

Step by Step Criminal Procedure: Appearance and Appeals

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1

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2

resources



Criminal Deskbook (at www.tjctc.org; resources; deskbooks)



Forms and Flowcharts (www.tjctc.org)



Code of Criminal Procedure (as cited on slides)



Legal Board Q&As (www.tjctc.org)

3

- How Does A Criminal Case Start?
- Defendant's Response to a Citation or Complaint
- What If a Defendant Fails to Appear?
- Judgment
- Motion for New Trial
- Appeal

Note: Additional criminal case topics (such as deferred disposition, DSC, other dismissals, and enforcement of judgments) are covered in other webinars.

4

- This webinar does not include any information regarding the Supreme Court and Court of Criminal Appeals emergency orders, OCA guidance, or other information related to the Coronavirus epidemic.
- That information can be found by visiting TJCTC's Coronavirus Updates, Information, and Resources webpage:
<https://www.tjctc.org/coronavirus.html>

5

HOW DOES A CRIMINAL CASE START?

6

Can a case be started without a citation/ticket?

A. Yes

B. No

7

An offense is committed

- A criminal case in Justice Court usually starts when a law enforcement officer sees someone commit a fine only offense. For example:
 - Speeding
 - DWLI (driving with license invalid)
 - Minor in possession of alcohol



8

Issuance of citation

- The officer usually gives the person a citation (or ticket).
 - The citation tells the person which court they have to appear in to answer the charge and by what date.
 - A duplicate copy of the citation must be filed with the court.

9

Citation serves as complaint

- The duplicate copy of the citation “serves as a complaint to which the defendant may plead guilty, not guilty or nolo contendere.”
 - Art. 27.14(d), CCP

10

Promise to appear

- When an officer stops someone and gives them a citation, they are in custody (they are not free to leave).
- For traffic offenses, the officer will ask the person to sign a **promise to appear** in court.
- The promise to appear is a condition of their release from custody.

11

Promise to appear

- What happens if the person refuses to sign the promise to appear?
 - Officer says: "Follow me."
- But most people are released after being given a citation and promising to appear.

12

Cases without citations



**Are there cases that
are started without a
citation being issued?**



Yes!



For example:

Parent contributing
Theft by check
Environmental (e.g. septic)

13

complaint

- In those cases a complaint is filed first, charging the defendant with an offense, and then a summons is issued requiring the person to appear and answer the charge.
- Does that defendant make a promise to appear in court?
 - No!

14

Can a case be started without a citation/ticket?

A. Yes

B. No

15

**DEFENDANT'S RESPONSE
TO A CITATION OR COMPLAINT**

16

What must be filed once the defendant pleads not guilty?

- A. Ticket
- B. Sworn Complaint
- C. Officer's car/body camera video recording

17

May a defendant appeal a case after voluntarily paying the fine?

- A. Yes
- B. No

18

Possible Responses by Defendant



1. Mail or deliver in person a plea of not guilty.



2. Mail or deliver in person a plea of guilty or nolo with no payment.



3. Mail in the fine and court costs.



4. Appear in person at the window and ask what their options are.



5. Appear in person at the window and ask if they can talk to the judge.



6. Call the clerk and never follow up.

19

If the defendant mails in or delivers in person a plea of not guilty:

- A **sworn complaint** must be filed charging the defendant with commission of the offense.
 - Signed by the officer or a prosecutor, not by the court.
 - Meet the requirements of Art. 45.019, CCP.
- A trial date should be set and the defendant should be notified.

20

**RESPONSE 1:
MAILS OR DELIVERS
A
PLEA OF NOT GUILTY**

When you set it for trial, does it have to be a jury trial?

- Yes! They get a jury trial unless they waive their right to a jury in writing.
- Note: unlike in civil cases, a defendant is not required to pay a fee for a jury trial.

21

If the defendant mails in a plea of guilty or nolo and a waiver of a jury trial, or delivers it in person to the court but does not send in a payment –

- The court should dispose of the case without requiring the defendant to appear IF:
 - The court receives the plea and waiver before the time the defendant was scheduled to appear in court; **or**
 - The court receives the plea and waiver after the time the defendant was scheduled to appear in court but at least five business days before a scheduled trial date.

-- Art. 27.14(b), CCP

Response 2: mails
or
Delivers a plea of
guilty
or nolo but no
payment

22

- Sometimes when a defendant does this they also ask what the amount of an appeal bond will be.
 - This is usually done through a lawyer
- Why do this?
 - They are going to appeal immediately and get a trial in the county court.
- Court should still dispose of the case without requiring defendant to appear as long as plea & waiver were received in time.

**RESPONSE 2:
MAILS OR
DELIVERS A PLEA
OF GUILTY
OR NOLO BUT NO
PAYMENT**

23

To “dispose of the case” the court must notify the defendant either in person or by regular mail of:

- The amount of any fine or costs assessed in the case;
- Information regarding the alternatives to the full payment of any fine or costs assessed against the defendant, if the defendant is unable to pay that amount; and
- If requested by the defendant, the amount of an appeal bond the court will approve.

-- Art. 27.14(b), CCP

**RESPONSE 2:
MAILS OR
DELIVERS A PLEA
OF GUILTY
OR NOLO BUT NO
PAYMENT**

24

- Defendant must pay any fine or costs assessed, or give an appeal bond in the amount stated in the notice, before the 31st day after receiving the notice.

-- Art. 27.14(b), CCP

**RESPONSE 2:
MAILS OR
DELIVERS A PLEA
OF GUILTY
OR NOLO BUT NO
PAYMENT**

25

Response 3: Mails in payment

- What if the defendant mails in payment?
- Art. 27.14(c): "Payment of a fine or an amount accepted by the court constitutes a finding of guilty in open court as though a plea of nolo contendere had been entered and constitutes a waiver of a jury trial in writing."

26

Response 3:
Mails in payment

- So mailing in the payment (or paying in person or by credit card) is a finding of guilt and a waiver of a jury trial.

27

Response 3:
Mails in payment

- If a defendant pays the fine, may they still appeal?
 - NO!
- A defendant may not appeal a case after voluntarily paying the fine.
 - *Fouke v. State* (Tex. Crim. App. 1975)
- “By voluntarily paying the fine and costs assessed against him, appellant rendered his appeal moot: his election to satisfy the judgment left him nothing from which to appeal.”
 - *Crawford v. Campbell* (Tex. App.—Houston [1st Dist.] 2003, no pet.)

28

Response 4:
Appears in person
at the window and
asks
what their options
are

- What do you tell them?
 - Plead guilty or nolo and pay a fine?
 - Option of an installment/payment plan?
 - Plead not guilty and go to trial?
 - Plead guilty or nolo and request DSC or a deferred disposition?
 - Alternatives to full payment of the fine and court costs?
 - Must be approved by judge. May require a hearing.

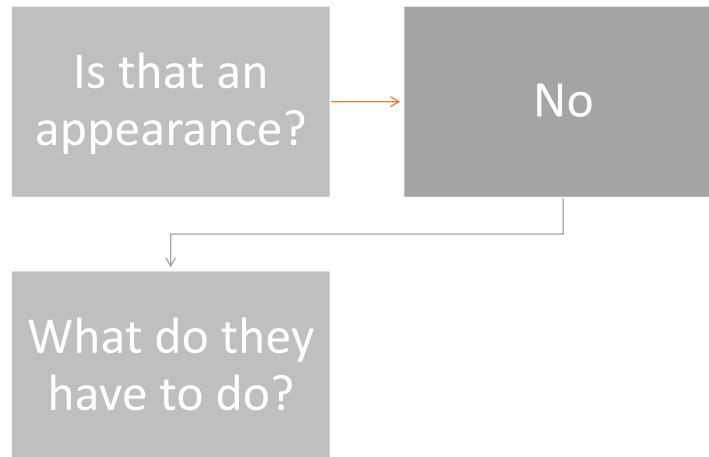
29

Response 5:
Appears in
person
at the window
and asks
if they can talk
with the judge

- Can't talk to the judge about the case except during a hearing.
- If plead guilty or nolo, judge can consider:
 - Driver safety course dismissal (defensive driving)
 - Deferred disposition
 - Alternatives to full payment of fine and court costs:
 - Installment/payment plan
 - Community service
 - Waiver

30

Response 6: Calls the clerk and never follows up



31

What must be filed once the defendant pleads not guilty?

- A. Ticket
- B. Sworn Complaint
- C. Officer's car/body camera video recording

32

May a defendant appeal a case after voluntarily paying the fine?

A.Yes

B.No

33

**WHAT IF DEFENDANT
FAILS TO ENTER A PLEA?**

34

The defendant did not appear at their appearance date and you sent them notice with a new appearance date. The new date should be within how many days from the day you send it?

- A. 14
- B. 30
- C. 45
- D. Why bother, they never show up anyway

35

Which should be charged if the defendant received a citation for a speeding offense and then did not appear by their initial appearance date?

- A.FTA
- B.VPTA

36

A sworn complaint must be filed before a court can refer a defendant to OMNI.

A.True

B.False

37

Options if Defendant Fails to Appear

1. Can we send the defendant a Courtesy Letter?

2. Can we issue a warrant for the underlying offense?

What do we have to do first?

3. Can a new VPTA or FTA offense be filed?

If so, can we issue a warrant for those?

38

Options if Defendant Fails to Appear

4. Can we put the defendant in OMNI?

5. Can we turn the defendant over to Collections? *Even before a conviction and without a judgment?*

6. Can we go ahead and convict the defendant?

39

Option 1: courtesy letter

- May the court send one after the defendant doesn't show up?
 - What should it say?

40

Option 2: Warrant for Underlying offense

Requirements for Issuance of Warrant

If defendant fails to appear by initial appearance date

A sworn complaint must be on file for the offense (the citation is not enough).

The court must first provide notice to the defendant of a new appearance date within 30 days (and they still don't show up).

If defendant appeared initially, but then later fails to appear for trial

A sworn complaint must be on file for the offense (which should have been done when defendant pled not guilty).

41

OPTION 2: WARRANT FOR UNDERLYING OFFENSE

Requirements of Notice

- The notice may be provided by telephone or first class mail.
- It must give:
 - A date and time within 30 days of the date of the notice when the defendant must appear before the judge;
 - The name and address of the court;

42

Option 2: Warrant for Underlying offense Requirements of Notice

- Information about alternatives to the full payment of any fine or costs if the defendant is unable to pay that amount; and
- An explanation of the consequences if the defendant fails to appear before the judge.
 - Art. 45.014(e)(1), CCP
- A form for this is on the TJCTC website; here's what it looks like:

43

CAUSE NO. _____		
THE STATE OF TEXAS	§	IN THE JUSTICE COURT
v.	§	PRECINCT NO. _____
_____	§	_____ COUNTY, TEXAS
<u>NOTICE OF FAILURE TO APPEAR PRIOR TO ISSUANCE OF WARRANT</u>		
<p>The Court FINDS that the Defendant in the above-styled case failed to appear as required or _____, 20____. The Defendant is hereby ORDERED to appear in the above-named court, located at _____ County, Texas, or or before _____, 20____ to answer to the allegations in this case, such date being less than 30 days from the provision of this notice. Failure to appear may result in nonrenewal of the Defendant's driver's license and/or a warrant being issued for the Defendant's arrest.</p>		
<p>NOTICE OF ALTERNATIVES TO PAYMENT OF FINE AND COSTS: A defendant who is convicted of a criminal offense punishable by fine only is entitled to alternative methods of satisfying the judgment against them if they are unable to pay the fine or costs, in whole or in part, including:</p>		
<ol style="list-style-type: none"> 1) A payment plan, allowing the defendant to make payments toward the fine and costs in designated intervals. Note that if any amount is paid more than 30 days after the judgment assessing the fine or costs then a \$25 time payment fee must be assessed. 2) Disposition of the amount assessed by performing community service. There are many options that meet the requirements of the law for community service, see Art 45.049 of the Code of Criminal Procedure for full details. A defendant is entitled to a minimum of \$100 credit for every 8 hours of community service performed. 3) If performing community service imposes an undue hardship, a defendant who is indigent or who lacks sufficient resources to pay may be entitled to a waiver of the fine and costs, in whole or in part. 		
<p>The Defendant was notified of this information by:</p> <p><input type="checkbox"/> Telephone at the following number: _____</p> <p><input type="checkbox"/> Regular mail at the following address: _____</p>		
<p>ISSUED AND SIGNED this ____ day of _____, 20____.</p>		
<p>_____ JUSTICE OF THE PEACE, PRECINCT COUNTY, TEXAS</p>		

44

Option 2: Warrant for Underlying offense

- The court must recall the warrant if the “defendant voluntarily appears and makes a good faith effort to resolve the arrest warrant before the warrant is executed.”
-- Art. 45.014(g), CCP

45

OPTION 3: NEW OFFENSE OF VPTA OR FTA

A charge of Violate Promise to Appear (VPTA) or Failure to Appear (FTA) is a brand new criminal offense.

- **VPTA:** Sections 542.401, 543.009, Transportation Code
- **FTA:** Section 38.10(e), Penal Code
- Case about which offense should be charged: *Azeez v. State* (Tex. Crim. App. 2008)

46

VPTA OR FTA?

If no appearance on a citation

- **VPTA** if “Rules of the Road” offense (Transportation Code Ch. 540-600)
- **FTA** if not “Rules of the Road” offense

If no appearance on a complaint

- **FTA** if defendant was released on bond with condition to appear.
- If no bond – **neither offense!**

If initially appears and then doesn't appear at trial

- **FTA** if defendant entered an appearance bond.
- If no appearance bond – **neither offense!**

- VPTA: Defendant has to “willfully” violate their promise to appear.
- FTA: Defendant has to “intentionally or knowingly” fail to appear as required.

47

OPTION 3: NEW OFFENSE OF VPTA OR FTA

- A charge of VPTA or FTA must have its own cause number and be processed just like any other case.
 - There must be a sworn complaint alleging the offense (preferably filed by law enforcement or a prosecutor and *not* the court clerk).
 - The court issues a summons to the defendant.
 - The defendant must enter a plea, and is entitled to a jury.
 - If convicted, it is a separate conviction and fine from the original offense.

48

Why do we say law enforcement or a prosecutor should file the complaint for a VPTA or FTA charge?

49

**OPTION 3: NEW
OFFENSE
OF VPTA OR FTA**

Fine Ranges

- VPTA: \$1 - \$200
- FTA: \$1 - \$500 (Class C misdemeanor)

Section 542.401, Transportation Code;
Section 38.10(e), Penal Code

50

OPTION 3: NEW OFFENSE OF VPTA OR FTA

Can a warrant be issued on a new FTA or VPTA offense?

- Yes – can issue a warrant on this or on the original offense.
- But either way, all requirements for issuing a warrant as already discussed must be met.
 - Have to have sent the notice with the new appearance date if defendant didn't appear at initial appearance date (and still didn't show by new date).
 - Make sure you have a complaint for the offense you are issuing the warrant on!

51

Option 4: OMNI

- OMNI is a program that denies criminal defendants the ability to renew their driver's license.
- DPS “may deny renewal of the person's driver's license for **failure to appear based on a complaint or citation or failure to pay or satisfy a judgment ordering the payment of a fine and cost** in the manner ordered by the court.”

-- Section 706.004, Transportation Code

52

Option 4: OMNI

- To place a person into OMNI for not appearing in response to a citation, the court:
 - Does NOT need to have a sworn complaint
 - Does NOT have to issue a warrant
 - Does NOT need to have an FTA or VPTA criminal charge filed

53

Option 4: OMNI

new law alert

SB 346 – the following changes apply **ONLY** to OMNI fees that are assessed on or after 1/1/20 (it doesn't matter when the offense was committed):

- Is now a \$10 fee
- Is now called a Reimbursement Fee
- The County gets to keep all of it
 - For the purpose of compensating private vendors contracted to implement Ch. 706 of the Transportation Code

54

Option 4: OMNI Removal from omni

- A defendant must be removed from OMNI if reported for failing to appear if they are acquitted of the offense (no fee).
 - Otherwise, they must pay a fee (\$30 or \$10 depending on the date the fee is assessed) and:
 - NEW LAW
 - Post an appearance bond;
 - Pay or discharge the fine and costs on an outstanding judgment; or
 - Make other suitable arrangements to pay the fine and costs within the court's discretion.
- Section 706.005(a)

55

OPTION 4: OMNI PAYMENT OF FEE

- A person who fails to appear shall be required to pay a fee **for each complaint or citation reported to DPS**, unless the person is acquitted of the charge.
 - The court may waive the fee if the defendant is indigent.
- Section 706.006(a) and (d), Transportation Code

56

- Commissioners Court may enter into a contract with a private attorney or a private vendor for the provision of collections services.
- These services include “amounts in cases in which the accused has failed to appear:
 - As promised under . . . Chapter 543, Transportation Code, or other law;
 - In compliance with a lawful written notice to appear issued under Art. 14.06(b) or other law;

Option 5: PRE-JUDGMENT REFERRAL TO COLLECTIONS

57

- A collection fee of 30% may be added on to any amount that is more than 60 days past due and has been referred to the attorney for collection.
- The collection fee does not apply to any amount that has been satisfied through time-served credit or community service.
 - Art. 103.0031(b), CCP

OPTION 5: PRE-JUDGMENT REFERRAL TO COLLECTIONS

58

- For pre-judgment collections, the amount to which the 30% collection fee applies is the amount to be paid that is communicated to the accused as acceptable to the court under its standard policy for resolution of the case, if the accused voluntarily agrees to pay that amount.
 - Art. 103.0031(b)

OPTION 5: PRE-JUDGMENT REFERRAL TO COLLECTIONS

59

- SHOULD NOT appear like a 'bill' or 'invoice.'
 - E.g. should not say "Account Due."
- SHOULD include a statement that mailing in payment will result in a criminal conviction and that the defendant has a right to plead not guilty and go to trial instead.
- Must include a statement about the alternatives to payment of the full fine and costs if the defendant is not able to pay in full.

OPTION 5: PRE-JUDGMENT REFERRAL TO COLLECTIONS

60

Option 6: WHAT ABOUT CONVICTION?

What if they keep not showing up? Can we just go ahead and impose a fine and court costs?

NO! A defendant NEVER owes a fine or court costs until they plead guilty/nolo or are convicted at trial.

So this is NOT an option!

61

The defendant did not appear at their appearance date and you sent them notice with a new appearance date. The new date should be within how many days from the day you send it?

- A. 14
- B. 30
- C. 45
- D. Why bother, they never show up anyway

62

Which should be charged if the defendant received a citation for a speeding offense and then did not appear by their initial appearance date?

A.FTA

B.VPTA

63

A sworn complaint must be filed before a court can refer a defendant to OMNI.

A.True

B.False

64

JUDGMENT

65

If defendant is present when judgment of conviction is pronounced, what must the court do?

- A. Give them a copy of judgment and tell them have a nice day
- B. Hold a hearing to determine if they are able to immediately pay the fine and costs
- C. Nothing, go on to the next case

66

Two possibilities for a Judgment

- Judgment of acquittal
- Judgment of conviction

67

Judgment of Acquittal

- Should be entered if there is a trial and the defendant is found not guilty.
- Not the same as a dismissal.

68

Judgment of Conviction

- Should be entered every time a defendant pleads guilty or nolo or is found guilty at trial;
- Should be rendered in open court and reduced to writing.
 - Art. 45.041(d), CCP

69

Hearing on ability to pay

If defendant is present when judgment of conviction is pronounced the **court must:**

- **Hold a hearing** to determine if the defendant “has sufficient resources or income to immediately pay all or part of the fine and costs”
 - Court should consider only the defendant’s present ability to pay.

-- Art. 45.014(a-1)

70

income to immediately pay all or part of the fine and costs” the same as “indigence”?

71

Payment alternatives

- If defendant is unable to immediately pay, the judge must consider whether to order one or more payment alternatives:
 - Payment plan (MUST allow)
 - Community service
 - Waiver of some or all of the fine and court costs.
- More info on all of these can be found in Ch. 8, Section B of our Criminal Deskbook

-- Art. 45.014(a-1)

72

NEW LAW ALERT – WAIVER

- Option to waive fines stays the same – Judge can do it if:
 - Defendant is indigent or doesn't have enough resources/income to pay; or they were a child at the time of the offense, **AND**
 - Performing community service would be an undue hardship.
- Option to waive costs has changed – Judge can do it if:
 - Defendant is indigent or doesn't have enough resources/income to pay; or they were a child at the time of the offense.
- New definition added to CCP Ch. 45: “Cost” includes any fee imposed on a defendant by the justice or judge at the time a judgment is entered.

Applies starting 1/1/20 even if offense was before then.

CCP 45.004, 45.0491

73

NEW LAW ALERT

Waiver

For determining whether there is an undue hardship in deciding whether to waive fines, a new subsection:

-Makes explicit that a determination of undue hardship is in the court's discretion, and

-Gives factors that the court may consider (on right).

Significant physical or mental impairment/disability

Pregnancy and childbirth

Substantial family commitments or responsibilities, including child or dependent care

Work responsibilities and hours

Transportation limitations

Homelessness or housing insecurity

Any other factors the court determines relevant

74

If defendant is present when judgment of conviction is pronounced, what must the court do?

- A. Give them a copy of judgment and tell them have a nice day
- B. Hold a hearing to determine if they are able to immediately pay the fine and costs
- C. Nothing, go on to the next case

75

MOTION FOR NEW TRIAL

76

Defendant pleads guilty or nolo while in jail. How many days do they have to file a motion for a new trial?

- A. 5
- B. 10
- C. 21
- D. They don't have the option to file it

77

What is it?

- What is a motion for a new trial?
 - It is a request to set aside a judgment of conviction and let the defendant have a whole new trial in justice court.

78

Deadline

- When does a motion for new trial have to be made?
 - Within 5 days after the judgment.
 - If the court does not rule on the motion before the 11th day after judgment, the motion is automatically denied.
 - Art. 45.037, 45.038, CCP

79

Deadline

- If the defendant pleads guilty or nolo while in jail, then he may file a motion for a new trial within **10 days**.
- The court **must grant** that motion and allow the defendant an opportunity to go to trial.
 - Art. 45.023(d), CCP

80

Defendant pleads guilty or nolo while in jail. How many days do they have to file a motion for a new trial?

- A. 5
- B. 10
- C. 21
- D. They don't have the option to file it

81

APPEAL

82

What is the minimum amount an appeal bond can be?

- A. \$50
- B. \$100
- C. \$250
- D. There is no minimum amount

83

Defendant mails in plea of guilty/nolo and requests an appeal bond. How many days after they receive the court's notice of appeal bond amount do they have to file the bond with the court?

- A. 10
- B. 21
- C. 30
- D. 45

84

- When may a defendant appeal?
 - When there is a final judgment of conviction; or
 - Upon mailing a plea of guilty or nolo and waiving the right to a jury trial and asking the court what the amount of an appeal bond is.
 - Art. 45.042, Art. 27.14(b), CCP

When?

85

- How does a defendant file an appeal?
 - By filing an appeal bond on time.
 - They do not have to file a “notice of appeal.”
 - Art. 45.0426, CCP

How?

86

- How much is the appeal bond?
 - No less than double the amount of the fine and court costs adjudged against the defendant.
 - Payable to the State of Texas.
 - Minimum bond of \$50.
 - Art. 45.0425

HOW MUCH IS THE APPEAL BOND?

87

- When does the appeal bond have to be filed?
 - Within ten days after the judgment was entered.
 - Art. 45.0426, CCP
 - Or before the 31st day after the defendant receives the notice of the appeal bond amount if they mail in a plea of guilty or nolo and request the amount of the appeal bond.
 - Art. 27.14(b), CCP

DEADLINE TO FILE APPEAL BOND

88

- What is the effect of perfecting an appeal?
 - The defendant gets a trial de novo in the county court.
 - This means the defendant gets a whole new trial from scratch.
 - The justice court judgment is vacated and “null and void” – so nothing can be done to enforce it.

EFFECT OF APPEAL

89

What is the minimum amount an appeal bond can be?

- A. \$50
- B. \$100
- C. \$250
- D. There is no minimum amount

90

Defendant mails in plea of guilty/nolo and requests an appeal bond. How many days after they receive the court's notice of appeal bond amount do they have to file the bond with the court?

A.10

B.21

C.30

D.45

91

Thank You!

92