the interest of justice; and (6) makes various other changes affecting indigent defendants.

## HB 799 (Bench Exchange for Inquests)

This bill provides that if a justice of the peace or the county judge is not available to conduct an inquest, then the justice of the peace in the precinct in which the death occurred or the county judge may request a justice of the peace of another county to conduct the inquest. The justice of the peace who conducts the inquest must, not later than the fifth day after the date the inquest is initiated, transfer all information related to the inquest to the justice of the peace of the precinct in which the death occurred for final disposition of the matter.

## SB 239 (Parent's Right to View Body of Deceased Child)

This bill gives a parent a right to view the body of a deceased child (under 18 years old) under the supervision of a justice of the peace once he or she has assumed control over the body, or under the supervision of law enforcement if they have assumed control over the body, or under the supervision of a physician, registered nurse, licensed vocational nurse, medical examiner or person acting on behalf of the justice of the peace.

## SB 1849 and SB 1326 (Magistration)

This bill expedites the process for conducting an evaluation and written assessment under Art. 16.22, Code of Criminal Procedure, for a defendant charged with a Class B or higher offense where there is credible evidence that the defendant has a mental illness or intellectual disability. The bill also amends Art. 17.032, Code of Criminal Procedure, concerning the release on personal bond of non-violent offenders on condition that they obtain assistance from available mental health or intellectual disability services.

## HB 62 (Ban on Texting While Driving)

This bill makes it a Class C misdemeanor offense for an operator of a motor vehicle to use a portable wireless communication device to read, write or send an electronic message while operating a motor vehicle unless the vehicle is stopped. It is an affirmative defense if the operator used the device: in conjunction with a hands-free device; to navigate using a GPS; to report illegal activity, summon emergency help, or enter information into an app that provides information concerning traffic and road conditions; to read an electronic message that

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the person believes concerns an emergency; affixed to the vehicle to relay information in the course of the person's occupational duties; or to play music. An officer who stops a vehicle may not take possession of or inspect the device unless authorized by law. If the person causes the death or serious bodily injury of another person, then the offense is a Class A misdemeanor punishable by confinement in jail up to one year and a fine of up to \$4,000. The law preempts local ordinances or regulations. A person under 18 may not operate a motor vehicle while using a wireless communication device at all, except in case of emergency.

**HB 1066 (Collection of Civil Judgments)**

This bill authorizes a court to issue a turnover order under Section 31.002, Civil Practice and Remedies Code, and to appoint a receiver without a determination (as previously required) that the defendant's property "cannot readily be attached or levied on by ordinary legal process."

**SB 920 (Writ of Retrieval)**

This bill allows the court to issue a writ of retrieval for a person who is denied access to a residence because the occupant poses a threat of family violence and, if the occupant poses a clear and present danger of family violence, allows the justice of the peace to waive the bond requirement and to issue the writ without prior notice to the occupant. The bill also allows the recovery of electronic records of financial or legal documents.

**HB 557 (Expunction)**

This bill allows a justice court to expunge all records and files relating to the arrest of a person for a fine only offense if: the person is acquitted of the offense; or the person is released and no charge is pending at least 180 days after the arrest and the person was not charged with any other offense resulting from the arrest; or the prosecutor recommends expunction before the person is tried. On acquittal the court must advise the person of the right to expunction.

**HB 681 (Confidentiality of Records)**

This bill makes records relating to a fine only offense confidential and not subject to public disclosure five years after the date of a final conviction or of a dismissal after a deferred disposition. This applies to the disclosure of information beginning September 1, 2017, but for offenses occurring before, on or after September 1, 2017.

**Bills That Did Not Pass**

These (and related) bills did not pass:

SB 409: This bill would have increased the jurisdiction of justice courts in civil cases to \$20,000.

HB 2068: This bill would have repealed the Driver Responsibility (surcharge) Program.

HB 1322: This bill would have allowed any justice of the peace in any county to issue a blood search warrant.

## Improving Bond Conditions in DWI Cases through The Texas DWI Bond Schematic Program

The DWI Bond Schematic Program is part of a statewide plan to reduce the incidence of DWI offenses in Texas by assisting Texas counties in improving procedures for setting, monitoring and enforcing bond conditions in DWI cases. The program is designed to reduce the number of DWI drivers on Texas roads and highways, thereby improving public safety throughout the state.

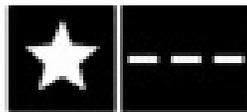
We will work with all justices of the peace and other criminal magistrates, prosecutors and monitoring agencies (such as the Community Supervision and Corrections Department) to create forms specific to each county to be used in administering the program. These forms may be based on TJCTC's Universal DWI Bond Schematic (available at [www.tjctc.org](http://www.tjctc.org)) or forms that a county currently uses in setting bond conditions. Forms will be modified to meet the bond conditions that county officials agree are appropriate in DWI cases.

The program: (1) provides county officials with an opportunity to develop a system for setting, monitoring, and enforcing DWI bond conditions to ensure community safety and protect victims; (2) increases consistency in setting bond conditions by a magistrate and a trial court; (3) promotes the use of bond conditions (such as ignition interlock devices) that reduce the incidence of DWI recidivism; and (4) ensures that bond conditions required by law are set, monitored and enforced.

Currently, Rockwall, Matagorda, Bandera and Jim Wells Counties participate in the program, and we have had or are planning meetings with Duvall, Jim Hogg, Kleberg, Polk, Angelina and Bee Counties concerning the program. We would greatly appreciate the opportunity to come in person to your county to discuss the benefits of the program.

The program is administered by the TJCTC Traffic Safety Initiative through funding provided by the Texas Department of Transportation. If you would like further information concerning the program, please feel free to contact me at [rsarosdy@txstate.edu](mailto:rsarosdy@txstate.edu).

-- Randall L. Sarosdy  
General Counsel



# Save a Life™

TEXAS DEPARTMENT OF TRANSPORTATION

# “I’D LIKE THIS OFF THE RECORD”: New Expunction Laws in Justice Courts

By Bronson Tucker  
Director of Curriculum

One of the biggest changes affecting justice courts enacted during the 85<sup>th</sup> Texas Legislature is the addition of the ability for justices of the peace to expunge some records related to an arrest for a fine-only misdemeanor offense, effective September 1<sup>st</sup>. Prior to the passage of HB 557, justice court judges could only expunge certain **conviction records** (along with all records related to dismissals for defendants under 17). Expunging **records related to an arrest** was the sole province of district judges.

However, Chapter 55 of the Code of Criminal Procedure has been modified to allow justices of the peace (and municipal judges) to perform these functions if the arrest was for a fine-only misdemeanor. You should familiarize yourself with this chapter before this law takes effect, as well as the changes made by HB 557. For the updated sections of Arts. 55.01 and 55.02, turn to page 45 of your 2017 TJCTC Legislative Update Resource Guide. The rest of Chapter 55 is available at [statutes.legis.state.tx.us](http://statutes.legis.state.tx.us).

***Other records may be expunged if the petition is filed on or after September 1, 2017, regardless of the arrest date.***

Not every person who is arrested for a fine-only misdemeanor can have their records expunged. Chapter 55 lays out the triggering events that can occur which entitle the defendant to that remedy. This article will walk through these events, along with the process that must be followed for each. It is important to be aware which triggering event allows the expunction so that you follow the correct procedure. Also remember that the following discussion applies only to expunction of arrest records. The procedures for expunging convictions, as justice courts have done, was not changed by the Legislature. So, for example, when someone turns 17 and has only one fine-only misdemeanor conviction, nothing regarding the process of expunging that conviction has changed. Also note that the below procedures apply to both custodial and noncustodial arrests, so they can be used if the person was never booked into jail, and was simply issued a citation for the offense.

## ELIGIBILITY FOR EXPUNCTION

We will first address the defendant being acquitted (found not guilty at trial) of the offense. A defendant who is acquitted is generally entitled to have their arrest records expunged. *Art. 55.01 (a)(1)(A), Code of Criminal Procedure*. (The exception is if the offense for which the person was acquitted arose out of a criminal episode, as defined by Section 3.01, Penal Code, and the person was convicted of or remains subject to prosecution for at least one other offense occurring during the criminal episode.) If a defendant is acquitted, the trial court must inform the defendant of the right to have the records related to the arrest expunged. *Art. 55.02, Sec. 1, Code of Criminal Procedure*. Be sure that your court implements this procedure.

Sec. 1 of Art. 55.02 lays out the process for post-acquittal expunction. Once the defendant has been acquitted, either the defendant or the prosecutor can request the expunction. If the defendant requests it, the state must be noti-

fied. If the prosecutor requests it, they must have the consent of the acquitted person. The requesting party must provide to the court all of the necessary information for an expunction petition, listed in Art. 55.02, Sec. 2(b). If the defendant has an attorney, the attorney must prepare the order for the court’s signature. If the defendant was pro se, the prosecutor must prepare the order for the court’s signature. The court must enter the order within 30 days of the acquittal. These records can be expunged if the trial resulting in the acquittal began on or after September 1, 2017. All other records described below may be expunged if the petition is filed on or after September 1, 2017, regardless of the arrest date.

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A person is entitled to have arrest records expunged if the charge is no longer pending and did not result in a conviction, the person doesn't face any current felony charges resulting from the arrest, and at least 180 days has elapsed from the arrest. This sounds confusing at first blush, but is designed to prevent the following situation: Person is pulled over and charged with DWLI and possession of controlled substance. If the DWLI gets dismissed, the person cannot have the arrest records expunged, because there were other felony charges resulting from the arrest. The 180 day window is to give law enforcement and prosecutors adequate time to initiate charges before allowing the arrest records to be expunged.

Regardless of other eligibility, the court can also expunge arrest records upon the request of the prosecutor, if the request is made before the offense is tried. *Art. 55.01(b)(2), Code of Criminal Procedure*. Finally, although exceptionally rare in justice court, the defendant would be eligible for expunction of arrest records if they are convicted of an offense, but ultimately acquitted by the court of criminal appeals, or the court of appeals, or are subsequently pardoned. *Arts. 55.01(a)(1)(B), 55.01(b)(1), Code of Criminal Procedure*. The prosecutor must prepare and the court must sign the order of expunction within 30 days after receiving notice of the pardon or acquittal. *Art. 55.02, Sec. 1a(b), Code of Criminal Procedure*.

In addition to the new Chapter 55 expunctions, effective September 1, HB 2059 allows justice courts to expunge arrest records of someone who has reached the age of 21 and was arrested for one and only one offense under Chapter 106 of the Alcoholic Beverage Code. The process is the same as the standard justice court "conviction" expunction, including the \$30 fee. *Sec. 106.12, Alcoholic Beverage Code*.

## REQUISITES OF THE PETITION

The petition to expunge arrest records for a fine-only misdemeanor may be filed in a justice court in the county in which the petitioner was arrested or in which the offense was alleged to have occurred. *Art. 55.02, Sec. 2(a-1), Code of Criminal Procedure*. The petition can be filed by the arrested person, or by the grandparent, parent, spouse, or adult brother, sister, or child of the arrested person if the arrested person is deceased, and would otherwise

be entitled to expunction as outlined above. *Art. 55.011, Code of Criminal Procedure*. There is a \$100 fee for filing the petition for expunction, except that there is no fee for requesting the expunction in cases where the defendant was acquitted, if the request is made within 30 days of the acquittal. The court may order the return of all or a portion of the \$100 to the defendant after granting the petition. *Art. 102.006, Code of Criminal Procedure*.

Pursuant to *Art. 55.02, Sec. 2(b)*, the petition must be verified and the following or an explanation for why one or more of the following is not included:

- (1) the petitioner's
  - (A) full name; (B) sex; (C) race; (D) date of birth; (E) driver's license number; (F) social security number; and (G) address at the time of the arrest;
- (2) the offense charged against the petitioner;
- (3) the date the offense charged against the petitioner was alleged to have been committed;
- (4) the date the petitioner was arrested;
- (5) the name of the county where the petitioner was arrested and if the arrest occurred in a municipality, the name of the municipality;
- (6) the name of the agency that arrested the petitioner;
- (7) the case number and court of offense; and
- (8) together with the applicable physical or e-mail addresses, a list of all:
  - (A) law enforcement agencies, jails or other detention facilities, magistrates, courts, prosecuting attorneys, correctional facilities, central state depositories of criminal records, and other officials or agencies or other entities of this state or of any political subdivision of this state;
  - (B) central federal depositories of criminal records that the petitioner has reason to believe have records or files that are subject to expunction; and
  - (C) private entities that compile and disseminate for compensation criminal history record information that the petitioner has reason to believe have information related to records or files that are subject to expunction.

## ISSUING THE EXPUNCTION ORDER

If the expunction is based on an acquittal, the court's expunction order must incorporate by reference and have attached a copy of the judgment of acquittal. Upon receiving a petition for expunction on grounds other than acquittal at trial, the court shall set a hearing on the matter no sooner than thirty days from the filing of the petition and shall give reasonable notice to each official or agency or other governmental entity named in the petition by certified mail, return receipt requested or secure electronic mail, electronic transmission, or facsimile transmission. *Art. 55.02, Sec. 2(c), Code of Criminal Procedure*. If the court finds that the petitioner is entitled to expunction of any records and files that are the subject of the petition, it shall enter an order directing expunction. The person who is the subject of the expunction order or an agency protesting the expunction may appeal the court's decision in the same manner as in other civil cases. *Art. 55.02, Sec. 3(a), Code of Criminal Procedure*.

If an order of expunction is issued, the court records concerning expunction proceedings are not open for inspection by anyone except the person who is the subject of the order unless the order permits retention of a record by law enforcement and prosecutors as described below. The clerk of the court issuing the order shall obliterate all public references to the proceeding and maintain the files or other records in an area not open to inspection. *Art. 55.02, Sec. 5(c), Code of Criminal Procedure*.

In an order of expunction issued under this article, the court shall require any state agency that sent information concerning the arrest to a central federal depository to request the depository to return all records and files subject to the order of expunction. The order of expunction must contain:

- (1) the following information on the person who is the subject of the expunction order:
  - (A) full name; (B) sex; (C) race; (D) date of birth; (E) driver's license number; and (F) social security number;

- (2) the offense charged against the person who is the subject of the expunction order;
- (3) the date the person who is the subject of the expunction order was arrested;
- (4) the case number and court of offense; and
- (5) the tracking incident number (TRN) assigned to the individual incident of arrest under Art. 60.07(b)(1) by the Department of Public Safety.

## EFFECTS OF THE EXPUNCTION ORDER



When the order of expunction is final, the release, maintenance, dissemination, or use of the expunged records and files for any purpose is prohibited. Also, the person arrested may deny the occurrence of the arrest and the existence of the expunction order except when questioned under oath in a

criminal proceeding about an arrest for which the records have been expunged, the person may state only that the matter in question has been expunged. *Art. 55.03, Code of Criminal Procedure*.

The court or other entity may maintain receipts, invoices, vouchers or other records of financial transactions related to the expunction proceeding or the underlying criminal cause. However, all portions of the record that identifies the person who was the subject of the order must be obliterated. *Art. 55.02, Sec. 5(g), Code of Criminal Procedure*.

It is a Class B misdemeanor to knowingly release, disseminate, or otherwise use the records or files subject to an expunction order or to knowingly fail to return or to obliterate identifying portions of a record or file ordered expunged. *Art. 55.04, Code of Criminal Procedure*.

## DISPOSITION OF RECORDS AND FILES SUBJECT TO AN EXPUNCTION ORDER

When the order of expunction is final, the clerk of the court shall send a certified copy of the order to the Crime Records Service of the Department of Public Safety and to each official or agency or other governmental entity of this state or of any political subdivision of this state named in the order.

This must be sent by secure electronic mail, electronic or facsimile transmission or by certified mail, return receipt requested. The order may be hand-delivered to a governmental entity named in the order, but the clerk must receive a receipt for that hand-delivered order. *Art. 55.02, Sec. 3(c), Code of Criminal Procedure.* Any certified mail returned receipts received by the clerk from notices of the hearing and copies of the order shall be maintained in the file.

The court's order can allow law enforcement and prosecuting attorneys to retain necessary records and files if the state establishes that there is reasonable cause that they will proceed against the person on an offense arising out of the transaction for which the person was arrested. The court's order must allow law enforcement and prosecuting attorneys to retain arrest records and files if the person is eligible for expunction due to the expiration of 180 days from arrest with no pending charges, as described above. *Art. 55.02, Sec. 4(a), (a-1), Code of Criminal Procedure.* In the case of a person who is the subject of an expunction order on the basis of an acquittal, the court may provide in the expunction order that the law enforcement agency and the prosecuting attorney retain records and files if:

(1) the records and files are necessary to conduct a subsequent investigation and prosecution of a person other than the person who is the subject of the expunction order; or  
(2) the state establishes that the records and files are necessary for use in:

- (A) another criminal case, including a prosecution, motion to adjudicate or revoke community supervision, parole revocation hearing, mandatory supervision revocation hearing, punishment hearing, or bond hearing; or
- B) a civil case, including a civil suit or suit for possession of or access to a child.

*Art. 55.02, Sec. 4(a-2), Code of Criminal Procedure.*

On receipt of the expunction order, each official or agency or other governmental entity named in the order shall return all records and files that are subject to the expunction order to the court or obliterate all portions of the record or file that identify the person who is the subject of the order and notify the court of its action and delete from its public records all index references to the records and files that are subject to the expunction order. The court may give the person who is the subject of the order all records and files returned to it pursuant to its order, except on expunctions on the basis of acquittal. *Art. 55.02, Sec. 5(a), (b), Code of Criminal Procedure.* The clerk of the court shall destroy all the files or other records returned under this provision not earlier than the 60th day after the date the order of expunction is issued or later than the first anniversary of that date unless the records or files were released to the arrested person. *Art. 55.02, Sec. 5(d), Code of Criminal Procedure.* The clerk shall certify to the court the destruction of files or other records.

Before destroying files and records, the clerk shall provide notice by mail, electronic mail, or facsimile transmission to the attorney representing the state in the expunction proceeding. This notice must be provided no less than 30 days prior to the date on which the records are to be destroyed. If the prosecutor objects within 20 days of receiving notice, the records may not be destroyed until the one year anniversary of the expunction order. *Art. 55.02, Sec. 5(d-1), Code of Criminal Procedure.*

## TABLE OF JUSTICE COURT EXPUNCTION PROCEDURES

<b>Type of Record</b>	<b>Requirements and Procedure</b>	<b>Fee</b>	<b>Authorizing Statute</b>
Dismissals/ Acquittals (Defendant under 17)	The case has been dismissed or the defendant was acquitted. Applicant files with the court in which the offense was pending. Application must be sworn and written.	\$30	Art. 45.0216(h), Code of Criminal Procedure
Arrest Records Related to ABC Offense	The defendant is now 21 years of age and has only one arrest for an offense under Ch. 106, ABC. Noncustodial arrests (citations) count as arrests. Applicant files sworn application with the convicting court.	\$30	Sec. 106.12, Alcoholic Beverage Code
Convictions of ABC Offense	The defendant is now 21 years of age and has only one conviction under Ch. 106, ABC. Deferrals do not count as convictions. Applicant files sworn application with the convicting court.	\$30	Sec. 106.12, Alcoholic Beverage Code
Convictions of fine-only misdemeanor (Defendant under 17)	The defendant had only one conviction of a fine-only misdemeanor before their 17 <sup>th</sup> birthday (other than ABC or tobacco offenses) and is now 17. Applicant files with the convicting court. Application must be sworn and written.	\$30	Art. 45.0216(b), Code of Criminal Procedure
Convictions of tobacco-related offense	The defendant complied with the court's order to take a tobacco awareness course or perform tobacco-related community service. Applicant files with the convicting court.	\$30	Sec. 161.255, Health & Safety Code
Conviction of "sexting" offense	The defendant has only one conviction of an offense under Penal Code Sec. 43.261, was never adjudicated by a juvenile court as having engaged in the same conduct, and is now 17. Applicant files with the court in which the offense was pending. Application must be sworn and written.	\$30	Art. 45.0216(b), (f), Code of Criminal Procedure
Arrest Records Related to Fine-Only Misdemeanors Not Resulting in Conviction or Acquittal (Adult defendants)	1) Offense is no longer pending, did not result in conviction, no felony charges are pending and at least 180 days has elapsed since arrest; 2) Prosecutor recommends expunction before trial of offense; or 3) Defendant convicted is subsequently acquitted by court of appeals or court of criminal appeals or pardoned. Applicant files petition described by Art. 55.02, Sec. 2(b) with any court in the county in which the defendant was arrested or in which the offense was alleged to occur.	\$100*	Arts. 55.01, 55.02, 102.006, Code of Criminal Procedure
Arrest Records Related to Acquittals (Adult defendants)	Trial court must notify defendant of right to expunction upon acquittal. Defendant or prosecutor can make request. Defendant's attorney prepares expunction order, if defendant is pro se, prosecutor does. Request can be made with trial court or petition described by Art. 55.02, Sec. 2(b) with any court in the county in which the defendant was arrested or in which the offense was alleged to occur.	\$0 <sup>^</sup>	Arts. 55.01, 55.02, 102.006, Code of Criminal Procedure

\* Court may return all or a portion of this fee to the applicant.

<sup>^</sup> Fee is only waived if petition is filed within 30 days of acquittal. If not, fee is \$100, though the court may return all or a portion of this fee to the applicant.

## 2017-2018 TJCTC Educational Schedule

### **20-HOUR JUSTICE OF THE PEACE EDUCATIONAL SEMINARS**

Dec. 3-6, 2017—Galveston  
Jan. 21-24, 2018—San Antonio  
Feb. 11-14, 2018—Austin  
April 15-18, 2018—Rockwall  
May 29-June 1, 2018—Lubbock

### **80-HOUR NEW JUSTICE OF THE PEACE EDUCATIONAL SEMINARS**

Stage I  
Dec. 10-14, 2017—Austin  
Stage II  
Jan. 7-11, 2018—Austin  
Stage III  
Mar. 27-30, 2018—Austin

### **16-HOUR COURT PERSONNEL EDUCATIONAL SEMINARS**

Nov. 13-15, 2017—Georgetown  
Jan. 31-Feb. 2, 2018—Bee Caves  
Feb. 26-28, 2018—Galveston  
Mar. 21-23, 2018—San Antonio  
June 4-6, 2018—San Marcos  
July 11-13, 2018—Rockwall

### **20-HOUR CIVIL PROCESS EDUCATIONAL SEMINARS**

Feb. 20-23, 2018—San Antonio  
April 8-11, 2018—Rockwall  
May 6-9, 2018—Galveston  
July 15-18, 2018—Bee Caves

### **LECTURE SERIES**

**Inquests: Cause & Manner of  
Death**

Texas State University Body  
Farm at Freeman Ranch  
May 14-16, 2018—San Marcos

**Magistration: Best Practices  
in the Face of Limited  
Resources**

Texas State University  
Round Rock Campus  
Aug. 6-8, 2018—Round Rock

**Leadership & Professional  
Development for  
Certified Clerks**  
Texas State University  
May 16-18, 2018—San Marcos

### **EDUCATIONAL WEBINARS**

Sept. 28, 2017—  
**Inquests: Autopsies and Body  
Transport Issues**

Oct. 4, 2017—  
**Indigency: Legislative  
Changes**

Oct. 12, 2017—  
**Inquest Question and Answer  
Session**

Oct. 18, 2017—**Magistration  
Hold or Release**

Nov. 7, 2017—  
**Emergency Detention Orders  
and Art. 16.22 Issues**

Nov. 29, 2017—  
**Magistration Question and  
Answer Session**

Jan. 18, 2018—  
**Republic of Texas & Sovereign  
Citizens**

Feb. 8, 2018—**Orders of  
Retrieval, Writs of  
Restoration, & Re-entry**

Mar. 5, 2018—  
**Landlord/Tenant Question  
and Answer Session**

Mar. 19, 2018—  
**Appeal De Novo**

Apr. 24, 2018—  
**FTA vs. VPTA and Capias vs.  
Capias Pro Fine**

May 22, 2018—  
**Residential Evictions: Filing  
to Judgement**

June 12, 2018—  
**Civil Procedure Question and  
Answer Session**

June 20, 2018—  
**DWI Bond Conditions**

July 2, 2018—  
**Residential Evictions: Trial  
and Appeal**

July 26, 2018—  
**Tow Hearings**

Aug. 1, 2018—  
**Identifying Mental Health  
Issues**

Aug. 14, 2018—  
**Plenary Power**

Aug. 20, 2018—  
**Blood Search Warrants**

### **TEXAS JUSTICE COURT TRAINING CENTER**

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# INQUEST BENCH EXCHANGES AND MASS FATALITY INCIDENTS

By Rebecca Glisan  
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## INQUEST BENCH EXCHANGES

Prior to the 85<sup>th</sup> Regular Legislative Session, there was no clear authority for justices of the peace to exchange benches for the purpose of conducting inquests. Section 27.054, Government Code, has allowed a justice of the peace to “hold court” for any other justice in any county at the request of that justice; but conducting an inquest does not fall under “holding court.”

HB 799, which goes into effect on September 1, 2017, created the following laws to allow justices of the peace to exchange benches for inquests:

### Art. 49.07, Code of Criminal Procedure (CCP): NOTIFICATION OF INVESTIGATING OFFICIAL

(c)(3) If a justice of the peace or the county judge serving the county in which the body or body part was found is not available to conduct an inquest, a person required to give notice under this article may ask the justice of the peace of the precinct in which the body or body part was found or the county judge to request a justice of the peace of another county to which this subchapter applies to conduct the inquest. The justice of the peace that conducts the inquest shall, not later than the fifth day after the date the inquest is initiated, transfer all information related to the inquest to the justice of the peace of the precinct in which the body or body part was found for final disposition of the matter. All expenses related to the inquest must be paid as provided by this chapter.

### Sec. 27.0545, Government Code: EXCHANGE OF BENCHES: INQUESTS

(a) If a justice of the peace or the county judge of a county to which Subchapter A, Chapter 49, Code of Criminal Procedure, applies is not available to conduct an inquest into a person's death occurring in the county, the justice of the peace of the precinct in which the death occurred or the county judge may request a justice of the peace of another county to which that subchapter applies to conduct the inquest.

- (b) A justice of the peace who on request conducts an inquest under this section shall, not later than the fifth day after the date the inquest is initiated, transfer all information related to the inquest to the justice of the peace of the precinct in which the death occurred for final disposition of the matter.
- (c) A justice of the peace who conducts an inquest under this section is not entitled to receive from the commissioners court of the county in which the death occurred any compensation, other than mileage, for conducting the inquest.



So what do these new laws mean? If the justice(s) of the peace and the county judge in the county where the body is found are unavailable, they may request assistance from another county. Either the

justice of the peace *of the precinct* or the county judge of the county where the body is found can request *any justice of the peace in any county* to conduct the inquest, *as long as that justice of the peace has the authority to conduct inquests in their own county under Chapter 49 of the CCP*. The person responsible for notifying the justice of the peace about a body under Art. 49.07, CCP, may also ask the justice of the peace of the precinct or the county judge to make the request. The justice of the peace who conducts the inquest must transfer all information related to the inquest to the justice of the peace *of the precinct where the body was found* within five days from when the inquest is initiated. The justice of the peace in that precinct is then responsible for finally disposing of the matter. The justice of the peace who conducts the inquest may receive reimbursement for mileage, but is not entitled to any other compensation.

The TJCTC has created a sample form for the inquest bench exchange. It can be found under the “2017 Legislative Update Forms” section at this link: <http://www.tjctc.org/tjctc-resources/forms.html>.

**MASS FATALITY INCIDENTS**

The new inquest bench exchange laws may also impact how you handle a mass fatality incident. Nothing in the language of the laws would prevent a county from having an inquest bench exchange agreement involving multiple justices. So if there are too many deaths for the justice(s) of the peace and county judge of a single county to handle, they could enter into a bench exchange agreement with one or more other available justices of the peace to come assist. In this case, the sample form mentioned above could be modified by simply copying and pasting additional lines for “requesting” judges and/or “performing” judges. There is no limit to how many of each may be included.

A best practice regarding mass fatality incidents is to plan ahead so that you are prepared if and when an incident occurs. As such, if you think you may want to pursue a multiple-justice bench exchange agreement in the case of a mass fatality, it would be a good idea to talk with the justices of the

peace in your county and surrounding counties ahead of time to figure out who else would be interested and how you will handle the situation.

Judge Lynn Holt of Bandera County is already having discussions in his county about how they want to implement inquest bench exchanges in the case of mass fatalities once the law goes into effect on September 1. If you would like to discuss ideas on this topic, you can contact Judge Holt at (830) 796-3593 or [jp4@banderacounty.org](mailto:jp4@banderacounty.org).

We would also like to inform everyone of an online training module that we will be adding to our website in the near future. It is an introductory training module on mass fatality incidents, the role of the justice of the peace, and interactions with other community players. We will be sending out an e-blast when the module is ready.

**CONSUMPTION AND POSSESSION OF ALCOHOL BY A MINOR: SEXUAL ASSAULT EXCEPTION**

**By Rebecca Glisan  
Staff Attorney**

During the 85<sup>th</sup> Regular Legislative Session of 2017, SB 966 was passed to amend Sections 106.04 and 106.05 of the Alcoholic Beverage Code. Section 106.04 addresses Consumption of Alcohol by a Minor and Section 106.05 addresses Possession of Alcohol by a Minor.

The new law states that these offenses do not apply to a minor who, when committing the offense, reports a sexual assault of themselves or another person or is a victim of a

**The purpose of this law is to avoid a situation in which a person is afraid to report a sexual assault...**

sexual assault that is reported by another person. The report must be made to a health care provider treating the victim, a law enforcement official, including campus police, or a Title IX coordinator responsible for responding to reports of sexual assault. A minor is not entitled to raise this defense if they commit the sexual assault that is reported. See Sections 106.04(f),(g),(h), and 106.05(e),(f),(g), Alcoholic Beverage Code.

SB 966 goes into effect on September 1, 2017, and only applies to an offense committed *on or after* that day. An offense is considered to be committed before September 1, 2017, if any element of the offense occurred before that date.

The purpose of this law is to avoid a situation in which a person is afraid to report a sexual assault because they do not want to get into trouble for drinking while underage. This is similar in concept to the exception that already exists (with some limitations) for a minor who reports a possible alcohol overdose under Art. 106.04(e) and 106.05(d), Code of Criminal Procedure. The idea behind both of these is that it is less important to prosecute these offenses than it is to encourage people to report sexual assaults and seek help if an individual may have overdosed on alcohol.

## BAIL AND BONDS

By Randall L. Sarosdy  
General Counsel

When a person is arrested and charged with the commission of a criminal offense, in most cases the person has a right under Art. 1, Section 11 of the Texas Constitution and Chapter 17 of the Code of Criminal Procedure to be “admitted” to bail and released on bond. The bond is the assurance given to the magistrate that the defendant will appear for any hearings and for trial of the charges against him.

The terminology relating to bail and bonds can sometimes be confusing, so we thought it would be worthwhile to offer an explanation.

### What is Bail?

“Bail” is “the security given by the accused that he will appear and answer before the proper court the accusation brought against him, and includes a bail bond and a personal bond.” Art. 17.01, Code of Criminal Procedure.

The **amount** of bail the defendant is required to post is set by the magistrate under Art. 17.15 of the Code of Criminal Procedure. But the term “bail” itself means the security the defendant must give to be released from custody pending trial, and includes the form of that security, which may be a bail bond or a personal bond.

### What is the Difference Between a Bail Bond, a Personal Bond and a Personal Recognizance Bond?

A “**bail bond**” is “a written undertaking entered into by the defendant and the defendant’s sureties for the appearance of the [defendant] before a court or magistrate to answer a criminal accusation . . . .” Art. 17.02, Code of Criminal Procedure. A bail bond is often referred to as a surety bond because the defendant’s agreement to show up for trial is guaranteed by the surety, who is liable for payment of the amount of bail if the defendant fails to appear. This is what happens in a bail forfeiture proceeding under Chapter 22 of the Code of Criminal Procedure.

A bail bondsman typically charges the defendant a non-refundable fee of 10% of the amount of bail. If the defendant is unable to pay the fee for the bail bond, then he might remain in jail awaiting trial. This has been an issue of some controversy lately and resulted in a major decision by United States District Judge Lee Rosenthal with respect to

the bail bond practices in Harris County. Judge Rosenthal’s opinion may be viewed at this link:

<http://gato-docs.its.txstate.edu/jcr:68513eb6-c99d-4ec6-898b-ee3a92ec70a1/Harris%20County%20suit.pdf>.

A bail bond also includes a cash bond. Art. 17.02 expressly allows a defendant to deposit cash “in the amount of the bond in lieu of having sureties sign the same.”

So if a defendant is able to deposit the full amount of the bail with the court in the form of cash, a cashier’s check or a money order, then the defendant does not have to pay a bail bondsman to serve as a surety on the bond. The advantage of posting bail in cash is that when the case is over the money is returned to the defendant in full. Of course, few defendants are able to post the full amount of the bail in cash and have those funds held by the court through the end of the trial.

Whether the defendant posts a cash bond or a surety bond is usually up to the defendant, not the magistrate or court. A defendant may be required to post a cash bond only in a bail forfeiture or surety surrender proceeding.

A **personal bond** is a bond made by the defendant in which he agrees to appear for any hearings in the case and for trial **and** in the event he fails to appear then he agrees to pay the amount set by the magistrate at the time he entered into the bond. A personal bond “is sufficient if it includes the requisites of a bail bond . . . **except that no sureties are required.**” Art. 17.04, Code of Criminal Procedure. A defendant who gives a personal bond must swear under oath as follows:

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.

Art. 17.04. So a personal bond does not mean that a defendant is not obligated to pay bail if he fails to appear for trial; it simply means that he does not have to have a surety guarantee the payment or alternatively pay it up front in the form of a cash bond. A personal bond may be enforced through a bail forfeiture proceeding under Chapter 22 of the Code of Criminal Procedure. See Art. 22.02 (“Bail bonds and personal bonds are forfeited in the following manner . . .”).

A **personal recognizance bond** is a personal bond in which the defendant simply agrees to appear for any future hearings or for trial without having to agree to pay any amount in the event he fails to do so. The bond is based on the defendant’s “word” or promise that he will appear and he is released from custody based on the court’s confidence that the defendant will take the responsibility to appear for all future court appearances. The consequence of failing to appear is simply that the defendant is subject to immediate arrest.

#### What is an Appearance Bond?

The term “appearance bond” is often used in connection with a defendant charged with a Class C misdemeanor or fine only offense. It is not expressly defined in the Code of Criminal Procedure but may refer to either a personal bond or a bail bond which a judge is authorized by Art. 45.016, Code of Criminal Procedure, to require of a defendant charged with an offense in justice court.

In 2017, the Legislature amended Art. 45.016 to spell out when a judge may order a personal bond in a case pending in his or her court and when a judge may order a bail bond. Art. 45.016, as amended effective September 1, 2017, now states:

#### **Art. 45.016. PERSONAL BOND; BAIL BOND.**

(a) The justice or judge may require the defendant to give a personal bond to secure the defendant's appearance in accordance with this code.

(b) The justice or judge may not, either instead of or in addition to the personal

bond, require a defendant to give a bail bond unless:

(1) the defendant fails to appear in accordance with this code with respect to the applicable offense; and

(2) the justice or judge determines that:

(A) the defendant has sufficient resources or income to give a bail bond; and

(B) a bail bond is necessary to secure the defendant's appearance in accordance with this code.

(c) If before the expiration of a 48-hour period following the issuance of the applicable order a defendant described by Subsections (b)(1) and (2) does not give a required bail bond, the justice or judge:

(1) shall reconsider the requirement for the defendant to give the bail bond and presume that the defendant does not have sufficient resources or income to give the bond; and

(2) may require the defendant to give a personal bond.

(d) If the defendant refuses to give a personal bond or, except as provided by Subsection (c), refuses or otherwise fails to give a bail bond, the defendant may be held in custody.

So under amended Art. 45.016 a judge may require a defendant to give a personal bond to secure the defendant's appearance at trial. Please note that a court that requires a defendant to give a personal bond under Art. 45.016 may not assess a personal bond fee. *See* Art. 17.42, Section 4(a), as amended by SB 1913, 85<sup>th</sup> Legislative Session (2017).

A judge may not require a defendant to give a bail bond as an appearance bond unless the defendant has failed to appear and the judge determines that the defendant has sufficient resources or income to give a bail bond and that a bail bond is necessary to secure the defendant's appearance. And if the defendant fails to give a bail bond within 48 hours after issuance of an order requiring the defendant to do so, then the judge must reconsider the order and presume that the defendant does not have sufficient resources or income to give the bail bond, but the judge may still require the defendant to give a personal bond.

### Conclusion

There is a growing trend toward the use of personal bonds -- along with appropriate bond conditions -- rather than relying primarily on bail bonds alone to secure the defendant's appearance at trial and protect the public. While the terminology relating to bail and bonds can be confusing, hopefully this discussion will help you understand the differences between bail, bail bonds, personal bonds, personal recognizance bonds and appearance bonds, and assist you both in magistrating defendants and in setting appearance bonds in cases pending in your court. If you need further clarification, please feel free to contact us.

## MUST BAIL BE DENIED FOR A PERSON ARRESTED UNDER THE INTERSTATE COMPACT FOR ADULT OFFENDER SUPERVISION?

By Randall L. Sarosdy  
General Counsel

We have had several questions recently about the Interstate Compact for Adult Offender Supervision ("ICAOS" or "Compact"), which provides that persons arrested on an out-of-state warrant under its retaking procedures may not be admitted to bail and therefore are not eligible for release on bond. Specifically, ICAOS Rule 1.101 states in part: "The warrant shall be entered in the National Crime Information Center (NCIC) Wanted Person File with a nationwide pick-up radius with NO BOND amount set."

Just what is the Interstate Compact for Adult Offender Supervision and, if you magistrate someone who has been arrested under it, must you refuse to admit that person to bail and refuse to release him or her on bond?

The Compact is a formal agreement between all 50 states and three territories that seeks to promote public safety by systematically controlling the interstate movement of certain adult offenders. It is designed to better ensure public safety and to create a more effective and efficient means of transferring and tracking offenders between states. The Interstate Commission for Adult Offender Supervision (the Commission) is charged with overseeing the day-to-day operations of the ICAOS and, through its rule making powers, seeks to achieve the goals of the ICAOS. Information about the Compact and the Commission may be found at this link: <http://www.interstatecompact.org/>

The Compact applies to a person who is on probation or parole and subject to supervision as the result of the commission of a criminal offense and required to request transfer of supervision under the Compact because of travel to a different state. <http://www.interstatecompact.org/sites/interstatecompact.org/files/pdf/legal/ICAOS-2017-Rules-ENG.pdf> The compacting states recognize that each state is responsible for the supervision of adult offenders in the community who are authorized pursuant to the bylaws and rules of the Compact to travel across state lines in such a manner as to track the location of offenders, transfer supervision authority in an orderly and efficient manner and, when necessary, return offenders to the originating jurisdiction. 58 Tex. Jur. 3<sup>d</sup> Penal and Correctional Institutions § 165 (2017).

Rule 5.111 of the Commission's rules implementing the Compact states that bail is **never** to be allowed to any offender subject to retaking proceedings:

Denial of bail or other release conditions to certain offenders. An offender against whom retaking procedures have been instituted by a sending or receiving state shall not be admitted to bail or other release conditions in any state.

The ICAOS 2017 Bench Book is also emphatic about not allowing bail. It states:

Bail Pending Return (See Section 4.4.4). **An offender subject to retaking proceedings has no right to bail.** Rule 5.111 specifically prohibits any court or paroling authority in any state to admit an offender to bail pending completion of the retaking process, individual state law to the contrary notwithstanding. Given that the ICAOS mandates that the roles of the Commission must be afforded standing as statutory law in every member state, the no bail provision of Rule 5.111 has the same authority as if the rule was promulgated by that state's legislature.

The Bench Book further states:

**PRACTICE NOTE: Admission to bail or other release of an absconding offender who is the subject of an arrest warrant issued by the sending state is strictly prohibited** in any state that is a member of the Compact regardless of whether that state was the original sending or receiving state. Warrants issued pursuant to any ICAOS rule are effective in all member states without regard or limitation to a specific geographical area.

The 2017 Bench Book may be found at this link: <http://www.interstatecompact.org/portals/o/library/publications/benchbook.pdf>

So the Commission's rules are clear: **a person arrested under the Compact is not to be admitted to bail or released on bond.**

But is this is a binding requirement of Texas law? Section 510.016, Government Code, which adopted the Compact in Texas, states:

**EFFECT ON TEXAS LAWS.** In the event the laws of this state conflict with the compact, the compact controls, except that in the event of a conflict between the compact and the Texas Constitution, as determined by the courts of this state, **the Texas Constitution controls.**

The Texas Constitution states in Art. 1, Section 11:

**BAIL.** All prisoners shall be bailable by sufficient sureties, unless for capital offenses, when the proof is evident; but this provision shall not be so construed as to prevent bail after indictment found upon examination of the evidence, in such manner as may be prescribed by law.

So the issue is whether the Compact prohibition on bail is binding in Texas in light of the Texas Constitution's provision permitting bail in most cases. We are not aware of any case that addresses or resolves this issue at this time.

Pending such a decision by a Texas court, we suggest following the Interstate Compact if you receive notice that the defendant is subject to the retaking procedures under it. But we note that it must be clear that the defendant has been arrested **under the Compact**, and that Rule 5.111 applies, and not the provisions of the Uniform Criminal Extradition Act, which is codified in Art. 51.13, Code of Criminal Procedure, and which **does** allow a defendant to be released on bail. *See* Art. 51.13, Section 16. The warrant should indicate whether or not the person was arrested under the Compact and it should state the defendant is to be held without bond.

In short, if the warrant is issued under the Uniform Criminal Extradition Act, Art. 51.13, Code of Criminal Procedure, then the defendant may be eligible for bail but if the warrant is issued under the retaking procedures of the Compact, then – unless and until a Texas court rules otherwise based on the Texas Constitution -- the defendant should not be admitted to bail or released on bond.