

6
THE ADJUDICATION OF JUVENILES

Table of Contents

CHAPTER 6 THE ADJUDICATION OF JUVENILES 6-3

Introduction 6-3

I. Jurisdiction of Municipal and Justice Courts in Juvenile Cases 6-4

A. Overview 6-4

B. Waiver of Jurisdiction 6-5

II. Taking Juveniles into Custody 6-6

A. “Citation” vs. “Arrest” 6-6

B. The Processing of a Child Taken into Custody 6-7

C. Transfers and Referral to Juvenile Court 6-9

D. Dealing with JNAs (Juveniles Now Adults) 6-9

1. HB 2319: Youth Accountability Comes to Municipal and Justice Courts 6-11

2. The Critical Role of Peace Officers 6-12

3. Addressing the “No Show” Scenario 6-13

III. Chapter 45, Code of Criminal Procedure Processes: Objectives and Application 6-15

IV. Dispositional Powers and Procedures 6-15

A. Forms of Deferral 6-15

1. Deferred Disposition 6-16

2. Driving Safety Courses (DSC) 6-17

3. Teen Court 6-18

B. Community Service 6-19

C. General Procedures 6-20

1. Parent’s Appearance Required 6-20

2. Juvenile Residing in Another County 6-21

3. Additional Sanctions 6-21

4. Early Youth Intervention Services 6-22

5. Reports to Juvenile Court 6-22

6. Juvenile’s Failure to Appear or Failure to Pay 6-23

a. Reporting to the DPS 6-23

b. Jailing Juveniles 6-23

c. Violation of a Court Order 6-23

d. Special Programs under Article 45.057, Code of Criminal Procedure 6-24

V. Court Records and Expunction 6-24

A. Alcohol Offenses 6-24

B. Education Code Offense (Failure to Attend School) 6-25

C. Health and Safety Code Offenses (Tobacco) 6-25

D. Penal Code Offenses 6-26

E. Transportation Code Offenses 6-26

VI. School Attendance 6-26

A. Failure to Attend School 6-27

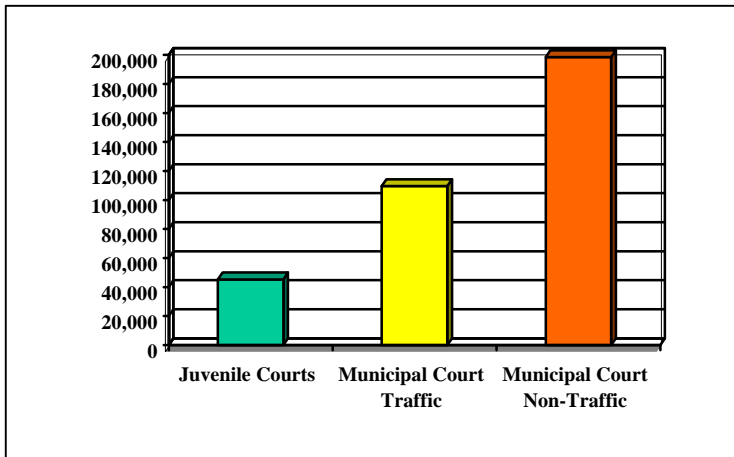
B. Parent Contributing to Nonattendance	6-31
C. Parent’s Failure to Appear with Child	6-32
VII. Alcohol Violations	6-32
A. Jurisdiction	6-32
1. Concurrent Exclusive Jurisdiction.....	6-32
2. Waiver of Jurisdiction	6-33
B. Appearance.....	6-33
1. Minor’s Appearance	6-33
2. Summoning the Parent	6-33
C. Offenses.....	6-34
D. Penalties	6-34
1. Fine.....	6-34
2. Community Service.....	6-35
3. Alcohol Awareness Program.....	6-35
4. Driver’s License Suspension or Denial	6-36
5. Driving Under the Influence of Alcohol by a Minor.....	6-37
a. Fine.....	6-37
b. Community Service	6-37
c. Alcohol Awareness Program.....	6-37
d. License Suspension or Denial.....	6-38
E. Deferred Disposition	6-38
F. Reports	6-39
1. Report to the Texas Commission on Alcohol and Drug Abuse.....	6-39
2. Report to the Department of Public Safety.....	6-39
VIII. Tobacco Offenses.....	6-40
A. Appearance.....	6-40
B. Offenses.....	6-40
C. Waiver of Jurisdiction	6-40
D. Penalty.....	6-41
1. Fine.....	6-41
2. Tobacco Awareness Program.....	6-41
E. Subsequent Violations	6-42
Works Consulted.....	6-42

CHAPTER 6 THE ADJUDICATION OF JUVENILES

Introduction

In Texas, municipal and justice courts are collectively known as local trial courts of limited jurisdiction.¹ Due to increases in juvenile criminal activity and legislative changes made since 1991, the local trial courts have experienced an explosion in juvenile activity.

Juvenile Docket Activity FY 2004²



Described by juvenile law scholars as “the shadow courts,” municipal and justice courts are now the venue for many types of cases that historically were adjudicated by juvenile courts. Today, municipal and justice courts play a critical new role in the Texas juvenile justice system.

¹ Throughout this chapter, the term “local trial courts” and municipal and justice courts will be used synonymously.

² OCA reported in FY 2004 that 171,756 juvenile Transportation Code offenses were filed in municipal court (down from 121,167 in 2000). During the same period of time, alcohol, health and safety, education, and “all other non-traffic-fine only offenses” totaled 198,439. *Annual Report of the Texas Judicial System*, Fiscal Year 2004, Office of Court Administration, Austin, Texas at 367. Since 2001, the number of juvenile non-traffic offenses filed in municipal courts increased by 138,117 cases (an increase of 80 percent).

I. Jurisdiction of Municipal and Justice Courts in Juvenile Cases

A. Overview

Municipal and justice courts have jurisdiction over “fine-only misdemeanors.”³ Additionally, the courts may impose sanctions not consisting of confinement in jail or imprisonment. The imposition of a sanction or denial, suspension or revocation of a privilege does not affect the original jurisdiction of the local trial courts in Texas.⁴ The increased number of fine-only offenses and growing volume of cases filed has complicated the task of adjudicating juveniles in the local trial courts. Excluding local ordinance violations, the primary source of juvenile-related criminal violations are located in the following codes:

- Alcoholic Beverage Code;
- Education Code;
- Health & Safety Code;
- Penal Code; and
- Transportation Code.

These codes use the terms “child” and “minor” for the purpose of specifying certain age groups. Since the terms are not synonymous, to gain an understanding of the different definitions, courts must look to the various codes defining the terms. The following list notes definitions for child and minor contained in various codes:

- Section 51.02(2) of the Family Code defines a child as a person who is 10 years of age or older and under 17 years of age. Effective September 2001, to be processed as a “child,” an individual must be: (1) older than the age of 10 but younger than 17; and (2) charged with or convicted of an offense within municipal or justice

³ The term “fine-only” deserves emphasis and a word of warning. The typical notion of a fine-only offense is a Class C misdemeanor, punishable by a maximum fine of \$500 (Article 12.23, Penal Code). Be aware, however, that the Penal Code provides that all state law violations defined outside of the Penal Code are to be prosecuted as a Class C misdemeanor as long as they are punishable by fine-only (Article 12.41(3), Penal Code). Thus, for such non-penal code criminal offenses the maximum dollar amount is determined by the Legislature (*e.g.*, passing a school bus, defined in the Transportation Code, is punishable by a maximum fine of \$1,000). Additionally, remember that a municipality may adopt ordinances punishable by a fine not to exceed \$2,000 if the subject matter relates to health, fire safety or zoning (Section 54.001, Local Government Code). Such violations may only be adjudicated in a municipal court (Section 29.003(a), Government Code).

⁴ Articles 4.11 and 4.14, Code of Criminal Procedure; Section 29.003, Government Code.

court jurisdiction.⁵ Accordingly, regardless of whether the offense is a status offense, individuals who are 17 years of age when charged are taken into custody and handled in the same manner as an adult.

- Section 25.085 of the Education Code, for the purpose of determining school attendance requirements, defines a child as a person at least six years of age, or younger than six years of age if the child has previously been enrolled in first grade and has not yet reached his or her 18th birthday.
- Section 729.001 of the Transportation Code defines a person under the age of 17 as a minor.
- Section 106.01 of the Alcoholic Beverage Code defines a person who is under the age of 21 as being a minor.
- Section 161.252 of the Health and Safety Code, for the purposes of tobacco offenses, defines a person under the age of 18 as being a minor.

With a few notable exceptions, municipal and justice courts have jurisdiction of fine-only offenses regardless of whether the offender is an adult or juvenile. The most notable exception is public intoxication committed by a person under the age of 17.⁶ Other exceptions to municipal and justice court jurisdiction are found in Chapter 729.001, Transportation Code. Chapter 729 provides that a person younger than 17 need not comply with Transportation Code provisions pertaining to: (1) a vehicle carrying mobile amateur radio equipment;⁷ and (2) operating a vehicle at a weight greater than the registration application.⁸ Nor may a child be charged with: (1) an accident involving personal injury or death;⁹ (2) accident involving damage to vehicle;¹⁰ or (3) duty on striking unattended vehicle.¹¹

B. Waiver of Jurisdiction

Unless a municipal or justice court has a juvenile case manager program,¹² the court must waive jurisdiction and transfer a juvenile's case to the juvenile court if the child has been previously convicted of:

⁵ Article 45.058(h), Code of Criminal Procedure.

⁶ Section 51.03(f), Family Code.

⁷ Section 502.282, Transportation Code.

⁸ Section 502.412, Transportation Code.

⁹ Section 550.021, Transportation Code.

¹⁰ Section 550.022, Transportation Code.

¹¹ Section 550.024, Transportation Code.

¹² The juvenile case manager program (Article 45.056, Code of Criminal Procedure) was created in 2001 during the 77th Legislature. Municipal and justice courts with such a program may retain or waive jurisdiction of certain offenses (specifically, those which cannot be enhanced).

- Two or more prior fine-only offenses other than traffic or tobacco violation;
- Two or more violations of a penal ordinance of a political subdivision other than a traffic offense; or
- One or more of each of the types of misdemeanors described above.¹³

With the exception of traffic and tobacco offenses, a municipal or justice court judge may waive jurisdiction and transfer a child to juvenile court whenever a complaint is pending against the child for any fine-only offense.¹⁴

Notably, Section 161.257 of the Health and Safety Code provides that “Title 3 of the Family Code, does not apply to a proceeding under Subchapter N, Chapter 161, entitled ‘Tobacco Use by Minors.’” The chapter includes offenses and penalties for possession, purchase, consumption, and receipt of cigarettes or tobacco products by minors as well as misrepresentation of age by a minor to obtain a cigarette or tobacco product. Presumably, a third or subsequent case involving tobacco use by a child may not be transferred to juvenile court.

When a municipal or justice court waives jurisdiction and transfers a case to the juvenile court, all pertinent documents in the case need to be forwarded to the juvenile court with a transfer order. The local trial court should retain a copy of all documents. If the case is being transferred under the mandatory provision because of two prior convictions, information about the two prior cases should be included. The form being used to waive jurisdiction, sending the case to the juvenile court should contain the following: (1) name of the court; (2) name of the defendant; (3) name of the judge; (4) offense charged; and (5) cause number assigned to the case.

II. Taking Juveniles into Custody

A. “Citation” vs. “Arrest”

With the exception of public intoxication, in lieu of making a full custodial arrest and presenting a child before a magistrate, a peace officer may issue a citation.¹⁵ To secure release, the person detained must make a written promise to appear in court by signing the written notice prepared by the officer.¹⁶ In the context of a fine-only offense, a

¹³ Section 51.08(b)(1), Family Code.

¹⁴ Section 51.08(b)(1), Family Code.

¹⁵ Articles 14.06 and 45.058, Code of Criminal Procedure. While peace officers may not issue citations for public intoxication, they may release the individual in accord with Article 14.031 of the Code of Criminal Procedure.

¹⁶ While not a full custodial arrest, Section 543.005 of the Transportation Code provides that the brief detention period in which a citation is issued constitutes an arrest. (Section 543.004, Transportation Code).

citation acts as the functional equivalent of an arrest and subsequent procedures in the following ways:

- It serves as proof that the defendant has notice that he or she is accused of a criminal offense.
- It informs the defendant of the time and date in which he or she may personally appear to answer the criminal allegation. Alternatively, in fine-only offenses, an adult may enter a plea by mail.¹⁷ Note, however, that entering a plea by mail is not an option for defendants younger than 17 years of age.¹⁸
- The defendant's signature on the citation, while not a plea, can be analogized to a personal bond. In addition to a warrant being issued for the initial offense, a defendant's failure to appear as promised may result in a warrant being issued for either: Failure to Appear, a Class C misdemeanor,¹⁹ or Violate Promise to Appear, applicable only to Transportation Code, Subtitle C "Rules of the Road" offenses, punishable by a maximum fine of \$200.²⁰

In light of the U.S. Supreme Court's decision in *Atwater v. City of Lago Vista*,²¹ and the defeat of legislation that would have prohibited full custodial arrests for fine-only traffic offenses, Texas remains a state where peace officers have relatively unencumbered discretion to make full custodial arrests. In fact, with the exception of most speeding and open container violations, a Texas peace officer may arrest an offender without a warrant for any offense committed in his or her presence or within his or her view.²² By eliminating the requirement that the offense be committed in the officer's presence or view, the Family Code gives peace officers even broader authority to arrest juveniles. Thus, with the exception of arresting a juvenile in his or her home, a peace officer generally does not need a warrant. Rather, all that is required is probable cause.

B. The Processing of a Child Taken into Custody

Section 729.003 of the Transportation Code states that a minor detained for a traffic offense must be detained in a facility that complies with Section 51.12 of the Family Code. Section 51.12 provides that a child may be detained only in a juvenile processing office, a place of nonsecure custody, a certified juvenile detention facility, or a secure detention facility.

¹⁷ Article 27.14(d), Code of Criminal Procedure.

¹⁸ Article 45.0215, Code of Criminal Procedure.

¹⁹ Section 38.10, Penal Code.

²⁰ Sections 542.401 and 543.009, Transportation Code.

²¹ 121 S.Ct. 1536 (2001).

²² Article 14.01(b), Code of Criminal Procedure.

However, if the offense is within the jurisdiction of a municipal or justice court then a more specific rule applies. Article 45.058 of the Code of Criminal Procedure²³ provides procedures for taking children (ages 10-16) into custody. Under Article 45.058, a child may be:

- Released to a parent, guardian, custodian, or other responsible adult;
- Taken before a municipal or justice court; or
- Taken to a place of nonsecure custody.
 - A place of nonsecure custody is defined as an unlocked multipurpose area. A lobby, office or interrogation room is suitable if the area is not designated, set aside or used as a secure detention area and is not part of a secure detention area. A juvenile processing office may be used as a nonsecure custody as long as it is not locked when being used as nonsecure custody area.²⁴
 - A place of nonsecure custody must be designated by the head of law enforcement with custody of the child.²⁵
 - While in the custodial area, the juvenile cannot be handcuffed to a chair, rail or any object and he or she must be under continuous visual observation by a law enforcement officer or a member of the facility staff. The juvenile cannot be held in the facility for longer than is necessary to take the child before a judge or to release the child to the parents. If the juvenile is being held on charges other than municipal or justice court matters, he or she may be held long enough to be identified, investigated, processed, and for transportation to be arranged to a juvenile detention facility.²⁶ Unless authorized by the juvenile court, a juvenile apprehended for a fine-only offense may neither be fingerprinted nor photographed while in law enforcement custody.²⁷
 - Under no circumstances is the child to be held for more than six hours.²⁸ These same regulations apply to juveniles who are picked up on curfew violation charges.²⁹ After six hours the child may be: (1) released to a

²³ Formerly, Section 52.027 of the Family Code.

²⁴ Article 45.058(c), Code of Criminal Procedure.

²⁵ Article 45.058(b), Code of Criminal Procedure.

²⁶ Article 45.058(d), Code of Criminal Procedure.

²⁷ Section 58.002(a), Family Code.

²⁸ *Id.*

²⁹ Article 45.058(e), Code of Criminal Procedure.

responsible adult;³⁰ (2) released upon issuance of a citation;³¹ or (3) taken before a magistrate and released on a personal bond.³²

C. Transfers and Referral to Juvenile Court

A juvenile may be taken into custody and presented or detained in juvenile detention center if a municipal or justice court either: (1) transfers a non-traffic case to the juvenile court, or (2) refers the child to juvenile court for contempt of a court.³³

D. Dealing with JNAs (Juveniles Now Adults)

Until 2003, one area of juvenile law impacting municipal and justice courts remained unresolved: How do such courts enforce their judgments against juvenile defendants who are now adults?³⁴

While the volume and variety of cases in municipal and justice courts increased during the 1990s, the courts continued to be plagued by limited resources and inadequate enforcement measures. As a consequence, a significant number of children who were either accused or convicted of fine-only offenses gradually learned through frequent trips to court that the Texas law was ill equipped to hold them accountable for their behavior. The lack of procedural law not only resulted in courts sometimes acting without clear authority, but also contributed to a whole generation of young Texans believing that they could leave their childhood wrongs behind upon reaching age 17.

Over the years, the lack of legal authority in this area coupled with mounting frustration amongst judges resulted in inconsistent judicial practices throughout the state. At the core of such practices remained a fundamental unanswered question: Can a municipal or justice court enforce a judgment or order against an adult defendant, who violated a court order as a juvenile, in the same manner you would a defendant

³⁰ Article 45.058(a), Code of Criminal Procedure.

³¹ Article 14.06(b), Code of Criminal Procedure.

³² Article 17.03, Code of Criminal Procedure.

³³ Article 45.058(f), Code of Criminal Procedure.

³⁴ As a general proposition of law, a suspect is to be processed in accord with their age at the time of the alleged offense (not their age at the time of their arrest). This principle was highlighted in the arrest of Kennedy cousin, Michael Skakel, accused of the 1975 killing of Martha Moxley and in the arrest of the young men accused of the 1991 Austin Yogurt Shop Murders. In both cases, the accused were all adults but were arrested and processed as juveniles. Problematically, Texas law contained no such comparable procedure for municipal and justice courts. HB 2319, passed during the 78th Regular Legislature, is the first attempt at providing such procedures.

who is an adult? If so, may the court commit the defendant to jail on a *capias pro fine*?

For years local trial courts throughout the state had taken different approaches to the issue. There appeared, however, to be three general approaches:

Reluctance – A growing number of courts appreciated that there was neither case law nor statutory law that authorized jailing such defendants. Accordingly, many courts made little effort to enforce their orders. Contrary to Article 45.058 of the Code of Criminal Procedure, some judges mistakenly believed that they had no authority to even order the juvenile be taken into custody. Other than ordering DPS to deny the renewal of the juvenile’s driver’s license, many courts believed there was little or nothing else they could do to enforce their orders.

Attrition – Some judges took the perspective that compelling a juvenile to comply with the court’s order was a battle of wills between the juvenile and the judge. Consequently, some judges were willing to take the juvenile into custody as many times as necessary. The rationale being that sooner or later the juvenile would ultimately get tired of repeatedly being taken into custody.

Passive Aggression – Other judges felt that regardless of whether the defendant was a child at the time of the infraction, once a juvenile defendant had been found guilty and given an order by the court, no further efforts were necessary on the court’s part. Such courts waited for the defendant to turn age 17 and then had the defendant either arrested or committed to jail on a *capias pro fine* warrant. Though relatively few judges were known to engage in this practice, it was common enough to have its own name: “throwing the defendant a birthday party.”

None of the three general approaches were free from criticism.

“Reluctance” did not bring about compliance. “Attrition” may have been ideal but was neither generally practical nor possible. “Passive-aggression,” because of a judge’s duty to “dispose of all matters promptly, efficiently and fairly,”³⁵ was widely believed to be unethical. Not surprisingly, judges “lying in wait” for youthful offenders to reach age 17, led critics to claim that “birthday parties” were not only unlawful but “the domain of the small of mind and little of heart.”³⁶

³⁵ Canon 3(B)(9), Code of Judicial Conduct.

³⁶ Correspondence, Professor Robert O. Dawson, Bryant Smith Chair in Law, University of Texas School of Law (7/12/02).

Going into the 78th Legislature in 2003, Texas law contained more questions than answers when it came to enforcing municipal and justice courts orders on juvenile offenders who were now adults.

1. **HB 2319: Youth Accountability Comes to Municipal and Justice Courts**

One of the components of HB 2319 (passed during the 78th Regular Legislature and effective September 1, 2003) was a compromise between factions with differing beliefs about how the legal system should handle young offenders who either enter adulthood with either outstanding judgments or who have refused to appear in municipal or justice court. Notably, it prohibited “surprise birthday parties” (where the court makes no efforts to secure the appearance of the accused or enforce its orders against the juvenile misdemeanor until the child reaches age 17).³⁷ At the same time, however, it put into place a new framework of enforcement that ultimately allows judges who have attempted to enforce their judgments using juvenile contempt to commit a JNA (juvenile now adult) to jail by means of a *capias pro fine* warrant. (Thus, actually, the “birthday party” is now, statutorily, a formal affair.)³⁸

As revised, a *capias pro fine* warrant may not be issued for an individual convicted for an offense committed before the individual’s 17th birthday unless: (1) the court has already attempted to bring the child into compliance via juvenile contempt (Article 45.050 of the Code of Criminal Procedure); (2) the individual is 17 years of age or older; and (3) the court finds that the issuance of the *capias pro fine* is justified after considering the:

- Sophistication and maturity of the individual (the judge should use his or her notes taken when the juvenile made an appearance before the judge);
- Criminal record and history of the individual (generally, this will be a history of cases filed in municipal court, it could also include information from the Department of Public Safety); and
- Reasonable likelihood of bringing about the discharge of the judgment through the use of procedures and services currently available to the court.

Another key component of the youth accountability measures contained in HB 2319 pertains to juvenile defendants who fail to appear in municipal or justice court. Historically, a major problem in municipal and justice courts was that neither youthful offenders nor their parents or guardians were under any obligation to keep the court advised of their current residency and place of address. HB 2319 provides a protocol, if followed, which makes it the legal obligation of a youth and/or a parent to keep the

³⁷ Articles 45.045(b) and 45.060(a), Code of Criminal Procedure.

³⁸ Article 45.045(b)-(c), Code of Criminal Procedure.

court advised of the defendant's place of residence.³⁹ In such instances, municipal and justice courts are able to presume that the address they have as stated on the citation is the correct address for the defendant. Failure to inform the court of changes in address is a Class C misdemeanor.⁴⁰

2. The Critical Role of Peace Officers

From a law enforcement prospective, it must be emphasized that under HB 2319 the ability of a prosecutor or judge to enforce violations of the obligation to keep the court informed of a current address (*i.e.*, the address obligation), as well as the court's ability to exercise other accountability measures will nearly always depend on the actions of the peace officer in the field. For there to be a criminal violation of the address obligation, there must be proof that the juvenile and/or his or her parent was provided notice. The vast majority of the time, the only opportunity for notice to be given is when provided by a peace officer. A peace officer may effectively provide notice (1) pursuant to arrest and release as authorized by Article 45.058(a), Code of Criminal Procedure, or (2) when a citation is issued by a peace officer pursuant to Section 543.003, Transportation Code, or Article 14.06(d), Code of Criminal Procedure. While a municipal or justice court may also provide the notice when the juvenile makes his or her initial appearance, there is no guarantee that the juvenile or parent will appear. Accordingly, the better practice for peace officers issuing citations to suspects younger than 17 is to make the issuance of the new "obligation" notice part of their field citation practice. If peace officers do not provide such notice, courts and prosecutors will be unable to bring about compliance under the new law. Lack of notice is an affirmative defense.⁴¹

The child and parent are entitled to written notice of their obligation under Subsections (h) and (i) of Article 45.057, Code of Criminal Procedure. The Subsection reads as follows:

(h) A child and parent required to appear before the court have an obligation to provide the court in writing with the current address and residence of the child. The obligation does not end when the child reaches age 17. On or before the seventh day after the date the child or parent changes residence, the child or parent shall notify the court of the current address in the manner directed by the court. A violation of this subsection may result in arrest and is a Class C misdemeanor. The obligation to provide notice terminates on discharge and satisfaction of the judgment or final disposition not requiring a finding of guilt.

³⁹ Article 45.057(h)-(k), Code of Criminal Procedure.

⁴⁰ Article 45.057(h), Code of Criminal Procedure.

⁴¹ Article 45.057(k), Code of Criminal Procedure.

(i) If an appellate court accepts an appeal for a trial de novo, the child and parent shall provide the notice under Subsection (h) to the appellate court.

As previously mentioned, it is an affirmative defense to prosecution that notice was not given in accord with Article 45.057.⁴² Thus, from an evidentiary perspective, it is important that the peace officer be able to prove that the requisite notice was given. While not an insurmountable task, incorporating the “address obligation” notice requires the participation of law enforcement. Here are three ways that the “address obligation” notice can be effectively issued:

- **On the Citation** – While the law does not require the notice be incorporated into the citation, it is certainly the most ideal way to document that notice was provided.
- **Specialized Citations** – Because only suspects younger than 17 are required to be provided notice, some law enforcement agencies might find it easier to incorporate it into either a supplemental or stand-alone “kiddy” citation. Such specialized citations ideally would have a signature/acknowledgement line and generate carbon duplicates.
- **Incorporation by Reference** – Since many citations already contain so much text, the additional notice may necessitate providing a magnifying glass to all recipients. Another option is incorporation by reference. In other words, rather than containing the full text of the notice on the actual citation, the citation would contain a check box option for the peace officer or otherwise denote the following: “The suspect, who is younger than 17 and/or his or her parent, has been provided written notice of their obligation under Subsections (h) and (i) of Article 45.057, Code of Criminal Procedure.” The text Subsections (h) and (i) could be reproduced on an easily distinguished business-size card printed on bright card stock.

3. Addressing the “No Show” Scenario

While to some, the “address obligation” notice may seem like one more piece of paperwork, it is in fact the linchpin of HB 2319’s youth accountability measure intended to address the problem of securing the defendant’s appearance before the court. As previously mentioned, municipal and justice courts (especially in metropolitan areas) have difficulties securing the initial appearance of juvenile offenders. A growing number of juveniles see no negative consequences to failing to appear. Under HB 2319, once a peace officer provides the juvenile with the citation and “address obligation” notice, municipal and justice courts are legally able to presume that the address on the citation is a correct address until the case’s final

⁴² *Id.*

disposition. The juvenile, and possibly even the parents, can be made legally responsible for informing the court of any change of address. As previously mentioned, violation of this obligation is a separate Class C misdemeanor.

In the event that the juvenile offender fails to make an appearance, and if attempts to take the juvenile into *nonsecured* custody are unsuccessful prior to the defendant's 17th birthday, a municipal or justice court may issue the juvenile a foreshadowing warning in the form of a final notice on or after the defendant's 17th birthday.⁴³ A notice of continuing obligation to appear must contain the following statement provided in boldfaced type or capital letters:

WARNING: COURT RECORDS REVEAL THAT BEFORE YOUR 17TH BIRTHDAY YOU WERE ACCUSED OF A CRIMINAL OFFENSE AND HAVE FAILED TO MAKE AN APPEARANCE OR ENTER A PLEA IN THIS MATTER. AS AN ADULT, YOU ARE NOTIFIED THAT YOU HAVE A CONTINUING OBLIGATION TO APPEAR IN THIS CASE. FAILURE TO APPEAR AS REQUIRED BY THIS NOTICE MAY BE AN ADDITIONAL CRIMINAL OFFENSE AND RESULT IN A WARRANT BEING ISSUED FOR YOUR ARREST.⁴⁴

So why issue another notice to appear if the juvenile has already failed to appear once? The answer lies in the fact that the failure to obey the notice to appear is a new separate Class C offense committed, not by a child, but rather by an adult (*i.e.*, a Violation of Continuing Obligation to Appear). As a consequence, the JNA may be arrested and taken into *secured* custody, as would any other adult arrested for a Class C misdemeanor. Once in secured custody, the JNA should be brought before the court that issued the warrant. When taking a plea, it is critical that the court take a plea on all of the outstanding offenses, including those allegedly committed by the defendant prior to becoming an adult. This is possible because municipal and justice courts do not lose jurisdiction of the original offenses due to the age of the defendant (assuming that a complaint has been filed and

there is no statute of limitations issue). Potentially, juveniles who commit a Class C offense on or after September 1, 2003 and who

For additional information, see Juvenile and Minor Proceedings in the *TMCEC Bench Book*.

subsequently fail to make an appearance in court can, upon their 17th birthday, potentially face multiple charges stemming from the original offense (*e.g.*, violate promise to appear/failure to appear, a change of address violation and violation of the court's notice of the continuing obligation to appear). Excluding court costs and possible contempt-related fines, if convicted, such JNAs can now potentially face

⁴³ Article 45.060(b), Code of Criminal Procedure.

⁴⁴ Article 45.060(e), Code of Criminal Procedure.

aggregate fines up to \$2,000. As an adult, failure to pay such fines can result in the issuance of a *capias pro fine* warrant and commitment to jail for as long as 40 days.⁴⁵ This will, undoubtedly, come as a surprise to young adults and others unfamiliar with the law.

III. Chapter 45, Code of Criminal Procedure Processes: Objectives and Application

Chapter 45 of the Code of Criminal Procedure contains the procedures for processing cases that come within the criminal jurisdiction of municipal and justice courts. The Chapter is intended to facilitate the following objectives:

- To provide fair notice and meaningful opportunity for people to be heard;
- To ensure appropriate dignity in court procedure without undue formalism;
- To promote adherence to the rules with sufficient flexibility to serve the ends of justice; and
- To process cases without unnecessary expense or delay.⁴⁶

Chapter 45 is unique in the sense that it is a code of criminal procedure within the Code of Criminal Procedure. Proceedings in municipal and justice court are to be conducted in accordance with Chapter 45. In the event Chapter 45 does not provide a specific rule, judges are to apply the general provisions of the Code of Criminal Procedure (*i.e.*, provisions found outside of Chapter 45) to the extent necessary to achieve the objectives stated above.⁴⁷

IV. Dispositional Powers and Procedures

A. Forms of Deferral

Chapter 45 of the Code of Criminal Procedure provides three primary ways that a juvenile, subject to compliance with a court order, may avoid the imposition of a final judgment of guilt: (1) deferred disposition; (2) driving safety courses; and (3) teen court.⁴⁸

⁴⁵ Pursuant to HB 2424, effective September 1, 2003, municipal courts are only required to provide \$50 jail credit per offense per 24-hour period.

⁴⁶ Article 45.001, Code of Criminal Procedure.

⁴⁷ Article 45.002, Code of Criminal Procedure.

⁴⁸ Another form of deferral not discussed in this paper pertains to the dismissal of a misdemeanor charge upon commitment of a chemically dependent person (Article 45.053, Code of Criminal Procedure).

1. Deferred Disposition

An alternative to a fine is placing the juvenile on deferred disposition.⁴⁹ Deferred disposition is available for most offenses. The exceptions are:

- Traffic offenses committed in a construction maintenance zone when workers are present;⁵⁰
- Alcoholic Beverage Code offenses committed by a minor who is not a child and who has been previously convicted at least twice of an offense to which Section 106.071 applies;⁵¹
- A minor who commits the offense of driving under the influence of alcohol and has been previously convicted twice or more of that offense;⁵²
- A minor charged with consuming an alcoholic beverage is not eligible for deferred disposition if he or she has previously been convicted twice or more for consuming an alcoholic beverage.⁵³

If the offense charged is an alcohol offense including public intoxication, the court must require the minor to attend an alcohol awareness program approved by the Texas Commission on Alcohol and Drug Abuse when granting deferred.⁵⁴

If a minor is charged with minor in possession, minor consuming, minor purchasing alcohol, minor attempting to purchase, misrepresentation of age by a minor, or public intoxication (under age 21), the court must require the minor to perform community service. If it is a first time offense, the community service must be not less than eight or more than 12 hours. If the minor has a previous conviction, the minor must perform not less than 20 or more than 40 hours community service as a term of deferral.⁵⁵ As in all other proceedings involving juveniles, the court is required to summon the parents or guardian and require their presence when granting deferred disposition. Before granting deferred disposition, the judge accepts a plea of guilty, or no contest, or the defendant may be found guilty after a trial. The defendant must pay court costs before the judge may grant deferred disposition. When a deferred disposition is granted, the judge may

For a list of approved alcohol education providers, go to www.tcada.state.tx.us/education/index.shtml.

⁴⁹ Article 45.051, Code of Criminal Procedure.

⁵⁰ Sections 472.022 and 543.117, Transportation Code.

⁵¹ Section 106.071(i), Alcoholic Beverage Code.

⁵² Section 106.041(f), Alcoholic Beverage Code.

⁵³ Section 106.04(d), Alcoholic Beverage Code.

⁵⁴ Section 106.115, Alcoholic Beverage Code.

⁵⁵ Section 106.071, Alcoholic Beverage Code.

impose reasonable conditions or requirements for the juvenile to perform within a certain time. The judge has the discretion to impose a probation period of up to 180 days.

The judge may require any of the following conditions:

- A bond in the amount of the fine assessed but not imposed to secure payment of the fine;
- Payment of restitution not to exceed the amount of the fine assessed to the victim, if any;
- Submit to professional counseling;
- Submit to diagnostic testing for alcohol or a controlled substance or drug;
- Submit to psychosocial assessment;
- Participate in an alcohol or drug abuse treatment or education program;
- Pay the costs of any diagnostic testing, psychosocial assessment or participation in a treatment or education program either directly or through the court as court costs; and
- Comply with any other reasonable condition.

At the end of the deferral period, if the juvenile presents satisfactory evidence of compliance with the requirements imposed, the judge must dismiss the complaint and show that there is not a final conviction. At this time, the judge may impose a special expense fee up to the amount of fine that was assessed at the beginning of the deferral but not imposed. If the defendant does not comply with the conditions or present satisfactory evidence of compliance, the court should set the defendant for a show cause hearing and summon the parents or guardian. When a defendant fails to comply with the terms of the deferral, the court has the option of reducing the fine or imposing the original fine.⁵⁶

2. Driving Safety Courses (DSC)

Driving safety courses are an offense-specific form of deferred disposition.⁵⁷ Juveniles who want to take a driving safety course must make the request in open court in the presence of a parent or guardian.⁵⁸ All defendants requesting a driving safety course must give the court a plea of guilty or *nolo contendere*. The court must enter a

⁵⁶ Article 45.0511(d), Code of Criminal Procedure.

⁵⁷ Article 45.0511, Code of Criminal Procedure.

⁵⁸ Article 45.0215, Code of Criminal Procedure.

judgment on the plea.⁵⁹ If a minor fails to complete a driving safety course, the court is required to notify the minor of a show cause hearing. The court may need to summon the parent again depending on the original instructions the court gave the parents or guardian when he or she first appeared with their child. At the hearing, the court may grant an extension of time to present the driving safety course certificate or may impose the fine. When a minor fails to appear at a show cause hearing, the minor may be charged with the offense of failure to appear at show cause hearing.⁶⁰

3. Teen Court

Article 45.052, Code of Criminal Procedure, provides authority for municipal and justice courts to defer disposition via a teen court program. Teen court is a deferral program in which the juvenile's peers sentence defendants who participate, using a locally developed sanction grid. The deferral period may last up to 180 days. The court must approve the teen court program. To be eligible, the defendant must:

- Enter a plea of guilty or no contest in open court in the presence of parents or guardian and request, either in writing or orally, the teen court program;
- Be under the age of 18 or enrolled full time in an accredited secondary school in a program leading toward a high school diploma;
- Be charged with a misdemeanor punishable by fine-only or a violation of a penal ordinance of a political subdivision, including a traffic offense punishable by fine-only;
- Not have successfully completed a teen court program in the two years preceding the date that the alleged offense occurred; and
- Before the 180th day or within 90 days of having the teen court hearing (whichever is earlier), the juvenile must provide proof of completion to the municipal or justice court.

A court may transfer a case deferred under the teen court program to a court in another county if the court to which the case is transferred consents. A case may not be transferred unless it is within the jurisdiction of the court to which it is transferred.⁶¹

The judge must dismiss the charge at the conclusion of the deferral period if the defendant presents satisfactory evidence that he or she has successfully completed the program. A charge that is dismissed may not be part of the defendant's criminal

⁵⁹ Article 45.0511(c), Code of Criminal Procedure.

⁶⁰ Article 45.0511(i), Code of Criminal Procedure.

⁶¹ Article 45.052(f), Code of Criminal Procedure.

record or driving record or used for any purpose. However, if the charge was for a traffic offense, the court shall report to the Department of Public Safety that the defendant successfully completed the teen court program and the date of completion for inclusion in the defendant's driving record.⁶²

The court is required to collect all applicable court costs. The court may require the person requesting a teen court program to pay a fee not to exceed \$10 to cover the costs of administering the deferral for the teen court. This fee is to be deposited into the city's general treasury. The court may also require the defendant to pay a \$10 fee to cover the cost to the teen court for performing its duties. This fee should be paid to the teen court program. The teen court program must account to the court for the receipt and disbursement of the fee. A defendant who fails to complete the teen court program is not entitled to a refund of either \$10 fee.⁶³

The judge may exempt a defendant who has requested a teen court program from paying court costs or the fees.⁶⁴ This and Article 43.091, Code of Criminal Procedure, are the only sources of authority that a judge has to waive the payment of court costs. If a judge does exempt a defendant, the judge should include some type of documentation in the file to show why the court costs or fees were not collected.

B. Community Service

Performing community service may discharge fines and costs imposed by a municipal or justice court, regardless of whether the defendant is an adult or a juvenile.⁶⁵ A community supervision and corrections department or a court-related service office may provide the administrative duties and other services necessary for placement in community service programs.

A judge may require a defendant who fails to pay previously assessed fine or costs, or who is determined by the court to have insufficient resources or income to pay a fine or costs, to discharge all or part of the fine or costs by performing community service. A defendant may, at any time, discharge an obligation to perform community service required

perform community service must agree to supervise the defendant in the performance of the defendant's work and report on the defendant's work to the judge. A judge may not order more than 16 hours per week of community service unless he or she determines that requiring the defendant to work additional hours does not create a hardship on the defendant or the defendant's dependents. A defendant is considered to have discharged \$50 of fines or costs for each eight hours of community service performed.

The municipal or justice court judge, officer or employee of a city or county is not liable for damages arising from an act or failure to act in connection with manual labor performed by a defendant if the act or failure to act was:

- Performed pursuant to court order; and
- Not intentional, willfully or wantonly negligent or performed with conscious indifference or reckless disregard for the safety of others.

Court clerks are often responsible for coordinating community service. This includes developing a method of keeping track of defendants' community service orders and completion of services and making certain defendants submit the proper documentation of completion of community service.

If a child fails to perform community service as ordered by the court, the court can report to the Department of Public Safety the failure to pay the fine. The court may also send the case to the juvenile court for contempt (*i.e.*, violation of a court order hold) or hold the juvenile in contempt as provided by Article 45.050 of the Code of Criminal Procedure.

If a defendant defaults in the payment of a fine and the court concludes that community service would constitute an undue hardship, the court may waive the payment of the fine and court cost.⁶⁶

C. General Procedures

1. Parent's Appearance Required

In all criminal cases involving juveniles, the court is required to summon the parent, guardian or conservator to appear with his or her child and to be present during all court proceedings.⁶⁷ The summons must contain a notice to the parent that if the parent fails to appear in court with his or her child, the parent may be charged with a

⁶⁶ Article 43.091, Code of Criminal Procedure.

⁶⁷ Article 45.0215, Code of Criminal Procedure.

Class C misdemeanor offense.⁶⁸ The summons is issued by the judge and served by a peace officer as other summonses are served. A parent, guardian or conservator who fails to appear could be charged with the offense of failure to appear, not to be confused with the failure to appear offense in Section 38.10 of the Penal Code, which only applies to a defendant's failure to appear.

2. Juvenile Residing in Another County

When a juvenile resides in a county other than the county in which the alleged offense occurred, the defendant can, with permission of the court, enter a plea before a judge in the county where the defendant resides.⁶⁹ The judgment is rendered by the court in which the complaint is filed, and all fines and cost go to the original court.

3. Additional Sanctions

Under Article 45.057(b) of the Code of Criminal Procedure, when a child is convicted of a fine-only offense, the court may order:

- The child or the child's parents, managing conservators or guardians for services under Section 264.302 of the Family Code (Section 264.302 provides for early youth intervention services. See the next section for information on these services.);
- The child to attend a special program that the court determines to be in the best interest of the child, and if the program involves the expenditure of county funds, that is approved by the county commissioners court, including a rehabilitation, counseling, self-esteem and leadership, work and job skills training, job interviewing and work preparation, self-improvement, parenting, manners, violence avoidance, tutoring sensitivity training, parental responsibility, community service, restitution, advocacy, or mentoring program; or
- The child's parent, managing conservator or guardian, if the court finds the parent, managing conservator or guardian, by act or omission, contributed to, caused or encouraged the child's conduct to do any act or refrain from doing any act that the court determines will increase the likelihood that the child will comply with the orders of the court and that is reasonable and necessary for the welfare of the child, including:
 - Attend a parenting class or parental responsibility program; and
 - Attend the child's school classes or function.

⁶⁸ Article 45.057(g), Code of Criminal Procedure.

⁶⁹ Article 45.0215(c), Code of Criminal Procedure.

Article 45.057, Code of Criminal Procedure, contains a general list of conditions that the court may impose on both children and their parents. The court may require the parents, managing conservator or guardian of a child required to attend one of the above mentioned programs to pay an amount not greater than \$100 to pay for the costs of the program. The child, parent, managing conservator, or guardian required to attend a program, class or function may also have to submit proof of attendance to the court. An order for a child to attend any special programs is enforceable by contempt as defined in Article 45.050. Other orders are enforceable under the municipal and justice court contempt provisions as defined in Section 21.002(c) of the Government Code.⁷⁰

4. Early Youth Intervention Services

Early youth intervention services apply to a child who is seven years of age or older and under 17 years of age. Early youth intervention services are for children and their families who are in at-risk situations. A municipal or justice court may refer a child to these services if the Department of Human Resources has contracted with the county to provide the services.⁷¹ The services may include:

- Crisis family intervention;
- Emergency short-term residential care for children 10 years of age or older;
- Family counseling;
- Parenting skills training;
- Youth coping skills training;
- Advocacy training; and
- Mentoring.

5. Reports to Juvenile Court

When a municipal or justice court has a pending complaint against a child alleging a violation of a misdemeanor offense punishable by fine-only (including ordinance violations) other than a traffic offense (or a traffic ordinance violation), municipal or justice court shall notify the juvenile court of the pending complaint and furnish a copy of the final disposition.⁷²

⁷⁰ Municipal or justice contempt, with the exception of children, is punishable by a fine of \$100 and/or three days incarceration.

⁷¹ Section 264.302, Family Code.

⁷² Section 51.08(c), Family Code.

6. Juvenile's Failure to Appear or Failure to Pay

a. Reporting to the DPS

Courts must report to DPS a minor charged with a traffic offense who fails to appear or who defaults on payment of a fine. When the minor makes a final disposition of the case, the court must report the final disposition to DPS.⁷³

DPS will not issue a driver's license to any minor charged with a traffic offense who fails to appear or defaults in payment of fine unless the court files an additional report on final disposition of the case.⁷⁴ DPS will revoke the driver's license of any minor charged with a traffic offense who fails to appear or defaults in payment of fine unless the court files an additional report on final disposition of the case.⁷⁵ DPS may not reinstate a license until the court files an additional report on the final disposition of the case. A minor whose license is suspended or revoked under this statute must pay a \$100 reinstatement fee to DPS.⁷⁶ The fee is not required if the DPS rescinds the suspension or revocation or if a presiding officer or a court does not sustain the suspension or revocation.

b. Jailing Juveniles

Article 45.050, Code of Criminal Procedure, states that a justice or municipal court may not order the confinement of a person who is a child, as defined in the Family Code, for the failure to pay all or any part of a fine or costs imposed for the conviction of an offense punishable by fine only.

However, courts can order juveniles be taken into custody. As previously described, the Code of Criminal Procedure provides procedures for handling juvenile offenders taken into custody for traffic offenses, other fine-only misdemeanor offenses and status offenses.⁷⁷ Furthermore, a child may be detained in a detention facility designated by a juvenile court when a non-traffic case is being transferred from a municipal or justice court to a juvenile court.⁷⁸

c. Violation of a Court Order

When a child fails to obey an order of either a municipal court or justice court, the court is authorized to either refer the child to juvenile court for delinquent conduct for

⁷³ Section 729.003(e), Transportation Code.

⁷⁴ Section 521.201(7), Transportation Code.

⁷⁵ Section 521.294(5), Transportation Code.

⁷⁶ Section 521.294(5), Transportation Code.

⁷⁷ Article 45.058, Code of Criminal Procedure.

⁷⁸ Article 45.058(f), Code of Criminal Procedure.

contempt of a justice or municipal court order or retain the case and do one or both of the following: (1) fine the child up to \$500, or (2) order the suspension or denial of the child's driver's license or permit until the child has fully complied with the orders of the court. A court that orders suspension or denial of a driver's license or permit is required to notify DPS on receiving proof that the child has fully complied with the orders of the court.⁷⁹

A court may not retain a case and utilize its contempt powers and also refer the case to juvenile court by alleging delinquent conduct (specifically, disobeying a lawful court order). It is important to appreciate that when a municipal or justice court opts to refer a child to juvenile court for disobeying its lawful order, that in and of itself, is not a finding of contempt. Rather, the court is merely alleging delinquent conduct, an allegation that only a juvenile court can determine. Prior to making such a determination at an adjudication hearing, a child may be detained in a detention facility if the juvenile court determines that one of the factors listed in Sections 53.02 or 54.01 of the Family Code are present.⁸⁰

d. Special Programs under Article 45.057, Code of Criminal Procedure

If a local trial court imposes a sanction under Article 45.057 of the Code of Criminal Procedure and the child violates the court order, the court may hold the child in contempt as provided in Article 45.050. Parents held in municipal or justice court contempt may be fined up to \$100 and/or incarcerated up to three days in jail.⁸¹

V. Court Records and Expunction

Expunction is no longer solely a matter of gathering paper files and destroying them. Computer records must be deleted from the court's and other agencies' computers. Records kept in computers by the police department and other agencies including school districts, alcohol or drug abuse programs, counseling services, training programs, and community service providers, must all be expunged so that complete eradication of the case history is accomplished.

A. Alcohol Offenses

A minor's conviction of an alcohol-related offense may be expunged. To be eligible, an individual must be 21 years of age and have only one alcohol-related conviction.⁸² To expunge the offense, the person must file with the local trial court an application that includes a sworn affidavit that the person only has one offense (the one he or she

⁷⁹ Article 45.050, Code of Criminal Procedure.

⁸⁰ Attorney General Opinion No. GA-0131 (2003).

⁸¹ Section 21.002(c), Government Code.

⁸² Section 106.12, Alcoholic Beverage Code.

is trying to expunge) and is now 21 years of age. Some courts simply accept the affidavit, conduct a record check and, in the absence of other alcohol-related offenses, expunge the conviction. Other courts conduct a more formal proceeding notifying all agencies or persons who have a relation to the case, have records about the case or have knowledge about the applicant. These agencies might include the state and local office of the Alcoholic Beverage Commission, the Department of Public Safety (since they maintain the records of all convictions of Alcoholic Beverage Code offenses), the community service provider, the alcohol awareness program provider, the local police department, and the city attorney's office. If no agency or person can provide evidence that the applicant was convicted of more than one alcohol-related offense, the court would grant the petition for expungement.

When a case is expunged, the judge issues an order that dictates that the conviction, along with all complaints, verdicts, sentences and other documents be expunged from the applicant's records. After the order is issued, the applicant is released from all disabilities arising from the conviction. In addition, the case may not be shown or made known for any purpose.

B. Education Code Offense (Failure to Attend School)

Effective September 1, 2001, minors charged with the offense of failure to attend school can petition to have their records expunged under the Code of Criminal Procedure.⁸³ This section exclusively applies to the expunction of records of individuals convicted of Failure to Attend School. The request may be made on or after the individual's 18th birthday. While the applicant may determine the form, the request must be in writing, under oath and state that the applicant had no more than one conviction. The court may expunge the conviction without a hearing or order a hearing if facts are in doubt. Subsection (c) specifies what documents are to be expunged, including documents in the possession of the school district, special programs provider, the police department, and the prosecutor's office. Courts are prohibited from ordering that the applicant pay any fee or court cost for seeking an expunction.

C. Health and Safety Code Offenses (Tobacco)

Minors may apply to the court to have a conviction of a tobacco-related offense expunged.⁸⁴ Since the statute requires the court to determine if the defendant satisfactorily completed a tobacco awareness program or tobacco-related community service, the court should set a hearing on the application. All agencies or persons who have a relation to the case, records about the case or knowledge about the applicant

⁸³ Article 45.055, Code of Criminal Procedure.

⁸⁴ Section 161.255, Health and Safety Code.

should be notified. At the hearing, if the judge determines that the defendant has complied, then the court orders the expunction. When a case is expunged, the judge issues an order that dictates that the conviction be expunged, along with the complaint, verdict, sentence, and other documents. After the order is issued, the applicant is released from all disabilities arising from the conviction. Thereafter, the case cannot be shown or made known for any purpose.

D. Penal Code Offenses

Article 45.0216, Code of Criminal Procedure allows individuals with only one fine-only Penal Code conviction to request expunction on or after turning 17 years of age. The application is made directly to local trial court in which the individual was charged or convicted. The request must be made under oath. Courts are prohibited from ordering that the applicant pay any fee or court cost for seeking an expunction.

E. Transportation Code Offenses

Petitions must be filed pursuant to Chapter 55 of the Code of Criminal Procedure in district court.

VI. School Attendance

Despite popular belief, truancy is not, and has never been, a criminal matter in Texas. While historically children who engaged in truancy could be ordered to attend school, they could not be convicted or punished by the imposition of a fine. Under the civil truancy laws, armed primarily with the threat of contempt, courts could order children and their parents to comply with compulsory school attendance laws.

This perceived shortcoming in the civil truancy law led policymakers to create a separate criminal school attendance offense in 1993. Codified in the Education Code, an individual who is subject to the compulsory school attendance law may be charged with Failure to Attend School,⁸⁵ a Class C misdemeanor.

While initially juvenile courts adjudicated all matters involving delinquency, by 1995 the growing number of juveniles entering the judicial system forced the Legislature to fundamentally reconsider its approach to juvenile justice. To alleviate congested juvenile court dockets, the Legislature gave the municipal and justice courts jurisdiction of all Class C misdemeanor cases involving juveniles (with the exception

⁸⁵ Section 25.094, Education Code.

of public intoxication).⁸⁶ Additionally, juvenile courts were authorized, with permission, to transfer civil truancy cases to the municipal court and justice courts.

Differences in procedure and various related laws made the processing of civil truancy cases in municipal and justice courts cumbersome. Differences in the civil and criminal laws were often the source of confusion.

In the Fall 2000, the Texas Senate Education Committee assembled a workgroup of judges, school officials, educators, and attorneys to address perceived deficiencies in the State’s school attendance laws. The final product of the workgroup was S.B. 1432. The bill set out to accomplish the following objectives:

- To relieve municipal and justice courts from processing civil truancy cases;
- To distinguish the authority of peace officers acting as school attendance officers from non-peace officers;
- To assure that school districts refer truant students into the judicial system in a timely manner; and
- To provide municipal and justice courts more discretion and resources to handle non-attendance cases.

A. Failure to Attend School

Subsection 54.021(b) of the Family Code provides that a municipal court or justice court may exercise authority over a person engaged in truant conduct, which is conduct indicating a need for supervision, if the juvenile court has waived its original jurisdiction and a complaint is filed by the appropriate authority in the municipal or justice court charging an offense under Section 25.094 of the Education Code (Failure to Attend School). Subsection 54.021(c) of the Family Code provides that the failure to attend school proceedings are governed by Chapter 45, Code of Criminal Procedure. Similarly, the Education Code provides that a proceeding in a justice or municipal court based on a complaint under either Section 25.093 (Parent Contributing to Nonattendance) or under Section 25.094 (Failure to Attend School), except as otherwise provided, is governed by Chapter 45 of the Code of Criminal Procedure.⁸⁷ Effectively, the change in law means that municipal courts will only handle the offense of “failure to attend school” and will no longer handle “truancy” which required compliance with pertinent Family Code provisions.

The failure to attend school offense may be prosecuted in the justice court of any precinct in the county in which the individual resides or in which the school is located

⁸⁶ Section 8.07(a)(4), Penal Code.

⁸⁷ Section 25.094, Education Code.

or in a municipal court in the municipality in which the individual resides or in which the school is located. If the school district is in a county with a population of less than 100,000, the school district may file the complaint in the municipal or justice court or refer the student to the juvenile court.⁸⁸ If the individual resides or the school is located in a county with a population of two million or more, the offense may also be filed in the constitutional county court.⁸⁹

Section 25.0951 of the Education Code regulates when a complaint by a school district is permissible and when it is mandatory. If a student fails to attend school without an excuse on 10 or more days or parts of days within a six-month period in the same school year, it is mandatory that the school district file a complaint against the student and the student's parents. If a student fails to attend school without an excuse on three or more days or parts of days within a four-week period, the school district may, but is not required to, file a complaint against the student or the student's parent. Complaints may be filed in either municipal or justice courts.

The 77th Legislature amended Section 25.094, Education Code, to replace the term "child" with "individual." Hence, students, who do not meet the Family Code's definition of "child" (*e.g.*, students who are 17 years or older) and who cannot be ordered to attend school under the Family Code's truancy provisions, may be prosecuted under Section 25.094, Education Code, which provides that an individual commits an offense if the individual fails to attend school on 10 or more days or parts of days within a six-month period in the same school year or on three or more days or parts of days within a four-week period.

When a complaint is filed in the municipal court for the offense of failure to attend school, Article 45.054 of the Code of Criminal Procedure requires the court to endorse on a summons issued to the parent of the individual that directs the parent to appear personally at the hearing and directs the person having custody of the individual to bring the individual to the hearing. If the parent fails to obey the summons, he or she commits a Class C misdemeanor offense (maximum fine of \$500).

On commencement of a hearing for the offense of failure to attend school, the court shall inform the individual and the individual's parent in open court of his or her expunction rights and shall provide the individual and his or her parent with a written copy of Article 45.055 of the Code of Criminal Procedure which contains the expunction provision.

⁸⁸ Section 25.0951, Education Code.

⁸⁹ Section 25.094(b)(1), Education Code.

The Education Code provides an affirmative defense to the prosecution of the offense of failure to attend school.⁹⁰ It says that if one or more of the absences required to be proven was excused by a school official or should be excused by the court it is an affirmative defense. The burden is on the defendant to show by a preponderance of the evidence that the absence has been or should be excused. A decision by the court to excuse an absence for purposes of this section does not affect the ability of the school district to determine whether to excuse the absence for another purpose. It is also an affirmative defense to the prosecution that one or more of the absences required to be proven was involuntary. The burden is on the defendant to show by a preponderance of the evidence that the absence was involuntary.

The offense of failure to attend school is a Class C misdemeanor. Since the Education Code does not define Class C misdemeanor, the court must look to the Penal Code definition in Section 12.23, which provides for a maximum fine of \$500. Also, on a finding by the court that an individual has committed the offense of failure to attend school, the court may enter an order that includes one or more of the requirements listed in Article 45.054, Code of Criminal Procedure. That statute, entitled “failure to attend school proceedings,” allows the court to require the individual to attend:

- School without unexcused absences;
- A preparatory class for the high school equivalency examination administered under Section 7.111, Education Code, if the court determines that the individual is too old to do well in a formal classroom environment; or take the high school equivalency examination administered under Section 7.111, Education Code, if the individual is at least 16 years of age;
- An alcohol and drug abuse program;
- A rehabilitation program;
- A counseling program, including self-improvement counseling;
- A program that provides training in self-esteem and leadership;
- A work and job skills training program;
- A program that provides training in parenting, including parental responsibility;
- A program that provides training in manners;
- A program that provides training in violence avoidance;
- A program that provides sensitivity training; and
- A program that provides training in advocacy and mentoring.

⁹⁰ Section 25.094(f), Education Code.

The court can also require the individual to:

- Complete reasonable community service requirements; or
- For the total number of hours ordered by the court, that the individual participate in a tutorial program covering the academic subjects in which the student is enrolled provided by the school the individual attends.

The court can require the individual and the individual’s parent to attend a class for students at risk of dropping out of school designed for both the individual and the individual’s parent. An order that requires the parent of an individual to attend a class for students at risk of dropping out of school is enforceable in the justice or municipal court by contempt. In addition to any other order, the court may order the Department of Public Safety to suspend or deny issuance of the driver’s license or permit of the individual for a period specified by the court not to exceed 365 days.⁹¹

If a child violates a court order, the court may attempt to compel compliance pursuant to Article 45.050, Code of Criminal Procedure.⁹² Article 45.050 authorizes the local trial court to refer the child to the juvenile court for delinquent conduct or to retain jurisdiction of the case and do either or both of the following:

- Hold the child in contempt of the municipal court order and impose a fine not to exceed \$500; and/or
- Order the Department of Public Safety to suspend the driver’s license or permit of the child or, if the child does not have a license or permit, to deny the issuance of a license or permit to the child and, if the child has a continuing obligation under the court’s order, require that the suspension or denial be effective until the child fully discharges the obligation.

If the court is unable to hold contempt proceedings before the individual’s 17th birthday for conduct occurring prior to age 17, the court may still hold him or her in contempt and impose a remedy under Article 45.050. If the individual was placed under a court order when still a child but disobeys the court order while 17 years of age or older and the failure to obey occurred under circumstances that constitutes contempt of court, the court may hold him or her in contempt and impose a remedy listed above.

The 77th Legislature recognized the importance of keeping children in school by providing additional rehabilitation remedies to ensure compliance with the compulsory attendance laws. The Legislature also recognized that the handling of

⁹¹ Article 45.054(f), Code of Criminal Procedure.

⁹² Section 25.094(d), Education Code.

truants required courts to oversee these individuals for extended periods of time and required diligence on the part of the court staff to ensure that the truants complied with all of the court orders. Because of the complexity of handling juvenile cases, the Legislature provided authority for the municipal and justice court, with approval of their respective local governments, to employ juvenile case managers.⁹³ While initially case managers were required to be part of a comprehensive plan to reduce school attendance violations in the entity's jurisdiction, the 78th Legislature expanded the scope of their function to reduce local juvenile crime.

B. Parent Contributing to Nonattendance

The 77th Legislature changed the title of Section 25.093 of the Education Code from "Thwarting Compulsory Attendance" to "Parent Contributing to Truancy." In an effort to distinguish civil truancy from the criminal failure to attend school cases adjudicated by municipal and justice courts, the 78th Legislature changed the title of the offense to "Parent Contributing to Nonattendance." This statute allows school officials or the school attendance officer to file a complaint against a parent accused of contributing to a child's nonattendance in either municipal court or justice court. If the complaint is filed in a justice court, it may be filed in the precinct where either the school is located or the parent resides or in a municipal court of the municipality in which the parent resides or in which the school is located. This offense is a Class C misdemeanor. Each day that a child remains out of school may constitute a separate offense. Two or more offenses may be consolidated and prosecuted in a single action. It is an affirmative defense if one or more of the absences was excused by a school official or should be excused by the court. The burden is on the parent to show by a preponderance of the evidence that the absence has been or should be excused. A decision by the court to excuse an absence does not affect the ability of the school district to determine whether to excuse the absence for another purpose.

If the parent is convicted, one-half of the fine must be deposited to the credit of the operating fund of the school district in which the child attends school or the juvenile justice alternative program that the child has been ordered to attend. The city's portion is deposited into the city's general fund.

Upon conviction or if the court grants deferred disposition, the court may order the parent to attend a program, if one is available, that is designed to assist parents in identifying problems that contribute to the student's absences and to assist in developing strategies for resolving those problems. If the court orders deferred disposition, the court may require the defendant to provide personal services to a charitable or educational institution as a condition of the deferral. If the parent refuses

⁹³ Article 45.056, Code of Criminal Procedure.

to obey a court order, the court may punish the parent for contempt under Section 21.002 of the Government Code.

C. Parent's Failure to Appear with Child

Section 54.022 of the Family Code was repealed by the 77th Legislature. This statute included a provision that a parent who failed to appear with his or her child committed a Class C misdemeanor. However, the Legislature codified the same provision in Article 45.054, Code of Criminal Procedure. This statute requires the court, when an individual is charged with the offense of failure to attend school, to endorse a summons issued to the parent of the individual to appear personally at the hearing and to bring his or her child (individual) to the hearing. If the parent fails to attend the hearing after being served with a summons, he or she commits a Class C misdemeanor offense. The warning advising a parent of the possibility of being charged with a Class C misdemeanor for failing to appear with their child that was required by Section 54.022 to be on the summons issued to the parent. This provision was not carried over to Article 45.054. The general provision regarding the handling of a child requires the court to summon the parent and to include in the summons a warning that the failure of the parent, managing conservator or guardian to appear may be punishable as a Class C misdemeanor.⁹⁴ However, it should be noted that this provision uses the word "child" instead of "individual."

VII. Alcohol Violations

Section 106.01, Alcoholic Beverage Code, defines minor to mean a person under 21 years of age. A minor who is at least age 10 and under age 17 is also a child by Family Code definition and in some instances is referred to as a child in the Alcoholic Beverage Code.

A. Jurisdiction

1. Concurrent Exclusive Jurisdiction

Specific authority over alcohol offenses is given to municipal and justice courts.⁹⁵ That statute says that municipal or justice court has jurisdiction over cases that arise under Chapter 106, Alcoholic Beverage Code, that do not include confinement as an authorized sanction. The penalty provisions regarding Alcoholic Beverage Code offenses committed by a minor are found in Sections 106.041 and 106.071 of the Alcoholic Beverage Code. Those sections provide that first and second offenses are fine-only offenses, but convictions for third and more offenses by minors older than

⁹⁴ Article 45.057, Code of Criminal Procedure.

⁹⁵ Articles 4.11 and 4.14, Code of Criminal Procedure.

age 17 include confinement as part of the penalty. Those cases must be filed in county court. For jurisdiction regarding third (and more) offenses over defendants under the age of 17, see the following section, Waiver of Jurisdiction.

2. Waiver of Jurisdiction

A court must waive jurisdiction over a child under the age of 17 and transfer the case to juvenile court if the child has two previous convictions of any of the following offenses: Penal Code offenses, Alcoholic Beverage Code offenses or any fine-only offenses other than traffic offenses or tobacco-related offenses.⁹⁶ A municipal or justice court judge may waive jurisdiction over a juvenile's case, except for traffic violations and tobacco-related offenses, regardless of whether there are prior convictions. When a judge waives jurisdiction and transfers a case to the juvenile court, all pertinent documents in the case need to be forwarded to the juvenile court with a transfer order. When a case is being transferred under the mandatory provision because of two prior convictions, information about the two prior cases should be included.

B. Appearance

1. Minor's Appearance

The Alcoholic Beverage Code provides specific procedures for handling minors charged with alcohol offenses. All minors must appear in open court to plead guilty to an Alcoholic Beverage Code offense.⁹⁷ Minors under the age of 18 must appear in open court with a parent or legal guardian.⁹⁸

2. Summoning the Parent

Section 106.11 of the Alcoholic Beverage Code governs the summoning of the parent or guardian. If the parent or legal guardian resides within the city, the court must summon the parent or guardian to be present at all proceedings in the case. If the parent or legal guardian resides outside of the city, the court must give written notice to the minor's parent or legal guardian. A written notice is probably sufficient if the defendant is at least 17 years of age. However, if the minor is under the age of 17, Article 45.0215 of the Code of Criminal Procedure requires the court to summon the parent, guardian or conservator. When a court is unable to locate or to compel the presence of a parent or legal guardian, the court, after determining that diligent effort was used, may waive the presence of the parent or guardian.

⁹⁶ Section 51.08(b)(1), Family Code; Section 161.257, Health and Safety Code.

⁹⁷ Section 106.10, Alcoholic Beverage Code.

⁹⁸ Section 106.11, Alcoholic Beverage Code.

C. Offenses

The following is a list of Alcoholic Beverage Code offenses with which persons under the age of 21 may be charged:

- Purchase of alcohol by a minor;⁹⁹
- Attempt to purchase alcohol by a minor;¹⁰⁰
- Consumption of alcohol by a minor;¹⁰¹
- Driving under the influence of alcohol by a minor;¹⁰²
- Possession of alcohol by a minor;¹⁰³ and
- Misrepresentation of age by a minor.¹⁰⁴

D. Penalties

1. Fine

Except for the offense of driving under the influence of alcohol by a minor (DUI),¹⁰⁵ the penalties for the above listed offenses are in Section 106.071 of the Alcoholic Beverage Code. These penalties also apply to persons under the age of 21 charged with the offense of public intoxication. Section 106.071 provides that first and second offenses are Class C misdemeanors. Since the Alcoholic Beverage Code does not define Class C misdemeanor, the court must use the Section 12.23, Penal Code, definition, which provides for a punishment of a fine not to exceed \$500. This is also the amount of fine for subsequent offenses, except when a minor is at least 17 years of age and has two previous convictions for any of the following offenses: purchase, attempt to purchase, possessing, consumption of alcohol, or misrepresentation of age by a minor. Then the current offense is punishable by a fine of not less than \$250 or more than \$2,000 and/or confinement in jail for a term not to exceed 180 days. Hence, the municipal or justice court lacks jurisdiction. Although the penalty is not enhanced for third and subsequent offenses for defendants under the age of 17, the municipal or justice court must waive jurisdiction.¹⁰⁶

⁹⁹ Section 106.02, Alcoholic Beverage Code.

¹⁰⁰ Section 106.025, Alcoholic Beverage Code

¹⁰¹ Section 106.04, Alcoholic Beverage Code

¹⁰² Section 106.041, Alcoholic Beverage Code

¹⁰³ Section 106.05, Alcoholic Beverage Code

¹⁰⁴ Section 106.07, Alcoholic Beverage Code

¹⁰⁵ Section 106.041, Alcoholic Beverage Code.

¹⁰⁶ Section 51.08, Family Code.

2. Community Service

In addition to a fine, a minor convicted of possession, consuming, purchasing or attempting to purchase alcohol, misrepresentation of age by a minor, or public intoxication (under age 21) must perform community service. If the conviction is for a first time offense, the minor must perform between eight and 12 hours of community service. If the conviction is for a subsequent offense, the minor must perform between 20 and 40 hours of community service. Community service must be related to education about or prevention of misuse of alcohol if those programs are available in the community where the court is located. If there are no programs available, the court may order community service that it considers appropriate for rehabilitative purposes.¹⁰⁷

3. Alcohol Awareness Program

Section 106.115 of the Alcoholic Beverage Code governs alcohol awareness programs. A minor convicted of possessing, consuming, purchasing, or attempting to purchase alcohol, misrepresentation of age, or public intoxication (under age 21) must attend an alcohol awareness program. If it is a conviction for a first time offense, the court must require the attendance. If the defendant is younger than 18 years of age, the court may require the parent or guardian to attend the alcohol awareness program with the minor. If a conviction is for a subsequent offense, the court has the option whether or not to require participation in the alcohol awareness program. The court may also order the defendant's parents, conservator or guardian to refrain from doing anything that may increase the likelihood that the minor will not complete the alcohol awareness program.

<p>The Texas Commission on Alcohol and Drug Abuse must approve alcohol awareness programs. Locate a program in your area by calling 800/832-9623. For approved alcohol education programs for minors, go to www.tcada.state.tx.us/education/index.shtml.</p>

A minor has 90 days to complete the alcohol awareness program and return to the court with evidence of attendance. If the minor completes the alcohol awareness program, the judge may lower the fine to not less than one-half of the originally assessed amount. If the minor fails to present evidence of completion within 90 days, the court should set the minor for a show cause hearing and notify the minor of the hearing. If the minor is under the age of 18, the court must summons the parent or legal guardian to the hearing. At the hearing, the judge may or may not grant an extension. If a judge grants an extension, the case is reset for 90 days later. If the court

¹⁰⁷ Section 106.071, Alcoholic Beverage Code.

does not grant the extension, the court should explain about the driver's license suspension for failing to complete the program.

When a minor fails to complete a program or present proof to the court in the time required, the court must order the Department of Public Safety (DPS) to suspend the minor's driver's license. After the judge orders the suspension, the clerk reports the suspension to DPS on form DIC-15. The suspension period may not exceed six months. If the minor does not have a driver's license, DPS will not issue a license during the suspension period. It is a good idea for a court to notify the minor and his or her parents by sending a copy of the suspension order. This is not required but will demonstrate the seriousness of the matter and help clear up any misunderstandings that might arise.

The DIC-15 form is found in the 2004 <i>TMCEC Forms Book</i> .
--

4. Driver's License Suspension or Denial

In addition to a fine, community service and an alcohol awareness program, the court must order DPS to suspend or deny issuance of a driver's license of a minor convicted of any of the following offenses: minor possessing, consuming, purchasing, attempting to purchase alcohol, misrepresentation of age, or public intoxication (under age 21).¹⁰⁸ The suspension or denial is for a period of 30 days if the minor has not been previously convicted. If the conviction is a second conviction, the suspension or denial is for 60 days. If the conviction is a third or more, the suspension or denial is for 180 days.¹⁰⁹ A minor's driver's license suspension takes effect on the 11th day after the date the minor was convicted.¹¹⁰ When a minor is convicted, clerks should immediately notify DPS of the order to suspend the license so that DPS will have the notice before the 11th day after judgment.

To report the order of suspension to DPS, courts that report manually must use DPS form DIC-15. Also, it is a good idea for the courts to notify the minor and his or her parents by sending a copy of the suspension order and the DIC-15 form. This is not required but demonstrates the seriousness of the matter and helps clear up any misunderstanding that might arise.

¹⁰⁸ Section 106.071(2), Alcoholic Beverage Code.

¹⁰⁹ Section 106.071(d)(2), Alcoholic Beverage Code.

¹¹⁰ Section 106.071(h), Alcoholic Beverage Code.

5. Driving Under the Influence of Alcohol by a Minor

a. Fine

The offense of driving under the influence of alcohol by a minor is a Class C misdemeanor. Since the Alcoholic Beverage Code does not define Class C misdemeanor, the court must use the Penal Code definition, which provides for a maximum fine of \$500. This is also the amount of fine for subsequent offenses if a minor is younger than 17 years of age. However, the Family Code requires the court to waive jurisdiction and transfer the case to juvenile court if there are two prior convictions. If a minor is 17 years of age or older, the penalty for the third and subsequent offenses is enhanced to a punishment of a fine of not less than \$500 or more than \$2,000 and/or confinement in jail for a term not to exceed 180 days. Hence, the municipal or justice court lacks jurisdiction over these defendants.

b. Community Service

In addition to a fine, the court must require the minor to perform community service. If the conviction is for a first offense, the minor must perform between 20 and 40 hours of community service. If the conviction is for a subsequent offense, the minor must perform between 40 and 60 hours of community service. Community service must be related to education about or prevention of misuse of alcohol.

c. Alcohol Awareness Program

In addition to a fine and community service, the court must require the minor to attend an alcohol awareness program for a conviction of a first offense of driving under the influence of alcohol.¹¹¹ As previously stated, if the defendant is younger than 18 years of age, the court may require the parent or guardian of the defendant to attend the alcohol awareness program with the minor. If the conviction is for a second offense, the court has the option of requiring completion of an alcohol awareness program. Also, the court may order the minor's parents, conservator or guardian to refrain from doing anything that may increase the likelihood that the minor will not complete the alcohol awareness program.

A minor must complete the course and show proof of completion within 90 days of the final conviction. If the minor completes the course, the court may reduce the fine to half of the original fine. If a minor fails to present the evidence within the 90 days, the court should set the defendant for a show cause hearing and notify the defendant of the hearing. If the defendant is under the age of 18, the court must summon the parent or legal guardian to the hearing. At the hearing, the judge may or may not grant

¹¹¹ Section 106.041(d), Alcoholic Beverage Code.

an extension. If a judge grants an extension, the case is reset for 90 days later. If the court does not grant the extension, the court should explain about the driver's license suspension for failing to complete the program. If the minor fails to complete the course, the court must order DPS to suspend or deny issuance of the driver's license for a period not to exceed six months.

d. License Suspension or Denial

In addition to criminal penalties assessed by the court, minors convicted of the offense of driving under the influence of alcohol will also face an automatic 60-day license suspension through an administrative hearing that is not conducted by the municipal or justice court. This hearing is initiated by the peace officer that arrested the minor using the same procedures that are used when the defendant is an adult charged with the offense of driving while intoxicated.

E. Deferred Disposition

For the purpose of determining whether a minor has been previously convicted of an offense for a minor possessing, consuming, purchasing, attempting to purchase alcohol, misrepresentation of age, driving under the influence of alcohol, or public intoxication, an order of deferred disposition is considered a conviction.¹¹² This means that an order of deferred disposition is considered a conviction for the purpose of enhancing a charge to a subsequent offense.

A minor who is not a child and who has been previously convicted at least twice of an offense to which Section 106.07, Alcoholic Beverage Code, applies is not eligible to receive a deferral of final disposition of a subsequent offense.¹¹³ A minor who commits the offense of driving under the influence of alcohol and has been previously convicted twice or more of that offense is not eligible for deferred disposition.¹¹⁴ A minor charged with consuming an alcoholic beverage is not eligible for deferred disposition if he or she has been previously convicted twice or more of consuming an alcoholic beverage.¹¹⁵

When a court grants deferred disposition to a minor charged with an Alcoholic Beverage Code offense or public intoxication (the court has jurisdiction if the person is at least age 17), the court must require the minor to attend an alcohol awareness program approved by the Texas Commission on Alcohol and Drug Abuse.¹¹⁶

¹¹² Sections 106.04(d), 106.041(h)(2), and 106.071(f)(2), Alcoholic Beverage Code.

¹¹³ Section 106.071(i), Alcoholic Beverage Code.

¹¹⁴ Section 106.041(f), Alcoholic Beverage Code.

¹¹⁵ Section 106.04(d), Alcoholic Beverage Code.

¹¹⁶ Section 106.115, Alcoholic Beverage Code.

When a court grants deferred disposition to a minor charged with possessing, consuming, purchasing, or attempting to purchase alcohol, misrepresentation of age, or public intoxication (under age 21), the court must require the minor to perform not less than eight or more than 12 hours community service if the minor does not have any previous convictions. If the minor has a previous conviction, the minor must perform not less than 20 or more than 40 hours community service.¹¹⁷

F. Reports

1. Report to the Texas Commission on Alcohol and Drug Abuse

The court clerk must furnish to the Texas Commission on Alcohol and Drug Abuse upon request notice of a conviction of the following Alcoholic Beverage Code offenses:

- Purchase of alcohol by a minor;¹¹⁸
- Attempt to purchase alcohol by a minor;¹¹⁹
- Consumption of alcohol by a minor;¹²⁰
- Driving under the influence of alcohol by a minor;¹²¹
- Possession of alcohol by a minor;¹²² and
- Misrepresentation of age by a minor.¹²³

The report must be in the form prescribed by the Commission.¹²⁴

2. Report to the Department of Public Safety

Courts are required to furnish the Department of Public Safety notice of conviction or an order of deferred disposition of an Alcoholic Beverage Code offense and an acquittal of the offense of driving under the influence of alcohol by a minor.¹²⁵ The notice must be in a form prescribed by the Department of Public Safety and must contain the driver's license number of the defendant, if the defendant holds a driver's

¹¹⁷ Section 106.071, Alcoholic Beverage Code.

¹¹⁸ Section 106.02, Alcoholic Beverage Code.

¹¹⁹ Section 106.025, Alcoholic Beverage Code.

¹²⁰ Section 106.04, Alcoholic Beverage Code.

¹²¹ Section 106.041, Alcoholic Beverage Code.

¹²² Section 106.05, Alcoholic Beverage Code.

¹²³ Section 106.07, Alcoholic Beverage Code.

¹²⁴ Section 106.116, Alcoholic Beverage Code.

¹²⁵ Section 106.117(a)(2), (3) and (4), Alcoholic Beverage Code.

license.¹²⁶ Courts that report manually are required to use DPS form DIC-15 to file this report.

The Department of Public Safety maintains the information contained in the notices and provides the information to law enforcement agencies and courts as necessary to enable them to carry out their official duties. The information is admissible in any action in which it is relevant. A person who holds a driver's license having the same number that is contained in a record maintained by DPS is presumed to be the person to whom the records relates. The presumption may be rebutted only by evidence presented under oath.¹²⁷ The information on Alcoholic Beverage Code offenses maintained by DPS is confidential and may not be disclosed except as provided by Section 106.117(d).

VIII. Tobacco Offenses

Under the Health and Safety Code, minor is defined as an individual who is younger than 18 years of age.¹²⁸

A. Appearance

There are no special provisions in the Health and Safety Code for handling juveniles. However, Article 45.0215, Code of Criminal Procedure, requires the parents, guardian or conservator to be summoned and to be present at all proceedings involving persons under the age of 17. If the defendant is at least 17 years of age, the court handles that defendant as an adult.

B. Offenses

A minor commits an offense if he or she possesses, purchases, consumes, or accepts a cigarette or tobacco product.¹²⁹ Also, when a minor falsely represents himself or herself as being 18 years of age or older to obtain possession of, purchase or receive a cigarette or tobacco product, he or she commits an offense.¹³⁰

C. Waiver of Jurisdiction

Section 161.257 of the Health and Safety Code provides that "Title 3 of the Family Code does not apply to a proceeding under this subchapter." The subchapter referred to is Subchapter N, Chapter 161, entitled "Tobacco Use by Minors." It includes the

¹²⁶ Section 106.117(b), Alcoholic Beverage Code.

¹²⁷ Section 106.117(c), Alcoholic Beverage Code.

¹²⁸ Section 161.252(a), Health and Safety Code.

¹²⁹ Section 161.252(a)(1), Health and Safety Code.

¹³⁰ Section 161.252(a)(2), Health and Safety Code.

offenses of and penalties for possession, purchase, consumption, and receipt of cigarettes or tobacco products by minors as well as misrepresentation of age by a minor to obtain a cigarette or tobacco product. Title 3 of the Family Code is the Juvenile Justice Code. It includes Chapter 51 through Chapter 60, Family Code, and embodies numerous procedures involving child defendants in municipal or justice court, including the transfer provisions in Section 51.08(b). Section 161.257, Health and Safety Code, prevents a third or subsequent case involving tobacco use by a child from being transferred to juvenile court. Also, these offenses should not be counted when determining whether to waive jurisdiction for other non-traffic convictions.

D. Penalty

1. Fine

The penalty for all tobacco offenses is a fine not to exceed \$250.¹³¹

2. Tobacco Awareness Program

Section 161.253 of the Health and Safety Code governs tobacco awareness programs. Upon a first conviction of a tobacco offense, the court must suspend execution of the fine and require the minor to attend a tobacco awareness program approved by the Texas Health and Human Services Commission. The court may also require the parent or guardian of the minor to attend the tobacco awareness program with the minor. If a minor resides in an area in which access to a tobacco awareness program is not readily available, the court must require the minor to perform eight to 12 hours tobacco-related community service instead of attending the tobacco awareness program. The tobacco awareness program and the tobacco-related community service are remedial and not punishment. The minor must present proof to the court of completion of the tobacco awareness program no later than the 90th day after the date of conviction. When a court receives the evidence of completion from a minor who has not been previously convicted of a tobacco offense, the court must dismiss the complaint. If a minor has been previously convicted, the court must impose the fine and require attendance of a tobacco awareness program. However, the court may reduce the fine to not less than half of the original fine assessed.

To check for approved tobacco awareness programs, go to www.worthit.org/ locator.

If a minor does not present evidence of completion of a tobacco awareness program within the 90 days of the conviction, the court must order the Department of Public Safety to suspend or deny issuance of a driver’s license or permit. The order must specify the period of the suspension or denial, which may not exceed 180 days after

¹³¹ Section 161.252(d), Health and Safety Code.

the date of the order.¹³² Courts must use DPS form DIC-15 to report the order of suspension.

E. Subsequent Violations

When a second or subsequent offense is filed, the charge may be enhanced. Although the first offense was dismissed, it is considered a conviction for the purpose of enhancing subsequent violations.¹³³ Second or subsequent offenses filed with the court must be charged as second or subsequent offenses or the court must process and handle it like a first time offense.

Works Consulted

Juveniles, *Municipal Court Clerks Certification Program Guide Level I & II*, TMCEC, Austin, Texas (2002).

Ryan Kellus Turner, “Adjudication of Juveniles in Municipal or Justice Court” (August 10, 2001). *Juvenile Law Specialization Intensive Review Course*, Texas Juvenile Probation Commission and the Juvenile Law Section of the State Bar of Texas, Austin, Texas.

¹³² Section 161.254, Health and Safety Code.

¹³³ Section 161.253(g), Health and Safety Code.

MUNICIPAL JUVENILE/MINOR CHART

	Alcoholic Beverage Code	Alcoholic Beverage Code/DUI	Education Code	Health and Safety Code	Penal Code	Transportation Code Chapter 729
Jurisdiction	Yes. (See Art. 4.14, C.C.P., Sec. 29.003, G.C., Sec. 8.07, P.C., and Sec. 51.03, F.C.)	Yes. (See Art. 4.14, C.C.P., Sec. 29.003, G.C., and Sec. 8.07, P.C., and Sec. 51.03, F.C.)	Yes. (See Art. 4.14, C.C.P., Sec. 29.003, G.C., Sec. 8.07, P.C., and Sec. 51.03, F.C.) Court required to dismiss complaint for failure to attend school if not filed by 7 th day after student's last absence.	Yes. (See Art. 4.14, C.C.P., Sec. 29.003, G.C., Sec. 8.07, P.C., and Sec. 161.256, H.S.C.)	Yes. (See Art. 4.14, C.C.P., Sec. 29.003, G.C., Sec. 8.07, P.C., and Sec. 51.03(f), F.C.) All fine-only offenses, except the offense of public intoxication.	Yes. (See Art. 4.14, C.C.P., Sec. 29.003, G.C., and Sec. 51.03, F.C., and Sec. 729.001(a), T.C.) For exceptions, see section on offenses.
Waiver of Jurisdiction - Transfer to Juvenile Court¹ Sec. 51.08, F.C.	Sec. 51.08, F.C. Under age 17: • May waive jurisdiction over first and second violations; • Shall waive jurisdiction after two previous convictions of any non-traffic fine-only offenses. At age 17 or more, after two previous convictions, charge may be enhanced and filed in county court.	Sec. 51.08, F.C. Under age 17: • May waive jurisdiction over first and second violations; • Shall waive jurisdiction after two previous convictions of any non-traffic fine-only offenses. At age 17 or more, after two previous convictions, charge may be enhanced and filed in county court.	Sec. 51.08, F.C. Under age 17: • May waive jurisdiction over first and second violations; • Shall waive jurisdiction after two previous convictions of any non-traffic fine-only offenses. Age 17 – court retains jurisdiction.	Sec. 161.257, H.S.C May not waive jurisdiction. Title 3, Family Code (including transfer to juvenile court) does not apply to Subchapter N, H.S.C.	Sec. 51.08, F.C. Under age 17: • May waive jurisdiction over first and second violations; • Shall waive jurisdiction after two previous convictions of any non-traffic fine-only offenses.	Sec. 51.08, F.C. Municipal court may not waive its jurisdiction over traffic violations.
Age Art. 45.058(h), C.C.P.; Sec. 51.02, F.C. Sec. 8.07, P.C.	Sec. 106.01. Definition of a minor - Under age 21. Sec. 51.02, F.C. & Art. 45.058(h), C.C.P. Child defined as at least age 10 & younger than age 17.	Sec. 106.01. Definition of a minor - Under age 21. Sec. 51.02, F.C. & Art. 45.058(h), C.C.P. Child defined as at least age 10 & younger than age 17.	Sec. 25.085. Compulsory School Attendance • Child under age 6, if previously enrolled in 1st grade, or • At least age 6 and who has not reached his or her 18th birthday. (See Sec. 25.086 for Exemptions.)	Sec. 161.252, H.S.C. Definition of a minor - Under age 18. Sec. 51.02, F.C. & Art. 45.058(h), C.C.P. Child defined as at least age 10 & younger than age 17.	Sec. 8.07. Age Affecting Criminal Responsibility under age 17. Sec. 51.02, F.C. & Art. 45.058(h), C.C.P. Child defined as at least age 10 & younger than age 17.	Sec. 729.001. Operation of Motor Vehicle by Minor- Under age 17. Sec. 51.02, F.C. & Art. 45.058(h), C.C.P. Child defined as at least age 10 & younger than age 17.
Common Offenses	•Sec. 106.02. Purchase of Alcohol by Minor; •Sec. 106.025. Attempt to Purchase Alcohol by a Minor; •Sec. 106.04. Consumption of Alcohol by a Minor; •Sec. 106.05. Possession of Alcohol by a Minor; •Sec. 106.07. Misrepresentation of Age by a Minor.	•Sec. 106.041. Driving Under the Influence of Alcohol by a Minor.	•Sec. 25.094. Failure to Attend School; •Sec. 37.102. Rules (Enacted by School Board); •Sec. 37.107. Trespass on School Grounds; •Sec. 37.122. Possession of Intoxicants on School Grounds; •Sec. 37.124. Disruption of Classes; •Sec. 37.126. Disruption of Transportation.	Sec. 161.252 •Possession of cigarettes or tobacco; •Purchase of cigarettes or tobacco; •Consumption of cigarettes or tobacco; •Acceptance of cigarettes or tobacco; •Display false proof of age.	All fine-only offenses, except a person under age 17 may not be charged in municipal court for the offense of public intoxication (See Sec. 51.03(f), F.C.).	Sec. 729.001(a), T.C.; Sec. 8.07(a)(2), P.C.; Sec. 51.02(16), F.C. •Chpt. 502. Registration of Vehicles, except Secs. 502.282 or 502.412; •Chpt. 521. Driver's Licenses, except Sec. 521.457; •Subtitle C. Rules of the Road, except offenses punishable by imprisonment or by confinement in jail; •Chpt. 601. Safety Responsibility •Chpt. 621. Vehicle Size & Weight; •Chpt. 661. Motorcycles & All Terrain Vehicles; •Chpt. 681. Parking, Towing & Storage of Vehicles.

MUNICIPAL JUVENILE/MINOR CHART

	Alcoholic Beverage Code	Alcoholic Beverage Code/DUI	Education Code	Health and Safety Code	Penal Code	Transportation Code Chapter 729
Penalties²	<p>Sec.106.071 for offenses under Secs. 106.02, 106.025, 106.04, 106.05, 106.07, A.B.C. and Sec. 49.02, P.C.</p> <p>1st conviction •Class C misdemeanor (max \$500); •Mandatory alcohol awareness program, Sec. 106.115; •Mandatory 8-12 hours alcohol-related community service; •DL suspension or denial – 30 days; eff. 11th day after conviction.</p> <p>2nd conviction •Class C misdemeanor (max \$500); •Optional alcohol awareness program; •Mandatory 20-40 hours alcohol-related community service; •DL suspension or denial – 60 days; eff. 11th day after conviction.</p> <p>3rd conviction Under age 17: •See waiver provisions in chart. Age 17 & under 21 •Fine \$250 to \$2000 and/or confinement not to exceed 180 days if charge enhanced.</p> <p>Complete alcohol awareness program Court may reduce the fine to half the amount assessed.</p> <p>Failure to complete alcohol awareness program •Court may give another 90 days to complete. •1st conviction: court must order DPS to suspend or deny issuance of DL for up to six months. Sec. 106.115(c), A.B.C. •2nd or subsequent conviction: court must order DPS to suspend or deny issuance of DL not to exceed one year.</p>	<p>Sec. 106.041</p> <p>1st conviction •Class C misdemeanor (max \$500); •Mandatory alcohol awareness program; •Mandatory 20 to 40 hours alcohol-related community service; •Administrative DL suspension (separate proceeding Chapters 524 and 724, T.C.).</p> <p>2nd conviction •Class C misdemeanor (max \$500); •Optional alcohol awareness program; •Mandatory 40 to 60 hours of alcohol-related community service; •Administrative DL suspension (separate proceeding—Chapters 524 and 724, T.C.).</p> <p>3rd conviction Under age 17: •See waiver provisions in chart. Age 17 & under 21 •Fine \$250 to \$2000 and/or confinement not to exceed 180 days if charge enhanced.</p> <p>Complete alcohol awareness program Court may reduce the fine to half the amount assessed.</p> <p>Failure to complete alcohol awareness program •Court may give another 90 days to complete. •1st conviction: court must order DPS to suspend or deny issuance of DL for up to six months. Sec. 106.115(c), A.B.C. •2nd or subsequent conviction: court must order DPS to suspend or deny issuance of DL not to exceed one year.</p>	<p>Secs. 25.094, 37.102, 37.107, 37.122, 37.124, 37.126. Class C misdemeanors (max \$500)</p> <p>Sec. 25.094(c)³ – In addition to a fine, a court may order a sanction under Art. 45.054, C.C.P.:</p> <ul style="list-style-type: none"> •Attend school without unexcused absences; •Attend preparatory class for GED (older child that will not do well in classroom environment) or, if child is 16 or older, take GED exam; •Attend a special program: <ul style="list-style-type: none"> –alcohol & drug abuse program, –rehabilitation program, –counseling program, –training in self-esteem & leadership, –work and job skills training, –training in parenting, –manners training, –violence avoidance training, –sensitivity training, –advocacy, and –mentoring training; •Attend class for student at risk of dropping out of school (may require parent to attend with child); •Community service; •Participate in tutorial program; •Order DPS to suspend or deny issuance of a DL for a period of time not to exceed 365 days. 	<p>Sec. 161.252 and 161.253</p> <p>1st conviction •A fine not to exceed \$250, but court shall suspend execution of sentence (court costs must still be assessed and imposed) and order tobacco awareness program. Court dismisses charge on completion of course. •If no course available, court shall require 8-12 hours tobacco-related community service. •Failure to complete tobacco awareness course or community service, court required to order DPS to suspend or deny issuance of DL for up to 180 days after date of order.</p> <p>Subsequent offenses •A fine not to exceed \$250; •Court shall suspend execution of sentence and order tobacco awareness course; •Upon completion of course, court may reduce fine to not less than half; •Failure to complete tobacco awareness course or community service, court required to order DPS to suspend or deny issuance of DL not to exceed 180 days after date of order.</p>	<p>Sec. 12.23 Class C misdemeanor (max fine \$500) Under age 17 & two prior convictions, see waiver provisions in chart.</p> <p>Public Intoxication (Sec. 49.02): Persons under age 21 (municipal court has jurisdiction if person is at least age 17) charged with public intoxication, the penalty is under Sec. 106.071, A.B.C.: See penalties for Alcoholic Beverage Code Offenses other than DUI.</p>	<p>Secs. 729.001 and 729.002 Penalty same as adult defendant. See general and specific penalty clauses throughout Transportation Code.</p>

MUNICIPAL JUVENILE/MINOR CHART

Alcoholic Beverage Code	Alcoholic Beverage Code/DUI	Education Code	Health and Safety Code	Penal Code	Transportation Code Chapter 729
-------------------------	-----------------------------	----------------	------------------------	------------	---------------------------------

ecs. 106.10, A.B.C.

45.0215, C.C.P.



MUNICIPAL JUVENILE/MINOR CHART

	Alcoholic Beverage Code	Alcoholic Beverage Code/DUI	Education Code	Health and Safety Code	Penal Code	Transportation Code Chapter 729
Failure to Appear	<p>Sec. 38.10 P.C. May be charged with penal offense of Failure to Appear.</p> <p>Art. 45.058, C.C.P. Court may issue a warrant for nonsecure custody.</p> <p>Art. 45.057(h), C.C.P. Child may be charged with the offense of failure to provide written notice of current address. (It is an affirmative defense to prosecution if the child and parent were not informed of their obligation to notify the court of change of address.)</p> <p>Secs. 521.201(8) and 521.294(6), T.C. Court may report failure to appear to DPS.</p>	<p>Sec. 38.10 P.C. May be charged with penal offense of Failure to Appear.</p> <p>Art. 45.058, C.C.P. Court may issue a warrant for nonsecure custody.</p> <p>Art. 45.057(h), C.C.P. Child may be charged with the offense of failure to provide written notice of current address. (It is an affirmative defense to prosecution if the child and parent were not informed of their obligation to notify the court of change of address.)</p> <p>Secs. 521.201(8) and 521.294(6), T.C. Court may report failure to appear to DPS.</p>	<p>Sec. 38.10 P.C. May be charged with penal offense of Failure to Appear.</p> <p>Art. 45.058, C.C.P. Court may issue a warrant for nonsecure custody.</p> <p>Art. 45.057(h), C.C.P. Child may be charged with the offense of failure to provide written notice of current address. (It is an affirmative defense to prosecution if the child and parent were not informed of their obligation to notify the court of change of address.)</p> <p>Secs. 521.201(8) and 521.294(6), T.C. Court may report failure to appear to DPS.</p>	<p>Sec. 38.10 P.C. May be charged with penal offense of Failure to Appear.</p> <p>Art. 45.058, C.C.P. Court may issue a warrant for nonsecure custody.</p> <p>Art. 45.057(h), C.C.P. Child may be charged with the offense of failure to provide written notice of current address. (It is an affirmative defense to prosecution if the child and parent were not informed of their obligation to notify the court of change of address.)</p> <p>Secs. 521.201(8) and 521.294(6), T.C. Court may report failure to appear to DPS.</p>	<p>Sec. 38.10 P.C. May be charged with penal offense of Failure to Appear.</p> <p>Art. 45.058, C.C.P. Court may issue a warrant for nonsecure custody.</p> <p>Art. 45.057(h), C.C.P. Child may be charged with the offense of failure to provide written notice of current address. (It is an affirmative defense to prosecution if the child and parent were not informed of their obligation to notify the court of change of address.)</p> <p>Secs. 521.201(8) and 521.294(6), T.C. Court may report failure to appear to DPS.</p>	<p>Sec. 543.009, T.C. May be charged with offense of Violation of Promise to Appear.</p>

MUNICIPAL JUVENILE/MINOR CHART

	Alcoholic Beverage Code	Alcoholic Beverage Code/DUI	Education Code	Health and Safety Code	Penal Code	Transportation Code Chapter 729
Expunction ⁵	<p>Sec. 106.12 Yes. May apply to municipal court at age 21 if only one conviction under Alcoholic Beverage Code.</p> <p>Sec. 106.12(d) Court shall charge \$30 fee for each application.</p>	<p>Sec. 106.12 Yes. May apply to municipal court at age 21 if only one conviction under Alcoholic Beverage Code.</p> <p>Sec. 106.12(d) Court shall charge \$30 fee for each application.</p>	<p>Sec. 25.094(g) Only for offense of failure to attend school.</p> <ul style="list-style-type: none"> •Court must notify child of right; •Court must give copy of Art. 45.055, C.C.P. <p>Art. 45.055, C.C.P. •May apply at age 18 if only one conviction for offense of Failure to Attend School;</p> <ul style="list-style-type: none"> •Must submit written request made under oath; •Form of submission determined by applicant; •Must pay \$30 fee. <p>Art. 45.0216, C.C.P. Other fine-only Education Code Offenses: Court must notify child of right;</p> <ul style="list-style-type: none"> •Court must give copy of Art. 45.016, C.C.P. •Not more than one conviction; •Child may apply on or after age 17; •Apply to trial court; •Child makes request under oath; •Court shall charge \$30 fee. 	<p>Sec. 161.255, H.S.C. Yes.</p> <ul style="list-style-type: none"> •May apply to the court to have conviction expunged; •Applicant must have completed tobacco awareness course; •May have multiple convictions expunged as long as applicant completed tobacco awareness course for each conviction. •Court shall charge \$30 fee 	<p>Art. 45.0216, C.C.P. •Court must notify child of right;</p> <ul style="list-style-type: none"> •Court must give copy of Art. 45.016, C.C.P. •Not more than one conviction; •Child may apply on or after age 17; •Apply to trial court; •Child makes request under oath; •Court shall charge \$30 fee. 	<p>Chpt. 55, C.C.P. Expunction order must be filed in district court.</p>
Child Turns age 17 after Failure to Appear	<p>Art. 45.060, C.C.P. Court must have used all available procedures under Chapter 45 to secure appearance while under the age of 17 before proceeding under Art. 45.060, C.C.P.</p> <p>At age 17 or older, court issues an order to appear. Order must have a warning about continuing obligation to appear and that failure to appear may result in a warrant being issued.</p> <p>If person fails to appear after notice, prosecutor may file violation of obligation to appear charge under Art. 45.060 and court may issue a warrant of arrest.</p>	<p>Art. 45.060, C.C.P. Court must have used all available procedures under Chapter 45 to secure appearance while under the age of 17 before proceeding under Art. 45.060, C.C.P.</p> <p>At age 17 or older, court issues an order to appear. Order must have a warning about continuing obligation to appear and that failure to appear may result in a warrant being issued.</p> <p>If person fails to appear after notice, prosecutor may file violation of obligation to appear charge under Art. 45.060 and court may issue a warrant of arrest.</p>	<p>Art. 45.060, C.C.P. Court must have used all available procedures under Chapter 45 to secure appearance while under the age of 17 before proceeding under Art. 45.060, C.C.P.</p> <p>At age 17 or older, court issues an order to appear. Order must have a warning about continuing obligation to appear and that failure to appear may result in a warrant being issued.</p> <p>If person fails to appear after notice, prosecutor may file violation of obligation to appear charge under Art. 45.060 and court may issue a warrant of arrest.</p>	<p>Art. 45.060, C.C.P. Court must have used all available procedures under Chapter 45 to secure appearance while under the age of 17 before proceeding under Art. 45.060, C.C.P.</p> <p>At age 17 or older, court issues an order to appear. Order must have a warning about continuing obligation to appear and that failure to appear may result in a warrant being issued.</p> <p>If person fails to appear after notice, prosecutor may file violation of obligation to appear charge under Art. 45.060 and court may issue a warrant of arrest.</p>	<p>Art. 45.060, C.C.P. Court must have used all available procedures under Chapter 45 to secure appearance while under the age of 17 before proceeding under Art. 45.060, C.C.P.</p> <p>At age 17 or older, court issues an order to appear. Order must have a warning about continuing obligation to appear and that failure to appear may result in a warrant being issued.</p> <p>If person fails to appear after notice, prosecutor may file violation of obligation to appear charge under Art. 45.060 and court may issue a warrant of arrest.</p>	<p>Art. 45.060, C.C.P. Court must have used all available procedures under Chapter 45 to secure appearance while under the age of 17 before proceeding under Art. 45.060, C.C.P.</p> <p>At age 17 or older, court issues an order to appear. Order must have a warning about continuing obligation to appear and that failure to appear may result in a warrant being issued.</p> <p>If person fails to appear after notice, prosecutor may file violation of obligation to appear charge under Art. 45.060 and court may issue a warrant of arrest.</p>

MUNICIPAL JUVENILE/MINOR CHART

	Alcoholic Beverage Code	Alcoholic Beverage Code/DUI	Education Code	Health and Safety Code	Penal Code	Transportation Code Chapter 729
Child Turns age 17 after failing to pay fine; capias pro fine; Art. 45.045, C.C.P.	Art. 45.045, C.C.P. Court must determine before issuing a <i>capias pro fine</i> : • that person is age 17 or older; • that issuance of <i>capias pro fine</i> is justified (must consider sophistication & maturity, criminal record and history of individual, and the reasonable likelihood of bringing about the discharge of judgment by other procedures); and • that the court has proceeded under Art. 45.050, C.C.P.	Art. 45.045, C.C.P. Court must determine before issuing a <i>capias pro fine</i> : • that person is age 17 or older; • that issuance of <i>capias pro fine</i> is justified (must consider sophistication & maturity, criminal record and history of individual, and the reasonable likelihood of bringing about the discharge of judgment by other procedures); and • that the court has proceeded under Art. 45.050, C.C.P.	Art. 45.045, C.C.P. Court must determine before issuing a <i>capias pro fine</i> : • that person is age 17 or older; • that issuance of <i>capias pro fine</i> is justified (must consider sophistication & maturity, criminal record and history of individual, and the reasonable likelihood of bringing about the discharge of judgment by other procedures); and • that the court has proceeded under Art. 45.050, C.C.P.	Art. 45.045, C.C.P. Court must determine before issuing a <i>capias pro fine</i> : • that person is age 17 or older; • that issuance of <i>capias pro fine</i> is justified (must consider sophistication & maturity, criminal record and history of individual, and the reasonable likelihood of bringing about the discharge of judgment by other procedures); and • that the court has proceeded under Art. 45.050, C.C.P.	Art. 45.045, C.C.P. Court must determine before issuing a <i>capias pro fine</i> : • that person is age 17 or older; • that issuance of <i>capias pro fine</i> is justified (must consider sophistication & maturity, criminal record and history of individual, and the reasonable likelihood of bringing about the discharge of judgment by other procedures); and • that the court has proceeded under Art. 45.050, C.C.P.	Art. 45.045, C.C.P. Court must determine before issuing a <i>capias pro fine</i> : • that person is age 17 or older; • that issuance of <i>capias pro fine</i> is justified (must consider sophistication & maturity, criminal record and history of individual, and the reasonable likelihood of bringing about the discharge of judgment by other procedures); and • that the court has proceeded under Art. 45.050, C.C.P.
Reports	Sec. 51.08(c), F.C. Under age 17 •Juvenile court when case filed; •Juvenile court when case disposed. Secs. 521.201(8) and 521.294(6), T.C. Under age 17 •DPS, if child fails to appear; •DPS, when case adjudicated. Sec. 521.3451, T.C. •DPS, when child fails to pay under Art. 45.050, C.C.P. •DPS, when child makes final disposition. Sec. 106.116, A.B.C. •Tex. Alcoholic Bev. Commission, if requested. Sec. 106.117, A.B.C. All minors •DPS, upon conviction or order of deferred.	Sec. 51.08(c), F.C. Under age 17 •Juvenile court when case filed; •Juvenile court when case disposed. Secs. 521.201(8) and 521.294(6), T.C. Under age 17 •DPS, if child fails to appear; •DPS, when case adjudicated. Sec. 521.3451, T.C. •DPS, when child fails to pay under Art. 45.050, C.C.P. •DPS, when child makes final disposition. Sec. 106.116, A.B.C. •Tex. Alcoholic Bev. Commission, if requested. Sec. 106.117, A.B.C. All minors •DPS, upon conviction, order of deferred, and acquittal under 106.041.	Sec. 51.08(c), F.C. Under age 17 •Juvenile court when case filed; •Juvenile court when case disposed of. Secs. 521.201(8) and 521.294(6), T.C. Under age 17 •DPS, if child fails to appear; •DPS when case adjudicated. Sec. 521.3451, T.C. •DPS, when child fails to pay under Art. 45.050, C.C.P. •DPS, when child makes final disposition.	Sec. 161.254, H.S.C. All minors •DPS, if defendant fails to present evidence of completion of tobacco-related program or community service. Secs. 521.201(8) and 521.294(6), T.C. Under age 17 •DPS, if child fails to appear; •DPS when case adjudicated. Sec. 521.3451, T.C. •DPS, when child fails to pay under Art. 45.050, C.C.P. •DPS, when child makes final disposition.	Sec. 51.08(c), F.C. Under age 17 •Juvenile court when case filed; •Juvenile court when case disposed of. Secs. 521.201(8) and 521.294(6), T.C. Under age 17 •DPS, if child fails to appear; •DPS when case adjudicated. Sec. 521.3451, T.C. •DPS, when child fails to pay under Art. 45.050, C.C.P. •DPS, when child makes final disposition. Sec. 15.27, P.C. • Upon conviction, prosecutor required to notify school of conviction of assault and possession of drug paraphernalia.	Sec. 543.203, T.C. •Convictions reported to DPS. Sec. 521.3452, T.C. Under age 17 • Court required to report failure to appear. Secs. 521.201(7) and 521.294(5), T.C. •DPS, if child fails to appear; •DPS when case adjudicated. Sec. 521.3451, T.C. •DPS, when child fails to pay under Art. 45.050, C.C.P. •DPS, when child makes final disposition.

MUNICIPAL JUVENILE/MINOR CHART

	Alcoholic Beverage Code	Alcoholic Beverage Code/DUI	Education Code	Health and Safety Code	Penal Code	Transportation Code Chapter 729
Parents ⁶	<p>Art. 45.0215, C.C.P. •Court required to issue summons for parents. • Failure to appear with child in court is a Class C misdemeanor.</p> <p>Art. 45.057(a), C.C.P. •Parent includes a person standing in parental relation, a managing conservator or a custodian.</p> <p>Art. 45.057(g), C.C.P. •Failure to appear with child in court is a Class C misdemeanor.</p> <p>Art. 45.057(h), C.C.P. •Failure to notify the court in writing of the child’s current address is a Class C misdemeanor.</p> <p>Art. 45.057, C.C.P. Court may order: •Attend a parenting class. •Attend child’s school classes & functions. •Pay up to \$100 for special program for child. •Parent to do an act or refrain from doing an act that will increase likelihood that child will comply.</p> <p>Sec. 106.115(d), A.B.C. •Court may order parent to do any act or refrain from an act to increase likelihood that minor will complete alcohol awareness program.</p>	<p>Art. 45.0215, C.C.P. •Court required to issue summons for parents. • Failure to appear with child in court is a Class C misdemeanor.</p> <p>Art. 45.057(a), C.C.P. •Parent includes a person standing in parental relation, a managing conservator or a custodian.</p> <p>Art. 45.057(g), C.C.P. •Failure to appear with child in court is a Class C misdemeanor.</p> <p>Art. 45.057(h), C.C.P. •Failure to notify the court in writing of the child’s current address is a Class C misdemeanor.</p> <p>Art. 45.057, C.C.P. Court may order: •Attend a parenting class. •Attend child’s school classes & functions. •Pay up to \$100 for special program for child. •Parent to do an act or refrain from doing an act that will increase likelihood that child will comply.</p> <p>Sec. 106.115(d), A.B.C. •Court may order parent to do any act or refrain from an act to increase likelihood that minor will complete alcohol awareness program.</p>	<p>Art. 45.0215, C.C.P. •Court required to issue summons for parents. • Failure to appear with child in court is a Class C misdemeanor.</p> <p>Sec. 25.093, E.C. •May be charged with the offense of Parent Contributing to Nonattendance, a Class C misdemeanor.</p> <p>Art. 45.054, C.C.P. •Order parent to attend a class for students at risk of dropping out of school.</p> <p>Art. 45.057(a), C.C.P. •Parent includes a person standing in parental relation, a managing conservator or a custodian.</p> <p>Art. 45.057, C.C.P. Court may order: •Attend a parenting class. •Attend child’s school classes & functions. •Pay up to \$100 for special program for child. •Parent to do an act or refrain from doing an act that will increase likelihood that child will comply.</p> <p>Art. 45.054(d), C.C.P. •Failure to comply with summons to appear with child charged with failure to attend school is a Class C misdemeanor.</p> <p>Art. 45.057(h), C.C.P. •Failure to notify the court in writing of the child’s current address is a Class C misdemeanor.</p>	<p>Art. 45.0215, C.C.P. •Court required to issue summons for parents. • Failure to appear with child in court is a Class C misdemeanor.</p> <p>Art. 45.057(a), C.C.P. •Parent includes a person standing in parental relation, a managing conservator or a custodian.</p> <p>Art. 45.057(g), C.C.P. •Failure to appear with child in court is a Class C misdemeanor.</p> <p>Art. 45.057, C.C.P. Court may order: •Attend a parenting class. •Attend child’s school classes & functions. •Pay up to \$100 for special program for child. •Parent to do an act or refrain from doing an act that will increase likelihood that child will comply.</p> <p>Art. 45.057(h), C.C.P. •Failure to notify the court in writing of the child’s current address is a Class C misdemeanor.</p>	<p>Art. 45.0215, C.C.P. •Court required to issue summons for parents. • Failure to appear with child in court is a Class C misdemeanor.</p> <p>Art. 45.057(a), C.C.P. •Parent includes a person standing in parental relation, a managing conservator or a custodian.</p> <p>Art. 45.057(g), C.C.P. •Failure to appear with child in court is a Class C misdemeanor.</p> <p>Art. 45.057, C.C.P. Court may order: •Attend a parenting class. •Attend child’s school classes & functions. •Pay up to \$100 for special program for child. •Parent to do an act or refrain from doing an act that will increase likelihood that child will comply.</p> <p>Art. 45.057(h), C.C.P. •Failure to notify the court in writing of the child’s current address is a Class C misdemeanor.</p>	<p>Art. 45.0215, C.C.P. •Court required to issue summons for parents. • Failure to appear with child in court is a Class C misdemeanor.</p> <p>Art. 45.057(a), C.C.P. •Parent includes a person standing in parental relation, a managing conservator or a custodian.</p> <p>Art. 45.057(g), C.C.P. •Failure to appear with child in court is a Class C misdemeanor.</p> <p>Art. 45.057(h), C.C.P. •Failure to notify the court in writing of the child’s current address is a Class C misdemeanor.</p> <p>Art. 45.057, C.C.P. Court may order: •Attend a parenting class. •Attend child’s school classes & functions. •Pay up to \$100 for special program for child. •Parent to do an act or refrain from doing an act that will increase likelihood that child will comply.</p>

MUNICIPAL JUVENILE/MINOR CHART

¹Art. 45.056, C.C.P., provides authority for municipal court to employ case managers for juvenile cases. Sec.51.08, F.C., provides that a court that has implemented a juvenile case manager program under Art. 45.056, C.C.P., may, but is not required to, waive its original jurisdiction under subsection (b)(1) of Section 51.08, F.C. Article 102.0174, C.C.P., provides that cities may adopt an ordinance creating a juvenile case manger fund and collect a \$5 fee to fund a juvenile case manager. (Effective January 1, 2006)

²Art. 45.057, C.C.P. – When a child who is at least 10 years old and younger than age 17 is charged with a fine-only offense, the court may, in addition to a fine, order the following sanctions: 1) Refer the child or child’s parent for services under Sec. 264.302, F.C.; 2) Require child to attend a special program that is in best interest of child, including rehabilitation, counseling, self-esteem and leadership, work and job skills training, job interviewing and work preparation, self-improvement, parenting, manners, violence avoidance, tutoring, sensitivity training, parental responsibility, community service, restitution, advocacy or mentoring program; 3) Require parents to do an act or refrain from an act that will increase the likelihood that the child will comply with court orders, including attending a parenting class or parental responsibility program and attending the child’s school classes or functions; 4) Order the parents of a child required to attend a special program to pay an amount not greater than \$100 for the costs of the program; 5) Require both the child and parent to submit proof of attendance. (If program involves the expenditure of county funds, county must approve child’s attendance.)

Deferred Disposition

- If the court grants deferred for all Alcoholic Beverage Code offenses except DUI, the court must require the defendant to perform the community service requirements and attend an alcohol awareness course; for DUI, the court must require an alcohol awareness course.
- If defendant charged with the offense of public intoxication is at least age 17 and under age 21, and the court grants deferred, the court must order the community service requirements under Sec. 106.071, A.B.C., and attendance at an alcohol awareness course.

³A dispositional order under Art. 45.054, C.C.P., is effective for the period specified by the court in the order but may not extend beyond the 180th day after the date of the order or beyond the end of the school year in which the order was entered, whichever period is longer.

⁴Art. 45.059, C.C.P., Children Taken into Custody for Violation of Juvenile Curfew or Order: 1) Release person to parent, guardian or custodian; 2) Take person before a justice or municipal court; or 3) Take person to juvenile curfew processing office (similar to nonsecure custody and not held for more than six hours).

⁵Art. 45.0216, C.C.P., provides that proceedings under Art. 45.051, C.C.P. (Deferred Disposition), and proceedings under Art. 45.052, C.C.P. (Teen Court), may be expunged under Art. 45.0216, C.C.P.

⁶Under Sec. 25.093(f), E.C., when a court grants deferred disposition to a parent charged with parent contributing to nonattendance, the court may require the defendant to attend a program that provides instruction designed to assist the parent in identifying problems that contribute to his or her child’s absence from school and strategies for resolving those problems.

The Adjudication of Juveniles in Municipal and Justice Court

The Nuts and Bolts of Juvenile Law

Ryan Kellus Turner

General Counsel

Texas Municipal Courts Education Center

Austin, Texas

What are the “Shadow
Courts?”

More Importantly, Why Should
You Care?

Jurisdiction

- Criminal Subject Matter
- “Fine-only” Misnomer
- Prominent Codes
 - Alcohol Beverage Code
 - Education Code
 - Health & Safety Code
 - Penal Code (except PI)
 - Transportation Code

Age

- No Single Uniform Age Guidelines
- Different Codes Use Different Ages
- Note Penal Code 8.07

Appearance

- Personal Appearance Required of Juveniles (No plea by mail)
- Parents or Guardians Attendance Required (May be waived)

Waiver of Jurisdiction to Juvenile Court

- General Rule: Three Strikes and You Are Out!
- General Exceptions:
 - Health & Safety (Tobacco)
 - Transportation (Most Traffic Violations)
 - Case Managers (Sec. 51.08, F.C.)
- Consider Enhancements

Violation of a Court Order

- Generally, Art. 45.050, CCP
 - “Punt & Pray”
- OR
- “Keep & Play”
 - \$500
 - Indefinite Conditional Lien on DL
- Compare: Sec. 21.002, GC (for 17+)

Penalties

- Depends on Offense
 - Fines
 - Payment Plans
 - Indigent Community Service
 - Community Service in Lieu of Fine
 - Related Community Service
 - Specific Awareness Programs
 - General “Laundry List” (Art. 45.057, CCP)
 - Specific FTAS “Laundry List” (Art. 45.054)

Expungement

- Depends on Code
 - ABC (Sec. 106)
 - CCP (Ch. 45 for FTAS & PC Violations)
- Depends on Date (pre or post Sept 2001)
- Chapter 55 Applies

Custody

- No Arrest Misnomer
- Difference is in
 - Processing
 - Length of Detention
 - Place of Detention
- Consult Respective Codes

Parents and Guardians

- State Law Authorizes
 - Cease and Desist Orders
 - Compulsory Orders to Assure Compliance
 - \$500 fines for most “no shows”
 - Specific Crimes (Contributing to Non-Attendance)
 - Contempt

Nebulous Areas Prior to the 2003

- How to Handle Non-Compliant Juveniles Who Are Now Adults
 - Arrest procedures?
 - Capias pro fine?
- No “certification” like procedure

Enforcement 2003 - Present

- Ends Make Your Own Rule for B-Day Parties
- Begins Formalized Procedures for Youth Accountability
- Greater Consequences for “JNAs”
 - Adult Crime = Adult Arrest
 - Childhood Judgments = Optional “Certification” and Commitment to Jail on Capias Pro Fine
- More Rules = More Details = More Options

THE END

...is always just the beginning of
something else!