

Introduction to Criminal Procedure

1

Resources

- TJCTC Criminal Procedure Deskbook
- TJCTC Trial Procedure Handbook
- TJCTC Fines, Fees, & Costs Deskbook
- TJCTC Forms
- Code of Criminal Procedure (CCP), especially:
 - Chapter 45 – General Criminal Procedure in Justice Court
 - Arts. 4.11 & 4.12 – Jurisdiction & Venue in Justice Court Criminal Cases
- Penal Code
- Transportation Code

2

What is a Criminal Case?

3

Criminal Cases

- A **criminal case** occurs when the State of Texas accuses a person (the **defendant**) of committing an **offense**.
- Texas law creates many criminal offenses. The language you should look for in the law to determine if something is a criminal offense will be something like “**an offense under this section is a state jail felony**” or “**violation of this statute is a misdemeanor punishable by a fine of no less than \$25 or more than \$99.**”

4

Types of Criminal Cases

There are two levels of criminal cases, **felonies** (the most serious) and **misdemeanors** (less serious).

Felonies are broken down into several categories, with first-degree felonies being the most serious, down to state jail felonies being least serious.

Misdemeanor cases are mainly broken into Class A, B, and C with Class C misdemeanors being the least serious. A defendant **cannot** be sentenced to jail time as punishment for a Class C misdemeanor.

5

Judge Must Remain Neutral

- The judge **must** remain neutral at all times in criminal cases.
 - You are not on “the team” with the prosecutor or the complaining officer, even though you may both work for the county. For that matter, you are also not on “the team” with the defendant.

6

Innocent Until Proven Guilty

- The defendant is “presumed innocent” until they either admit guilt or are proven guilty by the State of Texas.
- The defendant **does not** “owe money” until they either plead guilty, plead no contest (nolo contendere), or are proven guilty beyond a reasonable doubt at trial.

7

What Criminal Cases can I Hear?

8

What Kinds of Criminal Cases Does a Justice of the Peace Hear?

- A justice court only has “**jurisdiction**” (meaning the authority to act), in criminal cases that are **not** punishable by jail time.
- These offenses are sometimes referred to as “**fine-only**” misdemeanors, since the punishment is “only” a fine, and not jail or prison.
 - Code of Criminal Procedure Art. 4.11; Texas Constitution, Art. 5, § 19

9

Fine-Only Misdemeanors

- “**Fine-only**” misdemeanors include any offenses where the only penalty is a monetary fine.
- They also include offenses that have a monetary fine plus some other kind of **sanction** that doesn’t include jail.

10

Fine-Only Misdemeanors w/Sanctions - Examples

- An example of a fine-only offense with a sanction is **Minor in Possession of Alcohol**.
- Someone convicted of this offense must perform community service and take an alcohol awareness class in addition to their fine. Despite these additional sanctions, this is still considered a “fine-only” misdemeanor.

11

Class C Misdemeanors

- The main category of fine-only misdemeanors are **Class C misdemeanors**, which have a fine range of \$1-500 and no confinement in jail or prison.
 - Penal Code Sec. 12.23.
- Not all fine-only misdemeanors are Class C misdemeanors, since they do not have a fine range of \$1-500, some examples include:
 - Most Rules of the Road traffic offenses, such as speeding (fine range \$1-200).
 - Electronic messaging while driving (fine range \$25-99).
 - Passing a school bus while loading/unloading children (fine range \$500-1250).

12

Fine-Only Misdemeanors (non-Class C)

- Not all fine-only misdemeanors are Class C misdemeanors, since they do not have a fine range of \$1-500, some examples include:
 - Most Rules of the Road traffic offenses, such as speeding (fine range \$1-200).
 - Electronic messaging while driving (fine range \$25-99).
 - Passing a school bus while loading/unloading children (fine range \$500-1250).

13

Juvenile Criminal Cases

- Justice courts hear several types of criminal cases that are filed against juveniles.
- Criminal cases filed against defendants who are under 17 years of age have separate rules and procedures which will be covered in detail later this week.
 - Consult the Juvenile Deskbook for information on these cases, as well as the upcoming class at this seminar!

14

Poll 1

- Q. The fine for a second offense of operating a motor vehicle without insurance is a fine of “not less than \$350 or more than \$1,000” under Transportation Code § 601.191.
 - Since the fine can be more than \$500, a justice court does not have jurisdiction over this case.
- A. True
B. False



See Criminal Deskbook at pages 3-4.

15

How do Criminal Cases Start?

16

Filing of a Citation or Complaint

- Criminal cases begin with the filing of a document, called a **charging instrument**, which alleges that the defendant committed a specific offense.
- There are two types of charging instruments used in justice court:
 - Citations (often called tickets)
 - Complaints

17

What is a Citation?

Whenever a peace officer sees a person commit a criminal offense, they may place the person under arrest.

Instead of taking a person to jail to be booked on minor misdemeanor offenses, the officer can give the person a notice to appear before the proper court at a later date.

This notice is called a **citation**, or “ticket.”

- Art. 14.06(b), Code of Criminal Procedure

18

Signing the Citation

- The defendant will be asked to sign the citation promising to appear in court as directed.
- If they refuse to sign the citation, usually the officer will take them to jail, triggering the process discussed in the Magistration class at Stage I.

19

Does the Officer Have to Give the Defendant a Citation?

- For most offenses, even fine-only misdemeanors, the officer **does** have authority to take the person to jail instead of issuing them a ticket.
 - In fact, one Texas case went all the way to the U.S. Supreme Court after someone was taken to jail on a seat belt ticket!

20

When a Citation Must be Given

- There are only 3 offenses in Texas for which the officer must issue a citation and where the defendant **may not** be taken to jail if they sign the citation promising to appear in court:
 - Speeding, Open Container, and “Texting While Driving”

21

What Does a Citation Look Like?

Texas Department of Public Safety

THP6
#1353 TX460 [REDACTED]

Date: November 9, 2014 5:49 pm
DL/D# TX - [REDACTED]
Violator: [REDACTED] Phone: [REDACTED]

Res: [REDACTED]
Addr: AUSTIN, TX 78738

Race/Sex: WM Height: 602 DOB: 12/28 [REDACTED]
Veh LP: TX - 38 [REDACTED] Make: YAMA Model: YZFR6ER
Passengers: Year: 2014 Color: RED
Haz/Mat Plac: Type: MOTORCYCLE
Constr. Zone: Route: 0071 County: TRAVIS
Workers Present: MilePost: 564 Weather: CLEAR/CLOUDY
Location: Traffic: MEDIUM
SH-0071 MP-564 @ EB - NEAR ARROYO CANYON DR in TRAVIS CO
(30.2745630, -97.9139560)

Alleged: 68 Speed Limit: 55 Accident: Radar Cal: 2153

VIOLATIONS
1. FAIL TO MAINTAIN FINANCIAL RESPONSIBILITY (#) (TXTRC 601.191)
2. NO RESTRICTED CLASS M LICENSE, MOTOR DRIVEN CYCLE/MOPED (TXTRC 521.224; 521.225)

WARNINGS - NO PENALTY ASSESSED FOR THE FOLLOWING OFFENSES
1. SPEEDING OVER LIMIT (#) (TXTRC 545.351; 545.352)SFR-OL

You are hereby notified to appear before:
Judge: Hon Susan Steeg in Travis Co.
Court: JP Pct & Place: 31 Phone: (512)854-676
8656-B W HWY 71 STE 100 AUSTIN 78735
On or before: Friday, December 19, 2014 10:00:00AM

Issued by: 13503 - BURLINSON, J Region: 6 District: B Area: 05

I hereby promise to appear at the time and place designated in this
SIGNATURE

22

What is a Complaint?

- A **complaint** is a formal charging instrument.
- It is sworn to and should be filed by a prosecutor or law enforcement officer.
- It must meet the requirements of **Art. 45.019** of the Code of Criminal Procedure, which include that it must identify the defendant, identify when and where the offense occurred, and identify specifically which offense is alleged.
 - It must begin with “In the name of and by authority of the State of Texas” and end with “against the peace and dignity of the State.”

23

When is a Complaint Filed?

Not Guilty or Non-Appearance

- If a citation is issued to a defendant, and the defendant either pleads not guilty, or does not appear by the appearance date on the citation, a sworn complaint **must** be filed.

24

What Happens After the Case is Filed?

27

Docketing the Case

- Once the case is filed, it should be added to your **docket**.
 - This is the list of cases that are scheduled in your court.
- Art. 45.017 of the Code of Criminal Procedure defines what information the docket should contain, but a good rule of thumb is that the docket should be specific enough that a brand new judge can take over a case and know exactly what has happened so far and what should happen next.
- Most counties have software systems that maintain the docket electronically – sit down and get familiar with your system ASAP!

28

“Style” of the Case

- Each case filed in your court has a title, or **style**, that goes at the top of all papers issued by the court in the case.
- In a criminal case, the style of the case is “The State of Texas v. _____ (defendant’s name).”
- This is also sometimes referred to as the caption.

29

Giving the Defendant Notice of the Case

- If the defendant was given a citation, their copy has the time and place by which they must appear printed on it, so there is no need for the court to give a separate notice.
- However, if the defendant was charged by complaint, they are unaware of the pending case, so the court should send the defendant a **summons**, notifying them of the case and giving them a date by which they must come in and enter a **plea**.
 - TJCTC has a summons form in the Criminal Procedure Forms section of the website.

30

What is a Summons?

- A summons is an order from the court for a person, in this case the defendant, to appear on or by a certain date and time.
- The summons following the filing of a sworn complaint should warn the defendant that if they fail to appear by this date, a **warrant** for their arrest may be issued.

31

The Defendant's Appearance

The defendant can appear in person, by mail, or through their attorney.



Information on what happens if the defendant **does not** appear will be covered in your Criminal Cases: Tricky Issues class, as well as Chapter 3 of the Criminal Deskbook.

32

The Defendant's Rights

- When the defendant appears, the court should inform the defendant of:
 - the offense charged and the possible penalties;
 - the defendant's **plea options**;
 - the defendant's **right to a jury trial** unless waived in writing; and
 - the option to take a **Driving Safety Course (DSC)** if the defendant is eligible.
 - More info on DSC is covered in Chapter 5 of the Criminal Deskbook and in the next class.

33

What is a Plea?

- A plea is the defendant's answer to the State's allegations
- The defendant has 3 options:
 - **Guilty** (The defendant admits guilt for the offense.)
 - **Nolo Contendere** (Often referred to simply as "**nolo**" and meaning "**no contest**". The defendant doesn't admit guilt but will not fight the charges.)
 - **Not Guilty** (The defendant denies guilt, and it will be the State's job to prove the defendant's guilt.)

34

Poll 2

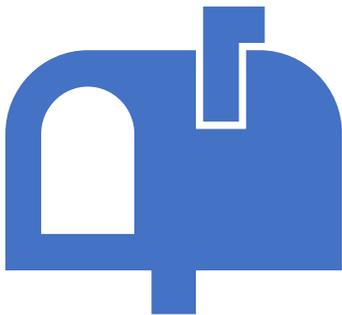
- Q. Joe Johnson is charged with speeding by going 85 mph in a 70-mph zone. He comes to your court on the appearance date in the citation and says he's a sovereign citizen, so he doesn't have to enter a plea. You should:
 - A. Hold him in contempt.
 - B. Enter a plea of not guilty and give him a bench trial right then and there.
 - C. Enter a plea of not guilty and set the case for a jury trial.



See Criminal Deskbook at page 61.

35

Appearance by Mail



- The defendant can appear by mail in a few ways:
 - They can mail in a plea of not guilty – court should proceed as described below.
 - They can mail in payment in full – this is taken as a plea of no contest.
 - They can mail in a plea of guilty/nolo – the court should notify them of the amount of the fine and costs.

36

The Court's Role in Appearance by Mail

- Often the defendant (or more frequently, the defendant's attorney) will mail in a plea of guilty/nolo **and** request the amount of the **appeal bond**.
 - The court **must** mail them a notice (*available on TJCTC website*) which tells them how much the fine and costs are, how much the appeal bond is, and informs them of **alternative methods of satisfying the judgment**.
 - *More information on this process in Tricky Issues and "alternative methods of satisfying the judgment" coming later!*

37

Poll 3

Q. The Comptroller's Office files a complaint in your court charging Suzie Smith with the offense of Failing to Furnish Sales Tax Reports in violation of Tax Code § 151.709, a Class C misdemeanor. How should the court notify Suzie of the case?

- A. Send your Constable out to pick her up.
- B. Issue a summons for her to appear.
- C. Issue an arrest warrant.
- D. Send her a show cause order.



See Criminal Deskbook at page 13-14.

38

What if the Defendant Pleads Guilty or No Contest?

39

Plea of Guilty/Nolo

- Several ways a plea of guilty or nolo may be made:
 - In person;
 - In writing by mail; or
 - By mailing in payment in full of the fine and costs – Art. 27.14(c), Code of Criminal Procedure (payment in full constitutes a plea of nolo & waiver of jury trial.)
- Unless the plea is made by mailing payment in full, plea of guilty/nolo should be accompanied by a waiver of the right to a jury trial.

40

Written Judgment

- A written judgment of **conviction** should be created immediately upon a plea of guilty or nolo.
 - Code of Criminal Procedure Art. 45.041
- This is not required if the court is placing the defendant on **deferred disposition or Driving Safety Course**.
 - *More information on these very common procedures is found in Chapter 5 of the Criminal Deskbook, and they will be covered in-depth in the next class, stay tuned!*
- Judgment forms are available on the TJCTC website.

41

What if the Defendant Pleads Not Guilty?

42

Defendant Pleads Not Guilty

- The defendant can enter a plea of not guilty by mail or in person.
- The court has the option of making the defendant post an **appearance bond**, which is a promise to appear as required.
- This bond can only be a **personal bond**, meaning the defendant doesn't have to put up cash up front or use a bail bond company. Instead, they are promising to pay the amount of the bond if they do not appear.
 - Code of Criminal Procedure Art. 45.016

43

Pretrial Hearing

- The court has the option of setting the defendant for a pretrial hearing.
- At this hearing, the prosecutor may make the defendant an offer, called a **plea bargain**.
- The court **must not** engage in plea bargaining with the defendant!
- All negotiating between the prosecutor and defendant should occur outside of the court's presence.
- The judge can either accept or reject the agreement, if any.

44

Trial Setting

- If the judge doesn't elect to have a pretrial hearing, or the pretrial hearing doesn't resolve the case, the next step is to set the case for trial.
- The defendant is entitled to a jury trial, so the setting should be for a jury trial unless the defendant waives the jury trial **in writing**.
 - Do **not** use forms that lock the defendant in to waiving the right to a jury.
 - Do **not** coerce or influence the defendant to waive the right to a jury.
 - The defendant does **not** have to pay a "jury fee" to get a jury.
- Texas Constitution Art. 1, § 10; Code of Criminal Procedure Art. 45.025

45

What Happens at a Criminal Trial?

46

Criminal Trial Basics

- There is no set amount of time or notice that must be given for a criminal trial. 30-60 days would be a standard notice of trial setting.
- A prosecutor **must** be present at every trial setting.
 - Code of Criminal Procedure Art. 45.101
- Remember that the trial **must** be a jury trial unless the defendant waived a jury in writing.
 - *For detailed information on scripts, oaths, and the trial process, please use the TJCTC Trial Notebook.*

47

Getting Witnesses to Court

- Either the state or the defendant can request the court to order witnesses to appear for trial.
 - This order is called a **subpoena**.
- In a justice court criminal case, witnesses may only be subpoenaed if they reside in the county in which the case is pending.
- The court should **not** automatically summon witnesses, including complaining officers, without a subpoena request.
- Code of Criminal Procedure Arts. 24.01(a), 24.16, 45.012(g); Government Code Sec. 27.059(b); TJCTC Criminal Deskbook Chapter 6

48

Summoning a Jury

- Each county will have slightly different procedures on getting jurors to court, and coordinating schedules with prosecutors, etc.
 - Sit down with your county officials and work out a plan to ensure you have juries and prosecutors when you need them.
 - Coordinating schedules to make sure trials are scheduled when prosecutors are available is **not** an ethical problem!
 - The Constable has authority to go round up additional people for the jury panel if needed on the day of trial.
- See Code of Criminal Procedure Arts. 45.027-45.030 for more information

49

Choosing the Jury: Challenges for Cause

- After the group of potential jurors (called the **jury panel**, or the **venire**) is brought to court, the jury selection process (formally called **voir dire**) begins. The jurors may have exemptions or excuses they wish to present (*see the Trial Notebook & Voir Dire Benchcard*)
- The parties may ask the potential jurors questions to ensure they will be fair jurors in the case.
- If an answer indicates someone might not be a fair juror, they will ask the judge to **strike**, or remove, the juror from the panel.
 - These are called “**challenges for cause**”

50

Choosing the Jury: Peremptory Challenges

- After the “challenges for cause” have been completed, each side gets to use three strikes for any reason or no reason at all.
 - These are called “**peremptory challenges.**”
 - They **may not** be solely based on race or gender.
- You are in charge of how long the jury selection process lasts. Let parties know up front how much time they have for questioning. 10 minutes or so per side is generally sufficient for a justice court criminal case.

51

Seating the Jury

The jury in justice court cases consists of **six (6)** jurors.

- Code of Criminal Procedure Art. 33.01(a)

Once all the challenges for cause and peremptory challenges are done, the first six jurors remaining on the jury panel will be the jury.

You may re-use a **jury panel** for multiple jury trials, but **must** go through this process each time, and **may not** just use these six selected jurors for multiple jury trials.

52

Trial Procedure

- For in-depth information and scripts, please see the TJCTC Trial Notebook.
- Generally, the trial steps are:
 1. Opening statements
 2. Witnesses, evidence, and testimony
 3. Closing arguments
- The state gets to go first, and also gets to go last to respond to any information offered by the defendant.

53

Making the Decision

- Each criminal offense has “**elements**” that must be proven in order for the defendant to be found guilty.
 - These are the specific actions that the defendant must have engaged in to commit an offense.
 - Often, the statute will clarify that a defendant must have engaged in those actions **intentionally, knowingly, recklessly, or negligently**.

54

Example of Elements

- The offense of Minor in Possession of Alcohol has two elements:
 - A minor (person under 21 years of age);
 - Possesses an alcoholic beverage.
- The state must prove every single element **beyond a reasonable doubt**
- They must also prove the identity of the defendant (the person at trial is the same person that committed the crime)
- They must also prove that the offense occurred in the county it is being tried in by a **preponderance of evidence (more likely than not.)**
- If they fail to do any of those things, the defendant must be found **not guilty**.

55

What is “Beyond a Reasonable Doubt”?



This means that there is no other logical explanation of the facts presented other than that the defendant committed the offense.



This is a very high bar and means the defendant should be **acquitted (found not guilty)** if there is any reasonable doubt, even if the defendant probably did it.

56

Verdict & Judgment

- If the trial is a jury trial, the jury determines if the defendant is guilty or not guilty – their decision is called the **verdict**
- If the trial is a **bench trial**, meaning there is no jury, the judge determines if the defendant is guilty or not guilty
- The judge determines the punishment for the offense, unless the defendant chose in writing before jury selection for the jury to determine punishment
 - Code of Criminal Procedure Art. 37.07, Sec. 2(b).

57

Right to Remain Silent

- The Fifth Amendment to the U.S. Constitution provides that the defendant is presumed to be innocent, that they do not have to put on **any** evidence in their own defense, and that their failure to testify or give evidence can not be used against them.
- For example, the prosecutor couldn't say to the jury "If the defendant had an explanation for this evidence, they would have told you about it."

58

Criminal Trials v. Civil Trials in Justice Court

Criminal Trials

- More formal proceedings, with formal rules of evidence and procedure
- Up to the parties/attorneys to ask questions and put on evidence
- Defendant is entitled to a jury unless they waive it in writing and doesn't pay a fee to receive a jury trial
- Jury consists of 6 members and verdict must be unanimous
- State must prove its case beyond a reasonable doubt

Civil Trials

- Less formal procedure, with the judge having total discretion on evidence
- Judge asks questions of parties and witnesses to "develop the facts of the case"
- Parties only get a jury if they submit a timely request and pay a \$22 jury fee
- Jury consists of 6 members, at least 5 must agree on the verdict
- Plaintiff must prove its case by a preponderance of the evidence

59

The Judgment

60

Judgment

- Immediately after each trial, a judgment should be created.
- If the jury, if any, or judge finds the defendant guilty, it will be a judgment of **conviction**.
- If the jury, if any, or judge, finds the defendant not guilty, it will be a judgment of **acquittal, not a dismissal**.
 - Judges may only dismiss criminal cases in certain specific circumstances, discussed in Chapter 5 of the Criminal Deskbook and in the next class!

61

Judgment of Acquittal

- A judgment of acquittal should contain:
 - The trial date,
 - That the defendant was acquitted, and
 - That the defendant has the right to **expunge** the records related to the offense.
- **Expunge** means to wipe out or erase. *More information on expunction in Chapter 10 of the Criminal Deskbook.*

62

Judgment of Conviction

- A judgment of conviction **must** contain:
 - The trial date and that the defendant was convicted
 - The **fine** amount that the judge or jury assessed
 - The **court costs** that are required upon conviction of that offense
 - Any other mandatory sanctions imposed by the court
- Additionally, you **must** determine if the defendant is able to afford the fine and costs that you are assessing. More information on this coming up!
 - Code of Criminal Procedure Art. 45.041

63

Judgment of Conviction Continued

- A judgment of conviction **may** contain:
 - **Restitution** ordered paid to the victim of the offense by the court.
 - For example, if a defendant was convicted of disorderly conduct, and that conduct caused \$80 in damage to someone's property, you could order the defendant to pay \$80 in **restitution** to that person.
 - Any other discretionary sanctions ordered by the court.
 - **Do not** order sanctions in a judgment without a law authorizing you to do so!
- Code of Criminal Procedure Art. 45.041

64

What are Fines and Court Costs?

- Anytime someone is convicted of a criminal offense, there will be a **fine** and **court costs**.
- The **fine** is up to the judge's discretion, within the range set by law for that offense, and generally goes into the county fund.
 - For speeding, the fine range is \$1-200, so the judge could set the fine anywhere in that range.
 - Many counties have developed uniform fine schedules so that each court in the county assesses the same fine for the same offense.

65

Court Costs

- The **court costs** are set by statute, and the judge has **no discretion** in determining their amount.
 - Some court costs only apply to certain types of offense, for example, the \$62 State Consolidated Court Cost does not get assessed on parking & pedestrian offenses.
 - Each court cost goes into a specific account maintained by the state, your court administration software should help with this.

66

Bill of Costs

- A “**bill of costs**,” which is a listing of each court cost charged in the case, must be prepared with the judgment. You don’t have to print off a paper copy, it can be electronically created within your software system.
- *For more information, consult the TJCTC Fines, Fees, & Costs Deskbook, as well as the Court Costs Chart and Cheat Sheet on the Charts and Checklists page*

67

Common Mistake: Fines & Costs

- Often, people lump the fine and court costs into one amount, and just call it the “fine.” This can result in mistakes being made.
 - For example, the maximum fine for speeding is \$200.
 - Court costs for speeding are \$129.
 - If you fine someone \$150 for speeding, and the costs are \$129, they owe \$279, and that is legal. But if you say “Your fine is \$250,” now you are imposing a fine that is illegal.
 - Also, lumping them together causes difficulty and confusion since the judge has discretion over the fine but not over the court costs.

68

On Your Own

The blank judgment form is on the next page.

- Your turn!
- Fill out the blank judgment form presented to you with the following information:
 - John Doe was convicted of theft at trial after a plea of not guilty.
 - Court costs are \$76.
 - The fine range is \$1-500 (*it's a Class C misdemeanor if the amount stolen is less than \$100.*)
 - The item was stolen from Franklin Barbecue and has a value of \$20.
 - John Doe appeared in person with no attorney, and a sworn complaint was filed in the case.

69

How is a Judgment of Conviction Enforced?

70

CAUSE NO. _____

STATE OF TEXAS § IN THE JUSTICE COURT
v. §
§ PRECINCT ____
§
§
DEFENDANT § _____ COUNTY, TEXAS

JUDGMENT OF CONVICTION – BENCH TRIAL

Judge Presiding: _____

Offense and Date: _____

Defendant's Plea: _____

Court Costs: _____

Fine: _____

Jail Credit Given: _____

Restitution Owed: _____ Payable to: _____

Defendant appeared on _____, 20____ and freely and voluntarily entered the plea indicated above and waived the right to trial by jury.

The Court **FINDS** that:

Defendant was charged by:

- Complaint Citation/written notice.

Defendant appeared:

- In person.
- By mail (*in accordance with Code of Criminal Procedure Article 27.14*).
- By counsel _____.

Defendant:

- Entered a plea of guilty to the charged offense after being admonished by the court.
- Entered a plea of nolo contendere (or "no contest") to the charged offense after being properly admonished by the court.
- Elected to have this cause heard by the court and was found guilty beyond a reasonable doubt by the court after evidence was entered by the attorney for the State.

Having received Defendant's plea, and having heard the evidence submitted, the court **FINDS** Defendant **GUILTY** of the charged offense.

The court **ORDERS** Defendant to satisfy the following sanctions authorized by law:

- _____
- _____

The court makes these additional **FINDINGS** and **ORDERS**:

- The Court **FINDS** that the defendant committed family violence, as defined by Family Code Section § 71.004, by committing the charged offense and has provided the required admonishment related to Defendant's right to possess firearms.
- _____
- _____

The court:

- WAIVES** the fine because Defendant is presently unable to pay and disposing of the fine by performing community service would be an undue hardship.
- ORDERS** Defendant to pay the fine in the amount of \$ _____ immediately.
- ORDERS** Defendant to pay the fine no later than _____, 20____. If any amount is paid on or after the 31st day from judgment, a \$15 time payment reimbursement fee will be assessed.
- ORDERS** Defendant to pay the fine in designated intervals (*see attached payment plan*).
- ORDERS** Defendant to dispose of the fine via community service (*see attached order*).

The court:

- WAIVES** court costs, because Defendant is presently unable to pay the court costs or was a child at the time of the offense.
- ORDERS** Defendant to pay court costs in the amount of \$ _____ immediately.
- ORDERS** Defendant to pay the costs by _____, 20____. If paid on or after the 31st day from judgment, a \$15 time payment reimbursement fee will be charged.
- ORDERS** Defendant to pay the costs in designated intervals (*see attached payment plan*).

The court **FINDS** that:

- Defendant owes no restitution in connection with the charged offense.
- Defendant owes restitution to a victim of the offense, and Defendant is **ORDERED** to make restitution to _____, the victim of the offense, as specified: _____

ISSUED AND SIGNED on _____, 20____.

JUSTICE OF THE PEACE, PRECINCT _____
_____ COUNTY, TEXAS

Refusal to Pay

If a defendant refuses to pay the fine and court costs, there is a procedure by which the court may order them committed to jail to “lay out” the fine and costs

However, ordering someone to jail to lay out the fine and costs because they are too poor to pay the fine and costs is referred to as “**debtor’s prison**” and violates the United States Constitution.

- *Tate v. Short, 401 U.S. 395 (1971).*

71

Determination of Ability to Pay

- It is **absolutely critical** that you follow all of the procedures that create safeguards against jailing indigent defendants based on inability to pay.
 - Failure to do so violates the defendant’s rights, and may result in your county being sued.
- If a defendant is convicted at trial **or** by entering a plea in open court, after assessing the fine and costs, you **must** immediately hold a hearing to determine if the defendant is able to immediately pay the fine and costs.
 - Code of Criminal Procedure Art. 45.041

72

Present Ability to Pay

- In considering the defendant's ability to pay the fine and costs, the court must consider only the defendant's **present ability to pay** (except as otherwise specifically provided).
 - Code of Criminal Procedure Art. 1.053

73

Alternatives to Payment

- If a defendant is convicted by entering a plea at the clerk window, the clerk **should** inform them that there are alternatives to satisfying the judgment by paying the fine and costs and ask them if they would like a hearing with you to determine their eligibility for those alternatives.
 - TJCTC has a handout in the Criminal Procedure Forms section describing these alternatives.
 - This form should be handed to the defendant.
 - Publicly posting this form in the office and on the court's website is also good practice.

74

Alternatives to Payment Continued

- If the defendant is unable to immediately pay, the judge **must** enter an order allowing **alternative satisfaction** of the fine and costs. Alternative methods include:
 - Payment Plan
 - Community Service
 - Partial or Complete Waiver of Fine and Costs
 - Code of Criminal Procedure Art. 45.041

75

Payment Plan

- The judge **must** allow a defendant who is unable to immediately pay the judgment to pay in specified portions at designated intervals.
 - Can outline the payment plan in the judgment or draft a separate order.
 - **Never** allow a payment plan without a written judgment.
- If any portion of the fine and costs is paid more than 30 days after the judgment, a Time Payment Reimbursement Fee of \$15 must be assessed.
 - Code of Criminal Procedure Art. 102.030

76

Community Service

- The court may allow a defendant to satisfy all or part of the judgment by performing community service.
 - Minimum credit of **\$100 for every 8 hours** of service performed.
 - Court **must** give a written order of how many hours to complete and date due.
 - May not order more than 16 hours in a given week unless it does not cause **undue hardship** to the defendant or their dependents.
 - *See also Code of Criminal Procedure Art. 45.049; TJCTC community service forms and handouts; and Chapter 8 of the Criminal Deskbook for more details on community service.*

77

Undue Hardship

- So what is **undue hardship**?
- It doesn't just mean that it is **inconvenient** for the defendant to perform the community service. It means that the defendant or their dependents will suffer if the defendant is forced to do the community service.
 - For example, a single parent of four who already is working two jobs to stay afloat and can't afford childcare to watch the kids while they do the community service.

78

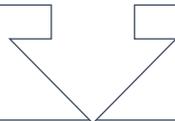
Waiver

- If a defendant is unable to pay and performing community service would be an undue hardship or was a child at the time of the offense, the judge may **waive** all or part of the fine.
- If a defendant is indigent or does not have enough resources or income to pay costs or was a child at the time of the offense, the judge may waive all or part of the costs.
 - This means the fine and costs are forgiven, and just “go away.”
 - The criminal **conviction does not** just “go away” even if the monetary penalty is waived.
- Code of Criminal Procedure Art. 45.0491

79

Reconsideration of Fines or Costs

If a defendant notifies a judge that they are having difficulty paying the fine or costs ordered in the judgment, the judge must hold a hearing to determine whether the judgment imposes an undue hardship on the defendant.



Even if you held a hearing at the time the judgment was entered, you are still required to reconsider the judgment since the defendant's circumstances may have changed.

Code of Criminal Procedure Art. 45.0445

80

Hearing: Reconsideration of Fines or Costs

- The defendant may give notice by appearing and informing the judge or clerk, by filing a motion, by mailing a letter, or by any other method established by the judge.
- The judge must hold a hearing to determine whether the judgment imposes an undue hardship on the defendant.
 - The judge may allow the defendant to appear by telephone or video conference.
- If the judgment imposes an undue hardship, then you must consider whether to allow the defendant to satisfy the fine and costs through one or more of the alternative methods discussed above.
 - Code of Criminal Procedure Art. 45.0445

81

When You Don't Need a Hearing

- The judge may decline to hold a hearing after a request for reconsideration only if the judge:
 - Is able to determine without a hearing that the **judgment does impose an undue hardship on the defendant** and the fine and costs should be satisfied by an alternative method; or
 - **Has previously held a hearing** after a request for reconsideration and is able to determine without a hearing that the judgment does not impose an undue hardship.
 - Code of Criminal Procedure Art. 45.0445

82

Post-Judgment Collections

- A county may enter into a contract with an entity to collect past due fines and costs.
 - Defendant may be referred to collections if any amount is **60 days** past due.
 - A **30%** fee is added to all amounts **paid** on cases referred to collections – this fee is **not** added for cases disposed of by jail credit or community service.
- Code of Criminal Procedure Art. 103.0031

83

Reporting to Omni

- A county may enter into a contract with **Omnibase**, who in turn contracts with DPS to block renewal of driver's licenses for defendants who fail to satisfy criminal judgments.
- To be released from an "**Omni hold**," the defendant must satisfy the judgment, appeal the judgment, or enter into an agreement with the court (such as payment plan or community service) and pay a **\$10 Omni Reimbursement Fee. This fee is waived if the defendant is indigent.**
 - Transportation Code Ch. 706; Criminal Deskbook Chapter 8

84

Capias Pro Fine

- A **capias pro fine** is an order to have a defendant arrested and **brought to the court** to determine why they have not satisfied the judgment.
- A capias pro fine **must not** be issued until the defendant is sent a notice of failure to satisfy the judgment and a **show cause hearing** is set for the defendant to explain why they have not satisfied the judgment.
 - A **show cause hearing** is any hearing where a party must *give good cause* to the court why the court should not take action against that party.
- Code of Criminal Procedure Art. 45.045, Criminal Deskbook Chapter 8 & Capias Pro Fine Flowchart

85

Capias Pro Fine – Appearance by Defendant

If the defendant **fails to appear at that show cause hearing** the court may issue the capias pro fine.

If the defendant **appears at the hearing**, the court should determine whether or not the judgment imposes an undue hardship on the defendant.

If the judgment imposes an **undue burden** on the defendant, the judge must determine whether the judgment should be satisfied through the alternative methods.

- Code of Criminal Procedure Art. 45.046

86

Capias Pro Fine – No Undue Burden

- If the judgment does not impose an undue burden, the judge must order the defendant to comply with the judgment within **30 days** from the date of the determination.
- If the defendant fails to comply with the judgment within 30 days, the court may issue a capias pro fine.
 - Code of Criminal Procedure Art. 45.046

87

Order of Commitment

- At a hearing after the defendant was brought to the court on a capias pro fine warrant, the judge may issue an **order of commitment**, which is an order that the defendant lay out the fine and costs in jail.
 - The defendant gets a **minimum of \$150** per unit of time, which the judge can set at **no less than 8 and no more than 24 hours**.
 - For example, the judge could say the defendant earns \$150 for every 12 hours spent in jail.
 - Code of Criminal Procedure Arts. 45.046 and 45.048

88

Order of Commitment: Required Findings

- An order of commitment may **only** be issued if the judge first finds **in writing** that the defendant:
 - **Is not indigent and intentionally failed to make a good faith effort to pay, or**
 - **Is indigent, was given the chance to do community service, failed to do community service, and could have done community service without undue hardship.**
- Note that an indigent defendant **may not** be forced to “lay out” the fine and costs in jail until they have been given the chance to do community service first.
 - Code of Criminal Procedure Art. 45.046

89

Discussion

Q. Bill Smith is convicted of speeding and the court enters a judgment with a fine of \$175 and costs of \$129. Sixty days later Bill has still not paid the fine. List three tools the court could use to enforce its judgment?

See Chapter 8 of the Criminal Deskbook



90

New Trial & Appeal

91

Motion for New Trial

A **motion for new trial** is a request for a case to be re-tried in the same justice court, as though the original trial never happened.

The defendant has **5 days** from judgment to file the motion, and it is automatically denied if the judge doesn't rule by the **11th day** after judgment.

Code of Criminal Procedure Art. 45.037

92

Motion for New Trial – When to Grant

- The motion **should** be granted if the judge feels that justice was not done in the original trial.
 - Code of Criminal Procedure Art. 45.038
- The state is **never** entitled to a new trial.
 - Code of Criminal Procedure Art. 45.040

93

Motion for New Trial – Jail Plea

- However, if the defendant was convicted on a guilty/nolo plea made while in jail, they have **10 days** to make the motion for new trial, and it **must** be granted.
 - Code of Criminal Procedure Art. 45.023(d)
- This is because many defendants enter a guilty/nolo plea solely to get out of jail as quickly as possible.

94

Appeal

An **appeal** is when a party wants a different court to rule in the case.

Justice court appeals go to the **county court (or county court-at-law)** and are heard **de novo**, meaning that the county court hears the case from scratch rather than deciding whether or not the justice court ruled properly.

The defendant can only appeal if and when they are convicted.

Code of Criminal Procedure Art. 45.042

95

Perfecting Appeal

- A defendant does not need to give a formal **notice of appeal**.
- To **perfect** their appeal (meaning to make it valid), they simply need to timely file an **appeal bond** with the court in an amount of double the fine and costs.
 - An appeal bond is a promise by the party appealing to pursue their appeal, backed up either by cash or by the promise of another person or company (a **surety**) to pay the amount of the bond in cash in the event that they do not pursue the appeal.

96

Appeal Bond

- The appeal bond normally must be filed within 10 days of the sentence being given to the defendant.
- An exception is that if the defendant mails in a plea of guilty or nolo with a request for the appeal bond amount, and the court mails the required notice as discussed earlier (and later in Tricky Issues), the defendant has 30 days from the day that they receive the notice to file the appeal bond.
- Code of Criminal Procedure Arts. 27.14(b), 45.0425, 45.0426

97

New Trial vs. Appeal

New Trial

- Only defendant can have new trial
- The case is retried in the Justice Court
- Motion must be made within 5 days generally (unless guilty/nolo plea entered in jail)
- Motion is granted if justice was not done in the original case and must be granted if guilty/nolo plea entered in jail

Appeal

- Defendant must be convicted to appeal
- The case is tried “de novo” in the County Court
- Appeal must generally be filed within 10 days (*30 days if mailed plea*)
- Appeal bond in amount of 2x fine and costs must be filed to perfect appeal
- No discretion whether to grant appeal if proper appeal bond filed on time

98

Discussion (5 min)



- Q. Jim Johnson is arrested on a warrant after failing to appear for a traffic citation. At the jail, the magistrate asks him if he wants to enter a plea to the traffic offense. He says “guilty.” The magistrate was a JP from your county, but the citation was filed in your court. A week later you receive a motion for a new trial.
- How would you rule on this motion?
- Did the magistrate have jurisdiction to take a plea at the jail? If not, what else could they have done instead?

See Criminal Deskbook at pages 4 & Magistration Deskbook pages 67-70