

Intro to Civil Process

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Tyler County, Precinct 4

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Civil vs. Criminal

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“It’s a civil matter
let the constable handle it”

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Topics

- Civil Law vs Criminal Law
 - What is the difference in the application of the law?
- Civil Judgments vs. Criminal Judgments
 - What's the difference?
- Certain Writs that require seizure and Attachment
 - Which Civil Writs allow use of reasonable force?
 - What is reasonable force?
- Liability issues
 - Failure to execute/levy/damages
- Officer approach & Officer Safety
 - Civil vs. Criminal

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Resources

- www.txcourts.gov
 - Texas Rules of Civil Procedure (TRCP)
- www.statutes.capitol.texas.gov
 - All statutes other than the Rules of Civil Procedure
- TJCTC website (www.tjctc.org)
 - Texas Civil Process Field
 - Practical Guide to Writs of Execution (includes chapter on liability)

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How long have you worked at a constable's office?

1. 1 year or less
2. 1-5 years
3. 6-10 years
4. 10+ years

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How would you describe the civil process volume in your office currently?

- 1. We are back to serving papers like we did prior to the pandemic.
- 2. We are at approximately 50% of the volume.
- 3. We are at approximately 25% volume or less.

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Civil Law vs. Criminal Law

- **Criminal Law** regulates the conduct of individuals through threats of fines and imprisonment.
- **Civil Law** defines the legal significance of public and private acts and regulates conduct through injunctions and the award of money damages.

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Civil Law vs. Criminal Law *(continued)*

- In a **criminal case**, the state brings an action against an individual to punish him for breaking one of their laws.
- In a **civil case**, a person brings a lawsuit seeking some sort of redress for an injury he claims to have suffered. The redress is usually in the form of money or return of property.

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Civil Law vs. Criminal Law

(continued 2)

- **Criminal Judgments** may result in the guilty party being assessed a fine only or a fine and a period of confinement or community service.
- **Civil Judgments** usually require the party adjudged of a wrongful act to compensate the wronged party in the form of money or the return of or possession of property.

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Civil Law vs. Criminal Law

(continued 3)

- **Civil Judgments** usually require the part adjudged of a wrongful act to compensate the wronged party in the form of money or the return of or possession of property.
- In a **civil case**, the peace officer is required to follow the rules and the laws that govern the execution of civil documents.

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COVID-19 PRECAUTIONS

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What Precautions has your Office put in Place Related to COVID-19?

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Writs that require seizure or attachment

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Writs that Require Seizure or Attachment *(continued)*

- **Writ of Execution** - Seize property to satisfy a judgment by sale
- **Property Attachment** - Seize property and dispose of as directed (sale or return)
- **Distress Warrant** - Seize business property on a commercial non-payment of rent
- **Writ of Possession** - Enter and remove tenant from the property
- **Sequestration** - Seize property from subject
- **Person or Child Attachment** - Directs officer to attach person and deliver as instructed by court

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Use of Reasonable Force

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Black's Law on Reasonable Force

- "The level of power that is necessary used against another person that is appropriate to protect yourself, family members or property."
- Mostly applicable in criminal matters and limited in civil matters

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Writs that allow use of reasonable force

- Writ of Possession (TPC 24.0061)
- Writ of Re-Entry (TPC 92.009)
- Writ of Retrieval (TPC 24A.003)
- Writ of Attachment for a Child (TFC Sec. 152.311(e))

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Use of Force When Serving Process

- In levying the writ the officer may remove bodily the defendant and his goods and possessions from the property but must use ordinary care to avoid injury
- Officer may not use excessive force such as kicking in a door or committing assault on the defendant
- Can't use force to get in, but can use to get out
T.R.C.P. 699; Patton v. Slade, 38 S.W. 832, 833 (Tex. Civ. App. 1897, no writ); Mendoza v. Singer Sewing Mach. Co., 84 S.W.2d 715, 716 (Tex. 1935)

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Use of Force When Serving Process
(continued)

- “The Officer Executing this Writ may use reasonable force as necessary to enforce this order.”
- May not be a valid order!!

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Officer Approach

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Did you work as a police officer, sheriff's deputy, or other **criminal law enforcement officer** prior to working at the constable's office?

1. Yes
2. No

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Officer Approach Tips

- What we know:
 - Not a criminal matter and only the Rules of Civil Procedure apply
 - We have a limited use of force and entry (if any at all)
 - Officer safety must be a priority
 - Writs may turn volatile at any moment

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Liability & Scope of Your Role

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For agency & officer
USC Title 42, Section 1983

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Do you have a phone number to contact an attorney at your County or District Attorney's office to ask liability questions?

- 1. Yes
- 2. No

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Duties and Liabilities

An officer is not liable for damages resulting from the execution of a writ issued by a court of this state if the officer:

in **good faith** executes the Writ as provided by law and by the TRCP

CPRC §7.003 (a)

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Good Faith

- A reasonably prudent officer,
- Under the same or similar circumstances,
- Could have believed that the officer’s conduct was justified base on the information the officer possessed when the conduct occurred.

CPRC §7.003 (c)

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Immunity

- Government employees are entitled to official immunity from suit arising from performance of their discretionary duties in good faith, so long as they are acting within the scope of their authority

Richardson v. Parker, 903 S.W. 2d 801, 804 (Tex. 1994) (applying definition of “good faith” from City of Lancaster v. Chambers, 883 S.W. 2d 650 (Tex. 1994)

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Liability Issues

- Failure to execute process - *Local Government Code § 86.024*
- a) If a constable fails or refuses to execute and return according to law a process, warrant, or precept that is lawfully directed and delivered to the constable, the constable shall be fined for contempt before the court that issued the process, warrant, or precept on the motion of the person injured by the failure or refusal. This section does not apply to actions brought under or that could have been brought under Chapter 34, Civil Practice and Remedies Code.
- b) The fine shall be set at not less than \$10 or more than \$100, with costs. The fine shall be for the benefit of the injured person. The constable must be given 10 days’ notice of the motion.

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Liability Issues - Helpful Citations

- Refusal or Neglect-liable for actual damages and contempt of court (CPRC 7.001)
- Improper Endorsement of Writ (CPRC 34.063)
- Improper Return of Writ (CPRC 34.064)
- Failure to Levy or Sell (CPRC 35.065)
- Improper Sales (CPRC 34.066)
- Failure to Deliver Money Collected (CPRC 34.067)
- Wrongful Levy (CPRC 34.075)

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Duty to execute is the basis of
your role

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