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# THE ADJUDICATION OF JUVENILES IN MUNICIPAL AND JUSTICE COURTS

A compilation of excerpts from *The Municipal Judges Book*, a publication of the  
Texas Municipal Courts Education Center

## Introduction

In Texas, municipal and justice courts are collectively known as local trial courts of limited jurisdiction. 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.

### I. Jurisdiction of Municipal and Justice Courts in Juvenile Cases

#### A. Overview

Municipal and justice courts have jurisdiction over “fine-only misdemeanors.”<sup>1</sup> 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.<sup>2</sup> 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 sources 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. Because 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.
- 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.

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<sup>1</sup> 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 fire safety, zoning, or public health and sanitation violations (Section 54.001, Local Government Code). Such violations may only be adjudicated in a municipal court (Section 29.003(a), Government Code).

<sup>2</sup> Articles 4.11 and 4.14, Code of Criminal Procedure; Section 29.003, Government Code.

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- 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.
  - Article 45.058 of the Code of Criminal Procedure defines a child as a person at least 10 years of age and younger than 17 years of age who is charged with or convicted of an offense that a justice or municipal court has jurisdiction of under Article 4.11 or 4.14, Code of Criminal Procedure.

Municipal and justice courts have jurisdiction of fine-only offenses regardless of whether the offender is an adult or juvenile. The most notable exception has been public intoxication committed by a person under the age of 17.<sup>3</sup> However, with the passage of H.B. 558 by the 81st Legislature, effective September 1, 2009, municipal and justice courts will have jurisdiction over the offense of public intoxication of children.

## **B. Waiver of Jurisdiction**

**Mandatory waiver:** Unless a municipal or justice court has a juvenile case manager program,<sup>4</sup> the court must waive jurisdiction and transfer a juvenile's case to the juvenile court if the child has been previously convicted of:

- Two or more prior fine-only offenses, other than traffic or tobacco violations;
- 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.<sup>5</sup>

If the court has a juvenile case manager, the court may, but is not required to, waive jurisdiction in the above situations.

**Discretionary waiver:** With the exception of traffic and tobacco offenses, a municipal or justice court may waive jurisdiction and transfer a child to juvenile court whenever a complaint is pending against the child for any fine-only offense.<sup>6</sup>

Traffic offenses can never be transferred to juvenile court, as traffic offenses are specifically excluded from the definition of CINS (conduct indicating a need for supervision) under Section 51.03(b)(1) of the Family Code.

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. 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 local trial court should retain a copy of all documents.

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<sup>3</sup> Section 51.03(f), Family Code.

<sup>4</sup> 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).

<sup>5</sup> Section 51.08(b)(1), Family Code.

<sup>6</sup> Section 51.08(b)(2), Family Code.

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## 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. To secure release, the person detained must make a written promise to appear in court by signing the written notice prepared by the officer.<sup>7</sup> In the context of a fine-only offense, a 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.<sup>8</sup> Note, however, that entering a plea by mail is not an option for defendants younger than 17 years of age.<sup>9</sup>
- 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,<sup>10</sup> or Violate Promise to Appear, applicable only to Transportation Code, Subtitle C “Rules of the Road” offenses, punishable by a maximum fine of \$200.<sup>11</sup>

In light of the U.S. Supreme Court’s decision in *Atwater v. City of Lago Vista*,<sup>12</sup> 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.<sup>13</sup> 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.

Article 14.06 of the Code of Criminal Procedure generally allows officers to issue a citation in lieu of an arrest for Class C misdemeanors other than public intoxication. Nonetheless, an officer may release an adult in accordance with Article 14.031 of the Code of Criminal Procedure. However, children (under the age of 17) who are charged with public intoxication may not be released under Article 14.031. Rather, the child may be issued a citation and be released to a parent, guardian, custodian, or other responsible adult under Article 45.058 of the Code of Criminal Procedure.

### B. The Processing of a Child Taken into Custody

Section 51.12 of the Family Code 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.

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 Procedure 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.

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<sup>7</sup> 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).

<sup>8</sup> Article 27.14(b), Code of Criminal Procedure.

<sup>9</sup> Article 45.0215, Code of Criminal Procedure.

<sup>10</sup> Section 38.10, Penal Code.

<sup>11</sup> Sections 542.401 and 543.009, Transportation Code.

<sup>12</sup> 121 S.Ct. 1536 (2001).

<sup>13</sup> Article 14.01(b), Code of Criminal Procedure and Section 543.004, Transportation Code.

- 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.<sup>14</sup>
- A place of nonsecure custody must be designated by the head of law enforcement with custody of the child.<sup>15</sup>
- 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.<sup>16</sup> 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.<sup>17</sup>
- Under no circumstances is the child to be held for more than six hours.<sup>18</sup> These same regulations apply to juveniles who are picked up on curfew violation charges.<sup>19</sup> After six hours the child may be: (1) released to a responsible adult;<sup>20</sup> (2) released upon issuance of a citation;<sup>21</sup> or (3) taken before a magistrate and released on a personal bond.<sup>22</sup>

### 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.<sup>23</sup>

## 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.<sup>24</sup>

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.<sup>25</sup>

<sup>14</sup> Article 45.058(c), Code of Criminal Procedure.

<sup>15</sup> Article 45.058(b), Code of Criminal Procedure.

<sup>16</sup> Article 45.058(d), Code of Criminal Procedure.

<sup>17</sup> Section 58.002(a), Family Code.

<sup>18</sup> *Id.*

<sup>19</sup> Article 45.058(e), Code of Criminal Procedure.

<sup>20</sup> Article 45.058(a), Code of Criminal Procedure.

<sup>21</sup> Article 14.06(b), Code of Criminal Procedure.

<sup>22</sup> Article 17.03, Code of Criminal Procedure.

<sup>23</sup> Article 45.058(f), Code of Criminal Procedure.

<sup>24</sup> Article 45.001, Code of Criminal Procedure.

<sup>25</sup> Article 45.002, Code of Criminal Procedure.

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## **A. General Procedures**

### **1. Child's Appearance Required**

Unlike adult defendants, defendants under the age of 17 are required to appear in person in open court.<sup>26</sup> They are not allowed to appear by mail or by delivery of a plea or fine to the clerk's office. Because offenses in municipal and justice courts are punishable by fine-only and not incarceration, juveniles in municipal or justice courts do not have a right to appointed counsel. The defendant, of course, has a right to retain counsel. However, the attorney cannot appear on behalf of the child; the child must still appear with his or her retained attorney.

### **2. 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.<sup>27</sup> 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 Class C misdemeanor offense.<sup>28</sup> 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.<sup>29</sup>

### **3. Continuing Obligation to Provide Court with Child's Current Address**

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 to provide the court with the child's current address. 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.*

*(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.*

It is an affirmative defense to prosecution that notice was not given in accord with Article 45.057.

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

### **4. 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.<sup>30</sup> The judgment is rendered by the court in which the complaint is filed, and all fines and cost go to the original court.

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<sup>26</sup> Article 45.0215, Code of Criminal Procedure.

<sup>27</sup> Article 45.0215, Code of Criminal Procedure.

<sup>28</sup> Article 45.057(g), Code of Criminal Procedure.

<sup>29</sup> Article 45.0215(d), Code of Criminal Procedure.

<sup>30</sup> Article 45.0215(c), Code of Criminal Procedure.

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## **B. Additional Sanctions Upon Conviction**

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 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.

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.<sup>31</sup>

## **C. 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.<sup>32</sup> 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.

## **D. 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

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<sup>31</sup> Municipal or justice contempt, with the exception of children, is punishable by a fine of \$100 and/or three days incarceration.

<sup>32</sup> Section 264.302, Family Code.

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violation), the municipal or justice court shall notify the juvenile court of the pending complaint and furnish a copy of the final disposition.<sup>33</sup>

#### **IV. Alternate 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.<sup>34</sup>

##### **1. Deferred Disposition**

An alternative to a fine is placing the juvenile on deferred disposition.<sup>35</sup> Deferred disposition is available for most offenses. The exceptions are:

- Traffic offenses committed in a construction maintenance zone when workers are present,<sup>36</sup>
- 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;<sup>37</sup>
- A minor who commits the offense of driving under the influence of alcohol and has been previously convicted twice or more of that offense;<sup>38</sup>
- 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.<sup>39</sup>

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.<sup>40</sup>

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.<sup>41</sup>

If the child is charged with a traffic offense classified as a moving violation, the court must require the defendant to complete a driving safety course approved under Chapter 1001 of the Education Code, and if the defendant holds a provisional license, the judge shall require the defendant to be retested by DPS as required by Section 521.161(b)(2) of the Transportation Code.

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 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.

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<sup>33</sup> Section 51.08(c), Family Code.

<sup>34</sup> 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).

<sup>35</sup> Article 45.051, Code of Criminal Procedure.

<sup>36</sup> Sections 472.022, Transportation Code and Article 45.051, Code of Criminal Procedure.

<sup>37</sup> Section 106.071(i), Alcoholic Beverage Code.

<sup>38</sup> Section 106.041(f), Alcoholic Beverage Code.

<sup>39</sup> Section 106.04(d), Alcoholic Beverage Code.

<sup>40</sup> Section 106.115, Alcoholic Beverage Code.

<sup>41</sup> Section 106.071, Alcoholic Beverage Code.

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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.

The court may impose a special expense fee not to exceed the amount of the fine assessed, but not imposed, at the time the court grants the deferral. The court may elect not to collect the special expense fee for good cause shown. 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. Beginning September 1, 2009, H.B. 1544 provides that the special expense fee may be collected at anytime before the date the deferral ends. 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.<sup>42</sup> In the event of a default, the judge shall require that the amount of the special expense fee be credited toward the amount of the fine imposed by the judge.

## 2. Driving Safety Courses (DSC)

Driving safety courses are an offense-specific form of deferred disposition.<sup>43</sup> Juveniles who want to take a driving safety course must make the request in open court in the presence of a parent or guardian.<sup>44</sup> All defendants requesting a driving safety course must give the court a plea of guilty or *nolo contendere*. The court must enter a judgment on the plea.<sup>45</sup> The child then has 90 days to complete the course and present evidence of successful completion to the court. 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 parent 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.

## 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;

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<sup>42</sup> Article 45.051(d), Code of Criminal Procedure.

<sup>43</sup> Article 45.0511, Code of Criminal Procedure.

<sup>44</sup> Article 45.0215, Code of Criminal Procedure.

<sup>45</sup> Article 45.0511(c), Code of Criminal Procedure.



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- 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 180<sup>th</sup> 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.<sup>46</sup>

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 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.<sup>47</sup>

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.<sup>48</sup> Those justice or municipal courts located in the Texas-Louisiana border region may charge \$20 for each of the fees discussed above.<sup>49</sup>

The judge may exempt a defendant who has requested a teen court program from paying court costs or the fees.<sup>50</sup> 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.<sup>51</sup> 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 by paying the fines and costs assessed.

A judge is required to specify in an order requiring community service the number of hours the defendant is required to work. Community service work must be for a governmental entity or a nonprofit organization that provides services to the public that enhance social welfare and the general well being of the community. The governmental entity or nonprofit organization that accepts a defendant ordered to 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

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<sup>46</sup> Article 45.052(f), Code of Criminal Procedure.

<sup>47</sup> Article 45.052(d), Code of Criminal Procedure.

<sup>48</sup> Article 45.052(e) and (g), Code of Criminal Procedure.

<sup>49</sup> Article 45.052(i), Code of Criminal Procedure.

<sup>50</sup> Article 45.052(h), Code of Criminal Procedure.

<sup>51</sup> Article 45.049, Code of Criminal Procedure.

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to work additional hours does not create a hardship on the defendant or the defendant's dependents. A defendant is considered to have discharged a minimum of \$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) 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 costs.<sup>52</sup>

## **V. Nondisclosure Orders**

S.B. 1056, passed by the 81st Legislature, and effective on the date of passage, adds Section 411.081(f-1) of the Government Code to require a court convicting a child (defined by Section 51.02 of the Family Code as a person at least 10 and less than 17 years of age) for certain misdemeanor offenses punishable by fine only to immediately issue an order prohibiting criminal justice agencies from disclosing criminal history record information related to the offense. Note this amendment applies only to a child who is convicted; it does not apply to a child who successfully completes a form of probation pursuant to Chapter 45 of the Code of Criminal Procedure (*i.e.*, deferred disposition, completion of teen court, commitment of chemically dependent persons, or a driving safety course).

The bill is intended to provide parity to children in the juvenile justice system. Under discretionary waiver provisions, most conduct that results in a child being adjudicated of a fine-only offense can be filed as a civil matter in juvenile court. Records of a child in juvenile court are already confidential, and this amendment extends that confidentiality to criminal court records (which until now were subject to the common-law right of inspection just like adult records). "Criminal justice agencies," as defined in Section 411.082 of the Government Code, can still access the records despite the nondisclosure order for purposes of enhancements or similar acts.

Further, the bill provides that a child convicted of a fine-only misdemeanor before the effective date may still petition the court for a nondisclosure order, which the court shall issue upon petition. It also amends provisions of the Public Information Act to reflect that information subject to a nondisclosure order is protected from disclosure

## **VI. 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.

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.<sup>53</sup> DPS will revoke the

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<sup>52</sup> Article 43.091, Code of Criminal Procedure.

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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.<sup>54</sup> 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.<sup>55</sup> 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.<sup>56</sup> 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.<sup>57</sup>

## **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 (1) refer the child to juvenile court for delinquent conduct for contempt of a justice or municipal court order or (2) retain the case and do one or both of the following: (A) fine the child up to \$500, or (B) 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.<sup>58</sup>

A court may not retain a case and utilize its contempt powers and also refer the contempt 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.

## **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.<sup>59</sup>

## **VII. Dealing with JNAs (Juveniles Now Adults)**

A *capias pro fine* 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);

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<sup>53</sup> Section 521.201(7), Transportation Code.

<sup>54</sup> Section 521.294(5), Transportation Code.

<sup>55</sup> Section 521.313, Transportation Code.

<sup>56</sup> Article 45.058, Code of Criminal Procedure.

<sup>57</sup> Article 45.058(f), Code of Criminal Procedure.

<sup>58</sup> Article 45.050, Code of Criminal Procedure.

<sup>59</sup> Section 21.002(c), Government Code.

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- 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.

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 17<sup>th</sup> 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 17<sup>th</sup> birthday.<sup>60</sup> 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.**<sup>61</sup>

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).<sup>62</sup> 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, the court should 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 and who 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 potentially face aggregate fines up to \$2,000. As an adult, failure to pay such fines can result in the issuance of a *capias pro fine* and, upon the proper determination, commitment to jail for as long as 40 days.<sup>63</sup> This will, undoubtedly, come as a surprise to young adults and others unfamiliar with the law.

## **VIII. 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.<sup>64</sup> 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 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),

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<sup>60</sup> Article 45.060(b), Code of Criminal Procedure.

<sup>61</sup> Article 45.060(e), Code of Criminal Procedure.

<sup>62</sup> Article 45.060(c), Code of Criminal Procedure.

<sup>63</sup> Pursuant to HB 2424, effective September 1, 2003, municipal courts are only required to provide \$50 jail credit per offense per 24-hour period.

<sup>64</sup> Section 106.12, Alcoholic Beverage Code.

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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. The municipal or justice court shall charge \$30 for each application for expungement to defray the cost of notifying state agencies of the orders of expungement.<sup>65</sup>

### **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.<sup>66</sup> 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) of Article 45.055, Code of Criminal Procedure, 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. The municipal or justice court shall charge \$30 for each application for expungement to defray the cost of notifying state agencies of the orders of expungement.<sup>67</sup>

### **C. Health and Safety Code Offenses (Tobacco)**

Minors may apply to the court to have a conviction of a tobacco-related offense expunged.<sup>68</sup> 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 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. The municipal or justice court shall charge \$30 for each application for expungement to defray the cost of notifying state agencies of the orders of expungement.<sup>69</sup>

### **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. The municipal or justice court shall charge \$30 for each application for expungement to defray the cost of notifying state agencies of the orders of expungement.<sup>70</sup> Records of a person under 17 years of age relating to a complaint dismissed under Section 45.051 (deferred disposition) or Section 45.052 (teen court) may be expunged under this section as well.<sup>71</sup>

### **E. Transportation Code Offenses**

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

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<sup>65</sup> Section 106.12(d), Alcoholic Beverage Code. Also see Article 102.006, Code of Criminal Procedure.

<sup>66</sup> Article 45.055, Code of Criminal Procedure.

<sup>67</sup> Article 45.055(d), Code of Criminal Procedure..

<sup>68</sup> Section 161.255, Health and Safety Code.

<sup>69</sup> Section 161.255(b), Health and Safety Code. Also see Article 102.006, Code of Criminal Procedure.

<sup>70</sup> Article 45.022(i), Code of Criminal Procedure. Also see Article 102.006, Code of Criminal Procedure.

<sup>71</sup> Article 45.022(h), Code of Criminal Procedure.



# MUNICIPAL JUVENILE/MINOR CHART



	Alcoholic Beverage Code	Alcoholic Beverage Code/DUI	Education Code	Health and Safety Code	Penal Code	Transportation Code Chapter 729
<b>Jurisdiction</b>	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 <sup>th</sup> 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.
<b>Waiver of Jurisdiction - Transfer to Juvenile Court<sup>1</sup></b> Sec. 51.08, F.C.	<b>Sec. 51.08, F.C.</b> Under age 17: • <b>May waive</b> jurisdiction over first and second violations; • <b>Shall waive</b> 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.	<b>Sec. 51.08, F.C.</b> Under age 17: • <b>May waive</b> jurisdiction over first and second violations; • <b>Shall waive</b> 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.	<b>Sec. 51.08, F.C.</b> Under age 17: • <b>May waive</b> jurisdiction over first and second violations; • <b>Shall waive</b> jurisdiction after two previous convictions of any non-traffic fine-only offenses. Age 17 – court retains jurisdiction.	<b>Sec. 161.257, H.S.C</b> <b>May not waive</b> jurisdiction. Title 3, Family Code (including transfer to juvenile court) does not apply to Subchapter N, H.S.C.	<b>Sec. 51.08, F.C.</b> Under age 17: • <b>May waive</b> jurisdiction over first and second violations; • <b>Shall waive</b> jurisdiction after two previous convictions of any non-traffic fine-only offenses.	<b>Sec. 51.08, F.C.</b> Municipal court <b>may not waive</b> its jurisdiction over traffic violations.
<b>Age</b> Art. 45.058(h), C.C.P.; Sec. 51.02, F.C. Sec. 8.07, P.C.	<b>Sec. 106.01.</b> Definition of a minor - Under age 21. <b>Sec. 51.02, F.C. &amp; Art. 45.058(h), C.C.P.</b> Child defined as at least 10 years of age & younger than age 17.	<b>Sec. 106.01.</b> Definition of a minor - Under age 21. <b>Sec. 51.02, F.C. &amp; Art. 45.058(h), C.C.P.</b> Child defined as at least 10 years of age & younger than age 17.	<b>Sec. 25.085. Compulsory School Attendance</b> Municipal court has jurisdiction if child at least age 10. • 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.)	<b>Sec. 161.252, H.S.C.</b> Definition of a minor - Under age 18. <b>Sec. 51.02, F.C. &amp; Art. 45.058(h), C.C.P.</b> Child defined as at least 10 years of age & younger than age 17	<b>Sec. 8.07. Age Affecting Criminal Responsibility under age 17.</b> <b>Sec. 51.02, F.C. &amp; Art. 45.058(h), C.C.P.</b> Child defined as at least 10 years of age & younger than age 17.	<b>Sec. 729.001. Operation of Motor Vehicle by Minor- Under age 17.</b> <b>Sec. 51.02, F.C. &amp; Art. 45.058(h), C.C.P.</b> Child defined as at least 10 years of age & younger than age 17.
<b>Common Offenses</b>	•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 & Boating 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.	<b>Sec. 161.252</b> •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.).	<b>Sec. 729.001(a), T.C.; Sec. 8.07(a)(2), P.C.; Sec. 51.02(16), F.C.</b> •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 Chapter 729
<b>Penalties<sup>2</sup></b>	<p><b>Sec.106.071 for offenses under Secs. 106.02, 106.025, 106.04, 106.05, 106.07.</b></p> <p><b>1<sup>st</sup> conviction</b></p> <ul style="list-style-type: none"> <li>•Class C misdemeanor (max \$500);</li> <li>•Mandatory alcohol awareness program, Sec. 106.115;</li> <li>•Mandatory 8-12 hours alcohol-related community service;</li> <li>•DL suspension or denial – 30 days; eff. 11<sup>th</sup> day after conviction.</li> </ul> <p><b>2<sup>nd</sup> conviction</b></p> <ul style="list-style-type: none"> <li>•Class C misdemeanor (max \$500);</li> <li>•Optional alcohol awareness program;</li> <li>•Mandatory 20-40 hours alcohol-related community service;</li> <li>•DL suspension or denial – 60 days; eff. 11<sup>th</sup> day after conviction.</li> </ul> <p><b>3<sup>rd</sup> conviction</b></p> <p>Under age 17:</p> <ul style="list-style-type: none"> <li>•See waiver provisions in chart.</li> </ul> <p>Age 17 &amp; under 21</p> <ul style="list-style-type: none"> <li>•Fine \$250 to \$2000 and/or confinement not to exceed 180 days if charge enhanced.</li> </ul> <hr/> <p><b>Complete alcohol awareness program</b></p> <p>Court may reduce the fine to half the amount assessed.</p> <p><b>Failure to complete alcohol awareness program</b></p> <p>Court may give another 90 days to complete.</p> <ul style="list-style-type: none"> <li>•1<sup>st</sup> conviction: court must order DPS to suspend or deny issuance of DL for up to six months. Sec. 106.115(c), A.B.C.</li> <li>•2<sup>nd</sup> or subsequent conviction: court must order DPS to suspend or deny issuance of DL not to exceed one year.</li> </ul>	<p><b>Sec. 106.041.</b></p> <p><b>1<sup>st</sup> conviction</b></p> <ul style="list-style-type: none"> <li>•Class C misdemeanor (max \$500);</li> <li>•Mandatory alcohol awareness program;</li> <li>•Mandatory 20 to 40 hours alcohol-related community service;</li> <li>•Administrative DL suspension (separate proceeding Chapters 524 and 724, T.C.—court does not suspend).</li> </ul> <p><b>2<sup>nd</sup> conviction</b></p> <ul style="list-style-type: none"> <li>•Class C misdemeanor (max \$500);</li> <li>•Optional alcohol awareness program;</li> <li>•Mandatory 40 to 60 hours of alcohol-related community service;</li> <li>•Administrative DL suspension (separate proceeding—Chapters 524 and 724, T.C.).</li> </ul> <p><b>3<sup>rd</sup> conviction</b></p> <p>Under age 17:</p> <ul style="list-style-type: none"> <li>•See waiver provisions in chart.</li> </ul> <p>Age 17 &amp; under 21</p> <ul style="list-style-type: none"> <li>•Fine \$250 to \$2000 and/or confinement not to exceed 180 days if charge enhanced.</li> </ul> <hr/> <p><b>Complete alcohol awareness program</b></p> <p>Court may reduce the fine to half the amount assessed.</p> <p><b>Failure to complete alcohol awareness program</b></p> <p>Court may give another 90 days to complete.</p> <ul style="list-style-type: none"> <li>•1<sup>st</sup> conviction: court must order DPS to suspend or deny issuance of DL for up to six months. Sec. 106.115(c), A.B.C.</li> <li>•2<sup>nd</sup> or subsequent conviction: court must order DPS to suspend or deny issuance of DL not to exceed one year.</li> </ul>	<p><b>Secs. 25.094, 37.102, 37.107, 37.122, 37.124, 37.126.</b></p> <p>Class C misdemeanors (max \$500)</p> <p><b>Sec. 25.094(c)<sup>3</sup></b> – 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"> <li>•Attend school without unexcused absences;</li> <li>•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;</li> <li>•Attend a special program: <ul style="list-style-type: none"> <li>–alcohol &amp; drug abuse program,</li> <li>–rehabilitation program,</li> <li>–counseling program,</li> <li>–training in self-esteem &amp; leadership,</li> <li>–work and job skills training,</li> <li>–training in parenting,</li> <li>–manners training,</li> <li>–violence avoidance training,</li> <li>–sensitivity training,</li> <li>–advocacy, and</li> <li>–mentoring training;</li> </ul> </li> <li>•Attend class for student at risk of dropping out of school (may require parent to attend with child);</li> <li>•Community service;</li> <li>•Participate in tutorial program;</li> <li>•Order DPS to suspend or deny issuance of a DL for a period of time not to exceed 365 days.</li> </ul>	<p><b>Sec. 161.252 and 161.253</b></p> <p><b>1<sup>st</sup> conviction</b></p> <ul style="list-style-type: none"> <li>•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.</li> <li>•If no course available, court shall require 8-12 hours tobacco-related community service.</li> <li>•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.</li> </ul> <p><b>Subsequent offenses (enhanced)</b></p> <ul style="list-style-type: none"> <li>•A fine not to exceed \$250;</li> <li>•Court shall suspend execution of sentence and order tobacco awareness course;</li> <li>•Upon completion of course, court may reduce fine to not less than half;</li> <li>•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.</li> </ul>	<p><b>Sec. 12.23</b></p> <p>Class C misdemeanor (max fine \$500). Under age 17 &amp; two prior convictions, see waiver provisions in chart.</p> <p><b>Public Intoxication (Sec. 49.02):</b></p> <p>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><b>Secs. 729.001 and 729.002</b></p> <p>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
<b>Appearance</b>	<p><b>Secs. 106.10, A.B.C.</b> •Must be in open court;</p> <p><b>Art. 45.0215, C.C.P.</b> Under age 17: •Must be in open court; •Parent or guardian required to appear with child; •Court must summon parent or guardian; •Court may waive presence, if unable to locate or compel parent’s presence.</p> <p><b>Art. 45.057, C.C.P.</b> Court should provide notice to the child and parent of child (under age 17) and parent’s obligation to notify the court in writing of the child’s current address.</p>	<p><b>Secs. 106.10, A.B.C.</b> •Must be in open court;</p> <p><b>Art. 45.0215, C.C.P.</b> Under age 17: •Must be in open court; •Parent or guardian required to appear with child; •Court must summon parent or guardian; •Court may waive presence, if unable to locate or compel parent’s presence.</p> <p><b>Art. 45.057, C.C.P.</b> Court should provide notice to the child and parent of child (under age 17) and parent’s obligation to notify the court in writing of the child’s current address.</p>	<p><b>Art. 45.0215, C.C.P.</b> Under age 17: •Must be in open court; •Parent or guardian required to appear with child; •Court must summon parent or guardian; •Court may waive presence, if unable to locate or compel parent’s presence.</p> <p><b>Art. 45.054, C.C.P.</b> Failure to Attend School Proceedings: court required to summon parents to appear with defendant regardless of defendant’s age.</p> <p><b>Art. 45.057, C.C.P.</b> Court should provide notice to the child and parent of child (under age 17) and parent’s obligation to notify the court in writing of the child’s current address.</p>	<p><b>Art. 45.0215, C.C.P.</b> Under age 17: •Must be in open court; •Parent or guardian required to appear with minor; •Court must summons parent or guardian; •Court may waive presence, if unable to locate or compel parent’s presence.</p> <p>Age 17 – parent’s presence not required.</p> <p><b>Art. 45.057, C.C.P.</b> Court should provide notice to the child and parent of child (under age 17) and parent’s obligation to notify the court in writing of the child’s current address.</p>	<p><b>Art. 45.0215, C.C.P.</b> Under age 17: •Must be in open court; •Parent or guardian required to appear with minor; •Court must summon parent or guardian; •Court may waive presence if unable to locate or compel parent’s presence.</p> <p><b>Art. 45.057, C.C.P.</b> Court should provide notice to the child and parent of child and parent’s obligation to notify the court in writing of the child’s current address.</p>	<p><b>Art. 45.0215, C.C.P.</b> Under age 17: •Must be in open court; •Parent or guardian required to appear with minor; •Court must summon parent or guardian; •Court may waive presence if unable to locate or compel parent’s presence.</p> <p><b>Art. 45.057, C.C.P.</b> Court should provide notice to the child and parent of child and parent’s obligation to notify the court in writing of the child’s current address.</p>
<b>Custody<sup>4</sup> Art. 45.058, C.C.P.</b>	<p>•A child at least age 10 and under age 17 may be taken into nonsecure custody.</p> <p>•Child may be: -released to parents, guardian, custodian or other responsible adult; -taken before a municipal or justice court; -taken to a place of nonsecure custody – held for not more than 6 hours.</p> <p>•If a minor who is a child has been referred to juvenile court under Sec. 51.08(b), F.C. or Art. 45.050, C.C.P., the child may be detained in a juvenile detention facility.</p> <p>•A minor age 17 when offense committed may be handled as an adult.</p>	<p>•A child at least age 10 and under age 17 may be taken into nonsecure custody.</p> <p>•Child may be: -released to parent, guardian, custodian, or other responsible adult; -taken before a municipal or justice court; -taken to a place of nonsecure custody – held for not more than 6 hours.</p> <p>•If a minor who is a child has been referred to juvenile court under Sec. 51.08(b), F.C. or Art. 45.050, C.C.P., the child may be detained in a juvenile detention facility.</p> <p>•A minor age 17 when offense committed may be handled as an adult.</p>	<p>•A child at least age 10 and under age 17 may be taken into nonsecure custody.</p> <p>•Child may be: -released to parent, guardian, custodian, or other responsible adult; -taken before a municipal or justice court; -taken to a place of nonsecure custody – held for not more than 6 hours.</p> <p><b>Sec. 25.094(d-1), E.C.</b> •Order based on probable cause that individual failed to attend school: -A child may be taken into custody.</p> <p>•Individual may be: -released to parent, guardian, custodian, or other responsible adult;-taken before a municipal or justice court that has venue.</p>	<p>•A child at least age 10 and under age 17 may be taken into nonsecure custody.</p> <p>•Child may be: -released to parent, guardian, custodian, or other responsible adult; -taken before a municipal or justice court; -taken to a place of nonsecure custody – held for not more than 6 hours.</p> <p>•If a minor who is a child has been referred to juvenile court under Sec. 51.08(b), F.C. or Art. 45.050, C.C.P., the child may be detained in a juvenile detention facility.</p> <p>•A minor age 17 when offense committed may be handled as an adult.</p>	<p>•A child at least age 10 and under age 17 may be taken into nonsecure custody.</p> <p>•Child may be: -released to parent, guardian, custodian, or other responsible adult; -taken before a municipal or justice court; -taken to a place of nonsecure custody – held for not more than 6 hours.</p> <p>•If a child has been referred to juvenile court under Sec. 51.08(b), F.C. or Art. 45.050, C.C.P., the child may be detained in a juvenile detention facility.</p>	<p>•A child at least age 10 and under age 17 may be taken into nonsecure custody.</p> <p>•Child may be: -released to parent, guardian, custodian, or other responsible adult; -taken before a municipal or justice court; -taken to a place of nonsecure custody – held for not more than 6 hours.</p> <p>•If a child has been referred to juvenile court under Sec. 51.08(b), F.C. or Art. 45.050, C.C.P., the child may be detained in a juvenile detention facility.</p>





# MUNICIPAL JUVENILE/MINOR CHART



	Alcoholic Beverage Code	Alcoholic Beverage Code/DUI	Education Code	Health and Safety Code	Penal Code	Transportation Code Chapter 729
<b>Failure to Appear</b>	<p><b>Sec. 38.10 P.C.</b>—Failure to Appear may be charged.</p> <p><b>Art. 45.058, C.C.P.</b> Court may issue an order for nonsecure custody.</p> <p><b>Art. 45.057(h), C.C.P.</b> 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><b>Secs. 521.201(8) and 521.294(6), T.C.</b> Court may report failure to appear to DPS.</p>	<p><b>Sec. 38.10 P.C.</b>—Failure to Appear may be charged.</p> <p><b>Art. 45.058, C.C.P.</b> Court may issue an order for nonsecure custody.</p> <p><b>Art. 45.057(h), C.C.P.</b> 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><b>Secs. 521.201(8) and 521.294(6), T.C.</b> Court may report failure to appear to DPS.</p>	<p><b>Sec. 38.10 P.C.</b>—Failure to Appear may be charged.</p> <p><b>Art. 45.058, C.C.P.</b> Court may issue an order for nonsecure custody.</p> <p><b>Art. 45.057(h), C.C.P.</b> 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><b>Secs. 521.201(8) and 521.294(6), T.C.</b> Court may report failure to appear to DPS.</p>	<p><b>Sec. 38.10 P.C.</b>—Failure to Appear may be charged.</p> <p><b>Art. 45.058, C.C.P.</b> Court may issue an order for nonsecure custody.</p> <p><b>Art. 45.057(h), C.C.P.</b> 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><b>Secs. 521.201(8) and 521.294(6), T.C.</b> Court may report failure to appear to DPS.</p>	<p><b>Sec. 38.10 P.C.</b>—Failure to Appear may be charged.</p> <p><b>Art. 45.058, C.C.P.</b> Court may issue an order for nonsecure custody.</p> <p><b>Art. 45.057(h), C.C.P.</b> 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><b>Secs. 521.201(8) and 521.294(6), T.C.</b> Court may report failure to appear to DPS.</p>	<p><b>Sec. 543.009, T.C.</b>— Violation of Promise to Appear may be charged for Subtitle C, Rules of the Road offenses.</p> <p><b>Sec. 38.10 P.C.</b>—Failure to Appear may be charged for other traffic offenses.</p> <p><b>Art. 45.058, C.C.P.</b> Court may issue an order for nonsecure custody.</p> <p><b>Art. 45.057(h), C.C.P.</b> 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><b>Sec. 521.3452, T.C.</b> Court shall report failure to appear to DPS.</p>
<b>Violation of a Court Order; Failure to Pay Fine: Art. 45.050, C.C.P.</b>	<p><b>Art. 45.050, C.C.P.</b> Applies to: children under age 17; children who turn age 17 before contempt proceedings can be held; and persons who failed to obey court order while age 17 or older. Court must provide notice of and conduct a hearing on contempt, before court may:</p> <ul style="list-style-type: none"> <li>• refer the child to the juvenile court for delinquent conduct for contempt of the municipal court order (if child turns age 17 court may not refer to juvenile court); or</li> <li>• retain jurisdiction and hold child/person in contempt of court - max fine \$500; and/or</li> <li>- order suspension or denial of DL until child/person fully complies with orders.</li> </ul> <p>All defendants: •Failure to complete alcohol awareness course, see section on penalties this chart.</p>	<p><b>Art. 45.050, C.C.P.</b> Applies to: children under age 17; children who turn age 17 before contempt proceedings can be held; and persons who failed to obey court order while age 17 or older. Court must provide notice of and conduct a hearing on contempt, before court may:</p> <ul style="list-style-type: none"> <li>• refer the child to the juvenile court for delinquent conduct for contempt of the municipal court order (if child turns age 17 court may not refer to juvenile court); or</li> <li>• retain jurisdiction and hold child/person in contempt of court - max fine \$500; and/or</li> <li>- order suspension or denial of DL until child/person fully complies with orders.</li> </ul> <p>All defendants: •Failure to complete alcohol awareness course, see section on penalties this chart.</p>	<p><b>Art. 45.050, C.C.P.</b> Applies to: children under age 17; children who turn age 17 before contempt proceedings can be held; and persons who failed to obey court order while age 17 or older. Court must provide notice of and conduct a hearing on contempt, before court may:</p> <ul style="list-style-type: none"> <li>• refer the child to the juvenile court for delinquent conduct for contempt of the municipal court order (if child turns age 17 court may not refer to juvenile court); or</li> <li>• retain jurisdiction and hold child/person in contempt of court - max fine \$500; and/or</li> <li>- order suspension or denial of DL until child/person fully complies with orders.</li> </ul>	<p><b>Art. 45.050, C.C.P.</b> Applies to: children under age 17; children who turn age 17 before contempt proceedings can be held; and persons who failed to obey court order while age 17 or older. Court must provide notice of and conduct a hearing on contempt, before court may:</p> <ul style="list-style-type: none"> <li>• refer the child to the juvenile court for delinquent conduct for contempt of the municipal court order (if child turns age 17 court may not refer to juvenile court); or</li> <li>• retain jurisdiction and hold child/person in contempt of court - max fine \$500; and/or</li> <li>- order suspension or denial of DL until child/person fully complies with orders.</li> </ul> <p>All defendants: •Failure to complete tobacco awareness course, see section on penalties this chart.</p>	<p><b>Art. 45.050, C.C.P.</b> Applies to: children under age 17; children who turn age 17 before contempt proceedings can be held; and persons who failed to obey court order while age 17 or older. Court must provide notice of and conduct a hearing on contempt, before court may:</p> <ul style="list-style-type: none"> <li>• refer the child to the juvenile court for delinquent conduct for contempt of the municipal court order (if child turns age 17 court may not refer to juvenile court); or</li> <li>• retain jurisdiction and hold child/person in contempt of court - max fine \$500; and/or</li> <li>- order suspension or denial of DL until child/person fully complies with orders.</li> </ul>	<p><b>Art. 45.050, C.C.P.</b> Applies to: children under age 17; children who turn age 17 before contempt proceedings can be held; and persons who failed to obey court order while age 17 or older. Court must provide notice of and conduct a hearing on contempt, before court may:</p> <ul style="list-style-type: none"> <li>• refer the child to the juvenile court for delinquent conduct for contempt of the municipal court order (if child turns age 17 court may not refer to juvenile court); or</li> <li>• retain jurisdiction and hold child/person in contempt of court - max fine \$500; and/or</li> <li>- order suspension or denial of DL until child/person fully complies with orders.</li> </ul>



# MUNICIPAL JUVENILE/MINOR CHART



	Alcoholic Beverage Code	Alcoholic Beverage Code/DUI	Education Code	Health and Safety Code	Penal Code	Transportation Code Chapter 729
<b>Expunction<sup>5</sup></b>	<p><b>Sec. 106.12</b> Yes. May apply to municipal court at age 21 if only one conviction under Alcoholic Beverage Code.</p> <p><b>Sec. 106.12(d)</b> Court shall charge \$30 fee for each application.</p>	<p><b>Sec. 106.12</b> Yes. May apply to municipal court at age 21 if only one conviction under Alcoholic Beverage Code.</p> <p><b>Sec. 106.12(d)</b> Court shall charge \$30 fee for each application.</p>	<p><b>Art. 45.055, C.C.P.</b> Yes. May apply to municipal court if only one conviction for offense of failure to attend school. (Sec. 25.094)</p> <ul style="list-style-type: none"> <li>•Court must notify child of right;</li> <li>•Court must give copy of Art. 45.055, C.C.P.</li> <li>•May apply at age 18;</li> <li>•Must submit written request made under oath;</li> <li>•Form of submission determined by applicant;</li> <li>•Must pay \$30 fee.</li> </ul> <p><b>Art. 45.0216, C.C.P.</b> Other fine-only Education Code Offenses: Court must notify child of right;</p> <ul style="list-style-type: none"> <li>•Court must give copy of Art. 45.0216, C.C.P.</li> <li>•Not more than one conviction;</li> <li>•Child may apply on or after age 17;</li> <li>•Apply to trial court;</li> <li>•Child makes request under oath;</li> <li>•Court shall charge \$30 fee.</li> </ul>	<p><b>Sec. 161.255, H.S.C.</b> Yes.</p> <ul style="list-style-type: none"> <li>•May apply to the court to have conviction expunged;</li> <li>•Applicant must have completed tobacco awareness course;</li> <li>•May have multiple convictions expunged as long as applicant completed tobacco awareness course for each conviction.</li> <li>•Court shall charge \$30 fee.</li> </ul>	<p><b>Art. 45.0216, C.C.P.</b></p> <ul style="list-style-type: none"> <li>•Court must notify child of right;</li> <li>•Court must give copy of Art. 45.0216, C.C.P.</li> <li>•Not more than one conviction;</li> <li>•Child may apply on or after age 17;</li> <li>•Apply to trial court;</li> <li>•Child makes request under oath;</li> <li>•Court shall charge \$30 fee.</li> </ul>	<p><b>Chpt. 55, C.C.P.</b> Expunction order must be filed in district court.</p>
<b>Child Turns age 17 after Failure to Appear</b>	<p><b>Art. 45.060, C.C.P.</b> 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 complaint for violation of obligation to appear under Art. 45.060 and court may issue a warrant of arrest.</p>	<p><b>Art. 45.060, C.C.P.</b> 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 complaint for violation of obligation to appear under Art. 45.060 and court may issue a warrant of arrest.</p>	<p><b>Art. 45.060, C.C.P.</b> 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 complaint for violation of obligation to appear under Art. 45.060 and court may issue a warrant of arrest.</p>	<p><b>Art. 45.060, C.C.P.</b> 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 complaint for violation of obligation to appear under Art. 45.060 and court may issue a warrant of arrest.</p>	<p><b>Art. 45.060, C.C.P.</b> 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 complaint for violation of obligation to appear under Art. 45.060 and court may issue a warrant of arrest.</p>	<p><b>Art. 45.060, C.C.P.</b> 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 complaint for violation of obligation to appear 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
<b>Child Turns age 17 after failing to pay fine; <i>capias pro fine</i>; Art. 45.045, C.C.P.</b>	<b>Art. 45.045, C.C.P.</b> Court must determine before issuing a <i>capias pro fine</i> : <ul style="list-style-type: none"> <li>• that person is age 17 or older;</li> <li>• that issuance of <i>capias pro fine</i> is justified (must consider sophistication &amp; maturity, criminal record and history of individual, and the reasonable likelihood of bringing about the discharge of judgment by other procedures); and</li> <li>• that the court has proceeded under Art. 45.050, C.C.P.</li> </ul>	<b>Art. 45.045, C.C.P.</b> Court must determine before issuing a <i>capias pro fine</i> : <ul style="list-style-type: none"> <li>• that person is age 17 or older;</li> <li>• that issuance of <i>capias pro fine</i> is justified (must consider sophistication &amp; maturity, criminal record and history of individual, and the reasonable likelihood of bringing about the discharge of judgment by other procedures); and</li> <li>• that the court has proceeded under Art. 45.050, C.C.P.</li> </ul>	<b>Art. 45.045, C.C.P.</b> Court must determine before issuing a <i>capias pro fine</i> : <ul style="list-style-type: none"> <li>• that person is age 17 or older;</li> <li>• that issuance of <i>capias pro fine</i> is justified (must consider sophistication &amp; maturity, criminal record and history of individual, and the reasonable likelihood of bringing about the discharge of judgment by other procedures); and</li> <li>• that the court has proceeded under Art. 45.050, C.C.P.</li> </ul>	<b>Art. 45.045, C.C.P.</b> Court must determine before issuing a <i>capias pro fine</i> : <ul style="list-style-type: none"> <li>• that person is age 17 or older;</li> <li>• that issuance of <i>capias pro fine</i> is justified (must consider sophistication &amp; maturity, criminal record and history of individual, and the reasonable likelihood of bringing about the discharge of judgment by other procedures); and</li> <li>• that the court has proceeded under Art. 45.050, C.C.P.</li> </ul>	<b>Art. 45.045, C.C.P.</b> Court must determine before issuing a <i>capias pro fine</i> : <ul style="list-style-type: none"> <li>• that person is age 17 or older;</li> <li>• that issuance of <i>capias pro fine</i> is justified (must consider sophistication &amp; maturity, criminal record and history of individual, and the reasonable likelihood of bringing about the discharge of judgment by other procedures); and</li> <li>• that the court has proceeded under Art. 45.050, C.C.P.</li> </ul>	<b>Art. 45.045, C.C.P.</b> Court must determine before issuing a <i>capias pro fine</i> : <ul style="list-style-type: none"> <li>• that person is age 17 or older;</li> <li>• that issuance of <i>capias pro fine</i> is justified (must consider sophistication &amp; maturity, criminal record and history of individual, and the reasonable likelihood of bringing about the discharge of judgment by other procedures); and</li> <li>• that the court has proceeded under Art. 45.050, C.C.P.</li> </ul>
<b>Reports</b>	<b>Sec. 51.08(c), F.C.</b> Under age 17 <ul style="list-style-type: none"> <li>•Juvenile court when case filed;</li> <li>•Juvenile court when case disposed.</li> </ul> <b>Secs. 521.201(8) and 521.294(6), T.C.</b> Under age 17 <ul style="list-style-type: none"> <li>•DPS, if child fails to appear;</li> <li>•DPS, when case adjudicated.</li> </ul> <b>Sec. 521.3451, T.C.</b> <ul style="list-style-type: none"> <li>•DPS, when child found in contempt for failure to pay under Art. 45.050, C.C.P. &amp; court orders suspension or denial of DL.</li> <li>•DPS, when child makes final disposition.</li> </ul> <b>Sec. 106.116, A.B.C.</b> <ul style="list-style-type: none"> <li>•Tex. Alcoholic Bev. Commission, if requested.</li> </ul> <b>Sec. 106.117, A.B.C.</b> All minors <ul style="list-style-type: none"> <li>•DPS, upon conviction or order of deferred.</li> </ul> <b>Sec. 106.115(d), A.B.C.</b> All minors <ul style="list-style-type: none"> <li>•DPS, court order of DL suspension or denial not to exceed six months upon failure to complete alcohol awareness program or community service.</li> </ul>	<b>Sec. 51.08(c), F.C.</b> Under age 17 <ul style="list-style-type: none"> <li>•Juvenile court when case filed;</li> <li>•Juvenile court when case disposed.</li> </ul> <b>Secs. 521.201(8) and 521.294(6), T.C.</b> Under age 17 <ul style="list-style-type: none"> <li>•DPS, if child fails to appear;</li> <li>•DPS, when case adjudicated.</li> </ul> <b>Sec. 521.3451, T.C.</b> <ul style="list-style-type: none"> <li>•DPS, when child found in contempt for failure to pay under Art. 45.050, C.C.P. &amp; court orders suspension or denial of DL.</li> <li>•DPS, when child makes final disposition.</li> </ul> <b>Sec. 106.116, A.B.C.</b> <ul style="list-style-type: none"> <li>•Tex. Alcoholic Bev. Commission, if requested.</li> </ul> <b>Sec. 106.117, A.B.C.</b> All minors <ul style="list-style-type: none"> <li>•DPS, upon conviction, order of deferred, and acquittal under 106.041.</li> </ul> <b>Sec. 106.115(d), A.B.C.</b> All minors <ul style="list-style-type: none"> <li>•DPS, court order of DL suspension or denial not to exceed six months upon failure to complete alcohol awareness program or community service.</li> </ul>	<b>Sec. 51.08(c), F.C.</b> Under age 17 <ul style="list-style-type: none"> <li>•Juvenile court when case filed;</li> <li>•Juvenile court when case disposed of.</li> </ul> <b>Secs. 521.201(8) and 521.294(6), T.C.</b> Under age 17 <ul style="list-style-type: none"> <li>•DPS, if child fails to appear;</li> <li>•DPS when case adjudicated.</li> </ul> <b>Sec. 521.3451, T.C.</b> <ul style="list-style-type: none"> <li>•DPS, when child found in contempt for failure to pay under Art. 45.050, C.C.P. &amp; court orders suspension or denial of DL.</li> <li>•DPS, when child makes final disposition.</li> </ul>	<b>Sec. 161.254, H.S.C.</b> All minors <ul style="list-style-type: none"> <li>•DPS, if defendant fails to present evidence of completion of tobacco-related program or community service. Court required to order DL suspended or denied for a period not to exceed 180 days.</li> </ul> <b>Secs. 521.201(8) and 521.294(6), T.C.</b> Under age 17 <ul style="list-style-type: none"> <li>•DPS, if child fails to appear;</li> <li>•DPS when case adjudicated.</li> </ul> <b>Sec. 521.3451, T.C.</b> <ul style="list-style-type: none"> <li>•DPS, when child found in contempt for failure to pay under Art. 45.050, C.C.P. &amp; court orders suspension or denial of DL.</li> <li>•DPS, when child makes final disposition.</li> </ul>	<b>Sec. 51.08(c), F.C.</b> Under age 17 <ul style="list-style-type: none"> <li>•Juvenile court when case filed;</li> <li>•Juvenile court when case disposed of.</li> </ul> <b>Secs. 521.201(8) and 521.294(6), T.C.</b> Under age 17 <ul style="list-style-type: none"> <li>•DPS, if child fails to appear;</li> <li>•DPS when case adjudicated.</li> </ul> <b>Sec. 521.3451, T.C.</b> <ul style="list-style-type: none"> <li>•DPS, when child found in contempt for failure to pay under Art. 45.050, C.C.P. &amp; court orders suspension or denial of DL.</li> <li>•DPS, when child makes final disposition.</li> </ul> <b>Sec. 15.27, P.C.</b> <ul style="list-style-type: none"> <li>• Upon conviction, prosecutor required to notify school of conviction of assault and possession of drug paraphernalia.</li> </ul>	<b>Sec. 543.203, T.C.</b> <ul style="list-style-type: none"> <li>•Convictions reported to DPS.</li> </ul> <b>Sec. 521.3452, T.C.</b> Under age 17 <ul style="list-style-type: none"> <li>• Court required to report failure to appear.</li> </ul> <b>Secs. 521.201(7) and 521.294(5), T.C.</b> <ul style="list-style-type: none"> <li>•DPS, if child fails to appear;</li> <li>•DPS when case adjudicated.</li> </ul> <b>Sec. 521.3451, T.C.</b> <ul style="list-style-type: none"> <li>•DPS, when child found in contempt for failure to pay under Art. 45.050, C.C.P. &amp; court orders suspension or denial of DL.</li> <li>•DPS, when child makes final disposition.</li> </ul>

# MUNICIPAL JUVENILE/MINOR CHART

	Alcoholic Beverage Code	Alcoholic Beverage Code/DUI	Education Code	Health and Safety Code	Penal Code	Transportation Code Chapter 729
Parents <sup>6</sup>	<p><b>Art. 45.0215, C.C.P.</b> •Court required to issue summons for parents. • Failure to appear with child in court is a Class C misdemeanor.</p> <p><b>Art. 45.057(a), C.C.P.</b> •Parent includes a person standing in parental relation, a managing conservator or a custodian.</p> <p><b>Art. 45.057(g), C.C.P.</b> •Failure to appear with child in court is a Class C misdemeanor.</p> <p><b>Art. 45.057(h), C.C.P.</b> •Failure to notify the court in writing of the child's current address is a Class C misdemeanor.</p> <p><b>Art. 45.057, C.C.P.</b> Court may order: •Attend a parenting class. •Attend child's school classes &amp; 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><b>Sec. 106.115(d), A.B.C.</b> •Court may order parent to do any act or refrain from an act to increase likelihood that minor will complete alcohol awareness program after child fails to complete program.</p>	<p><b>Art. 45.0215, C.C.P.</b> •Court required to issue summons for parents. • Failure to appear with child in court is a Class C misdemeanor.</p> <p><b>Art. 45.057(a), C.C.P.</b> •Parent includes a person standing in parental relation, a managing conservator or a custodian.</p> <p><b>Art. 45.057(g), C.C.P.</b> •Failure to appear with child in court is a Class C misdemeanor.</p> <p><b>Art. 45.057(h), C.C.P.</b> •Failure to notify the court in writing of the child's current address is a Class C misdemeanor.</p> <p><b>Art. 45.057, C.C.P.</b> Court may order: •Attend a parenting class. •Attend child's school classes &amp; 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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><b>Art. 45.054(d), C.C.P.</b> •Failure to comply with summons to appear with child charged with failure to attend school is a Class C misdemeanor.</p> <p><b>Art. 45.057(h), C.C.P.</b> •Failure to notify the court in writing of the child's current address is a Class C misdemeanor.</p>	<p><b>Art. 45.0215, C.C.P.</b> •Court required to issue summons for parents. • Failure to appear with child in court is a Class C misdemeanor.</p> <p><b>Art. 45.057(a), C.C.P.</b> •Parent includes a person standing in parental relation, a managing conservator or a custodian.</p> <p><b>Art. 45.057(g), C.C.P.</b> •Failure to appear with child in court is a Class C misdemeanor.</p> <p><b>Art. 45.057, C.C.P.</b> Court may order: •Attend a parenting class. •Attend child's school classes &amp; 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><b>Art. 45.057(h), C.C.P.</b> •Failure to notify the court in writing of the child's current address is a Class C misdemeanor.</p>	<p><b>Art. 45.0215, C.C.P.</b> •Court required to issue summons for parents. • Failure to appear with child in court is a Class C misdemeanor.</p> <p><b>Art. 45.057(a), C.C.P.</b> •Parent includes a person standing in parental relation, a managing conservator or a custodian.</p> <p><b>Art. 45.057(g), C.C.P.</b> •Failure to appear with child in court is a Class C misdemeanor.</p> <p><b>Art. 45.057, C.C.P.</b> Court may order: •Attend a parenting class. •Attend child's school classes &amp; 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## MUNICIPAL JUVENILE/MINOR CHART

<sup>1</sup>Art. 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 fee of up to \$5 to fund a juvenile case manager.

<sup>2</sup>Art. 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.

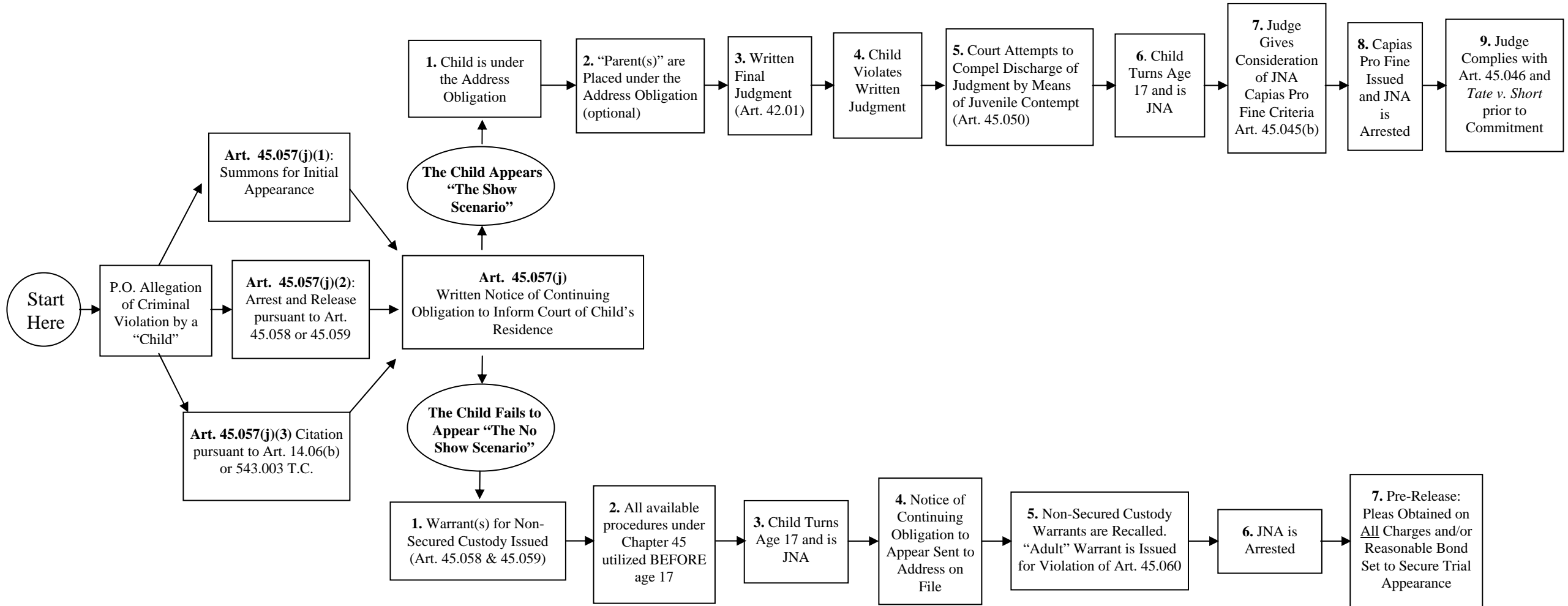
<sup>3</sup> A dispositional order under Art. 45.054, C.C.P., is effective for the period specified by the court in the order but may not extend beyond the 180<sup>th</sup> day after the date of the order or beyond the end of the school year in which the order was entered, whichever period is longer.

<sup>4</sup>Art. 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).

<sup>5</sup>Art. 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.

<sup>6</sup>Under 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.

**Juvenile Now Adult (JNA) Flowchart V.3.0  
TMCEC 2003-2004**



Note: Unless noted otherwise, all references are to the Code of Criminal Procedure

# Municipal Court Procedures: Children Ages 10-16

Prepared and Distributed by the Texas  
Municipal Courts Education Center

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Texas Court of Criminal Appeals

City:

Address:

Telephone:

## Purpose

This pamphlet is designed to provide information about criminal court proceedings involving children. It is not a substitute for legal advice from a licensed attorney. If you have questions about your best course of action, what plea you should enter, your rights, or the consequence of a conviction of the offense for which you are charged, you should contact an attorney. Neither the clerk, judge, nor prosecutor can give you legal advice.

## Your Rights

Under our American system of justice, all persons are presumed to be innocent until proven guilty. The State must prove you guilty "beyond a reasonable doubt" of the offense with which you are charged. Every criminal defendant has the right to remain silent and refuse to testify (without consequences). You have the right to retain an attorney and have them try your case or answer your questions. Since offenses in this court are punishable only by fine and not by incarceration, you do not have the

right to appointed counsel. Although your parents or guardians must appear with you, they may not act as your counsel (or attorney) unless they are, in fact, a licensed attorney.

You have the right to a jury trial. You may waive a jury trial and have a trial before the judge, commonly called a "bench trial." At trial you have many rights including:

- 1) The right to have notice of the complaint not later than the day before any proceedings in the prosecution;
- 2) The right to inspect the complaint before trial, and have it read to you at the trial;
- 3) The right to hear all testimony introduced against you;
- 4) The right to cross-examine witnesses who testify against you;
- 5) The right to testify on your own behalf;
- 6) The right not to testify (Your refusal to do so may not be held against you in determining your innocence or guilt.); and
- 7) You may call witnesses to testify on your behalf at the trial, and have the court issue a subpoena (a court order) to any witnesses to ensure their appearance at the trial.

## Appearance

In addition to your rights, you have some legal responsibilities. The law requires you to make an appearance in your case. Your appearance date is noted on your citation, bond, summons, or release papers.

You and a parent or guardian **must appear** in person **in open court**. You are not allowed to appear by mail or by delivery of a plea or fine to the clerk's office. You have an absolute right to be accompanied by your retained attorney. Your parent or guardian, however, must still appear with you even if your attorney accompanies you to court.

Your first appearance is to determine your plea. If you waive a jury trial and plead

guilty or nolo contendere (no contest), you may present extenuating circumstances for the judge to consider when determining the proper punishment. However, the judge is not required to reduce your fine. If you plead not guilty, the court will schedule a jury trial. You may waive a jury trial and request a bench trial.

If you enter a plea of guilty or no contest, you must also waive your right to a jury trial. Be prepared to pay the fine or file an appeal bond with the court.

## Pleas

Unless you are entitled to a compliance dismissal, you must enter one of the following three pleas. The plea must be made by the defendant charged with the offense. Parents or guardians, while they must be present, may not enter a plea on a child's behalf.

Plea of Not Guilty – A plea of not guilty means that you deny guilt and require the State to prove the charge. A plea of not guilty does not waive any of your rights. A plea of not guilty does not prevent a plea of guilty or no contest at a later time.

Plea of Guilty – By a plea of guilty, you admit that you committed the criminal offense charged.

Plea of Nolo Contendere (no contest) – A plea of nolo contendere means that you do not contest the State's charge against you.

The difference between a plea of guilty and nolo contendere is that the no contest plea may not later be used against you in a civil suit for damages. For example, in a civil suit arising from a traffic accident, a guilty plea can be used as evidence of your responsibility or fault.

If you plead guilty or nolo contendere, you will be found guilty and should be prepared to pay the fine. A plea of guilty or nolo contendere waives all of the trial rights discussed earlier. If you are unable to pay the fine and costs, you should be prepared to document and explain your financial situation.

## Fines, Costs, and Fees

The amount of the fine assessed by the court is determined by the facts and circumstances of the case. Mitigating circumstances may lower the fine, and aggravating circumstances may increase the fine. The maximum fine amount allowed for most traffic violations is \$200; for most other violations of State law and city ordinances--\$500; for fire safety, health, zoning, and sanitation violations—\$2,000.

Courts are required by the laws of the State of Texas to collect court costs and fees. Because costs vary for different offenses, check with the court for the amount of costs that will be assessed for the violation with which you are charged. If you go to trial, you may have to pay the costs of overtime paid to a peace officer spent testifying at trial. If you request a jury trial and are convicted, a \$3 jury fee is assessed. If a summons was served on your parents, a \$35 fee is also assessed. If you do not pay the whole fine and costs within 30 days of the court's judgment, you must pay an additional \$25 time payment fee.

Court costs are only assessed if you are found guilty at trial, if you plead guilty or nolo contendere, or if you are granted deferred disposition, teen court, or a driving safety course. If you are found not guilty or the case is dismissed, court costs are not assessed.

## Deferred Disposition

The judge may, in the judge's sole discretion, defer disposition on most cases. Costs must generally be paid when the court grants deferred. The court may also impose educational terms, different types of treatment, or other terms. If you complete the required terms, the case is dismissed, and the court may impose a special expense fee not to exceed the maximum fine amount authorized by state law. The deferred period cannot exceed 180 days.



### **Discharge by Community Service**

If you are unable to pay your fine and costs, you may be eligible to discharge your obligation by performing community service. This must be granted by the court. You will receive \$50 credit for each eight (8) hours worked. Please let the judge know if you are unable to pay the fine and costs.

### **Judge's Ability to Dismiss**

The municipal judge is responsible for conducting a fair, impartial, and public trial. The case against you is brought by the State of Texas through the prosecutor, not the court. Therefore, the judge may not dismiss a case without the prosecutor having the right to try the case.

There are several exceptions to this rule, including deferred disposition, driving safety courses, and compliance dismissals.

### **Trial Procedures**

If you need a continuance, you must put the request in writing with your reason for your request and submit it to the court prior to trial. You may request a continuance for the following reasons:

- 1) A religious holy day where the tenets of your religious organization prohibit members from participating in secular activities such as court proceedings (you must file an affidavit with the court stating this information);
- 2) You feel it is necessary for justice in your case; or
- 3) By agreement of the parties (you and the prosecutor).

The judge decides whether or not to grant the continuance. Failure to submit the request in writing may cause your request to be denied.

If you have a jury trial or bench trial scheduled, the case proceeds the same as if you were an adult. See the *Adult* pamphlet for information on trial procedures.

### **Continuing Obligation to Appear**

You and your parents or guardians have a duty to continue appearing in court even after you reach age 17. If you fail to appear before reaching age 17, you can be arrested and brought before the court. If you fail to appear after your 17<sup>th</sup> birthday and after notification by this court, you can be charged with an additional offense of *violation of obligation to appear* and be arrested in the same manner as any other adult.

### **Obligation to Notify Court of Address Change**

You and your parents or guardians have an obligation to inform the court in writing each time you change your address. You must notify the court within seven (7) days of each change of address. This obligation continues until your case is fully resolved and all fines and costs are paid or discharged. This obligation does not end when you turn age 17. Failure to make a proper notification may cause you and your parents or guardians to be charged with an additional criminal violation and to be arrested.

### **Mandatory Alcohol and Tobacco Courses and Community Service**

If you are found guilty of, or placed on deferred disposition for, an alcohol offense, the court must order you to complete an alcohol awareness course. The court must also order you to complete a period of community service.

If you are found guilty of, or placed on deferred for, a tobacco offense, the court must order you to complete a tobacco awareness course.

### **Contempt**

If you fail to pay your fine and costs, or violate other orders in the court's judgment, the court must provide an opportunity for you to explain your conduct. The court at this time may:

- 1) Determine that you are not in contempt;

- 2) Refer your case to the county juvenile court as delinquent conduct; or
- 3) Retain jurisdiction and find you in contempt and assess a fine up to \$500 and/or order the Texas Department of Public Safety to suspend or deny issuance of a driver's license, until you comply with the court's order.

### **Failure to Pay a Fine and Turning Age 17**

Even when you turn age 17, you are still obligated to discharge your responsibility to the court by paying your fine. If you do not, at age 17, the court may issue a *capias pro fine* for your arrest. You may then be committed to jail until you have earned enough jail credit to satisfy the fine(s) and costs owed.

### **Driver's License Suspension**

You may be denied issuance of a driver's license or if you have a driver's license, your privilege to drive may be suspended until you comply with the order(s) of this court. The following is a list of acts that can cause you to be denied or to lose your license:

- 1) Failing to appear in court;
- 2) Failing to pay or discharge your fine and costs;
- 3) Failing to take and present proof of taking an alcohol or tobacco awareness course; and
- 4) Violating a court order in the court's judgment.

Some offenses, such as the Alcoholic Beverage Code offenses, require courts upon conviction to order the Department of Public Safety to deny issuance of or to suspend a defendant's driver's license for a period of time.

### **Expunction Rights**

The records of this court, including all records in your case, are public and accessible to the public.

You may be entitled to an expunction of the records of a conviction in your case.

For a single alcohol conviction, you may petition this court for an expunction after your 21<sup>st</sup> birthday.

For tobacco convictions, you may petition this court for expunction after your 18<sup>th</sup> birthday.

For a single conviction for *failure to attend school* violation, you may petition this court for an expunction after your 18<sup>th</sup> birthday.

For a single conviction of any other non-traffic violation, you may petition this court for expunction after your 17<sup>th</sup> birthday.

Ask the court for proper forms for the application for expunction. The cost of an expunction is a minimum of \$30. If you have questions concerning the right to, need for, or consequences of expunction, please consult with a licensed attorney.

### **New Trial and Appeal**

If you are found guilty, you may make an oral or written motion to the court for a new trial. The motion must be made within one day after the court's rendering a judgment of guilt. The judge may grant a new trial if persuaded that justice has not been done in your case. Only one new trial may be granted. Defendants in courts of record should check with the court for rules regarding new trials.

If you are found guilty, you have the right to appeal your case. To appeal you must file an appeal bond with the municipal court within 10 days of the judgment. The court must set the appeal bond amount for at least twice the amount of the fine and costs. Defendants in courts of record should check with the court for rules regarding appeals.