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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

Described by a juvenile law scholar as “the shadow juvenile justice system,”<sup>1</sup> municipal and justice courts are now the primary 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.

In Texas, either a district or county court can be designated as a juvenile court. Despite the criminal nature of the conduct that results in proceedings in juvenile court, juvenile court proceedings are matters of civil law and are governed by Title 3 of the Family Code and the Juvenile Justice Code. The purpose of the Juvenile Justice Code is distinct from the objectives of the Code of Criminal Procedure and from the specific objectives of Chapter 45 governing municipal and justice court proceedings.<sup>2</sup> The subject matter adjudicated in juvenile court falls into two categories (1) delinquent conduct and (2) CINS (conduct indicating a need for supervision).<sup>3</sup> The distinction between delinquent conduct and CINS is that delinquent conduct is conduct that if committed by an adult could potentially result in the imposition by a court of a term of incarceration (*i.e.*, misdemeanors other than Class C misdemeanors and contempt), whereas CINS is conduct including Class C misdemeanors (excluding traffic and tobacco offenses) and other manners of behavior that are not conducive to the well being of children (*e.g.*, running away from home).

To conserve juvenile court resources and because it is generally believed to cost less to adjudicate cases in municipal and justice court than juvenile court, cases that can be filed as CINS are today filed as Class C misdemeanors. Consequently, more children are adjudicated in the Texas criminal justice system than the civil juvenile justice system. While, as will be further explained, these juvenile cases can be transferred from criminal court to juvenile court, most are not.

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

### A. Overview

Municipal and justice courts have jurisdiction over “fine-only misdemeanors,”<sup>4</sup> regardless of whether the offender is an adult or juvenile.<sup>5</sup> Such 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>6</sup> The increased number of fine-only offenses and growing volume of cases filed has complicated the task of adjudicating juveniles in municipal and justice courts. Excluding local ordinance violations, the primary sources of juvenile-related criminal violations are located in the following codes:

- Alcoholic Beverage Code;

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<sup>1</sup> Robert O. Dawson, *Texas Juvenile Law* (7<sup>th</sup> Edition) Texas Juvenile Probation Commission (2008) at 589.

<sup>2</sup> Compare Section 51.01, Family Code with Articles 1.03 and 45.001, Code of Criminal Procedure.

<sup>3</sup> Section 51.03, Family Code.

<sup>4</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>5</sup> Prior to September 1, 2009 there was a notable exception for public intoxication if committed by a person under the age of 17. However, with the passage of H.B. 558 by the 81st Regular Legislature, municipal and justice courts have jurisdiction over the offense of public intoxication of children.

<sup>6</sup> Articles 4.11 and 4.14, Code of Criminal Procedure; Section 29.003, Government Code.

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

There is no definition of “juvenile” in these codes. Rather, 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 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.
- 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 purpose 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 of the Code of Criminal Procedure.

## **B. Waiver of Jurisdiction and Transfer**

In the context of juvenile cases, waiver of jurisdiction and transfer means that a municipal or justice court has elected not to exercise, or is statutorily prohibited from exercising, its criminal jurisdiction. While presumably copies of all information relating to a case are sent, the Family Code only expressly states that a court in which there is a pending complaint shall notify the juvenile court of the county in which the court is located of the pending complaint and shall furnish to the juvenile court a copy of final disposition of any matter for which the court does not waive its original jurisdiction.<sup>7</sup> Upon waiver and transfer, the case potentially becomes a civil juvenile court case, governed by Title 3 of the Family Code.

**Mandatory waiver:** Unless a municipal or justice court has a juvenile case manager program,<sup>8</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>9</sup>

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

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<sup>7</sup> Section 51.09(c), Family Code.

<sup>8</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>9</sup> Section 51.08(b)(1), Family Code.

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**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>10</sup> Such waiver should, presumably be made before the defendant enters a plea.

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.

## II. Taking Juveniles into Custody

### A. “Citation” vs. “Arrest”

In lieu of making a full custodial arrest and presenting a child before a magistrate, a peace officer may issue a citation.<sup>11</sup> 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>12</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 on or at 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>13</sup> Note, however, that entering a plea by mail is not an option for defendants younger than 17 years of age.<sup>14</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>15</sup> or Violate Promise to Appear, applicable only to Transportation Code, Title 7, Subtitle C “Rules of the Road” offenses, punishable by a maximum fine of \$200.<sup>16</sup>

In light of the U.S. Supreme Court’s decision in *Atwater v. City of Lago Vista*,<sup>17</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>18</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

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<sup>10</sup> Section 51.08(b)(2), Family Code.

<sup>11</sup> Article 45.058(g), Code of Criminal Procedure. In 2009 such authority was extended in certain circumstances to cases involving public intoxication of a child. Article 45.058(g-1) of the Code of Criminal Procedure allows a law enforcement officer to issue a field release citation as provided by Article 14.06 in place of taking a child into custody for public intoxication, only if the officer releases the child to the child’s parent, guardian, custodian, or other responsible adult. See, *Supra*, note 6.

<sup>12</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.

<sup>13</sup> Article 27.14(b), Code of Criminal Procedure.

<sup>14</sup> Article 45.0215, Code of Criminal Procedure.

<sup>15</sup> Section 38.10, Penal Code.

<sup>16</sup> Sections 542.401 and 543.009, Transportation Code.

<sup>17</sup> 532 U.S. 318 (2001).

<sup>18</sup> Article 14.01(b), Code of Criminal Procedure and Section 543.004, Transportation Code.

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juveniles. Thus, with the exception of arresting a juvenile in his or her home, a peace officer generally does not need a warrant. Rather, all that is required is probable cause.

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

While Texas law prefers arrests to occur with a warrant and provides exceptions to the warrant requirement, when it comes to juveniles, Section 52.01(a) of the Family Code sets out multiple grounds for arrest. The practical effect being, that as long as the arrest of a child is predicated on probable cause, the statutory requirements for taking a child into custody are less onerous than for the arrest of an adult. Where there is an important difference is in what happens after the arrest. 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.
  - 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 place of nonsecure custody as long as it is not locked when being used as a nonsecure custody area.<sup>19</sup>
  - A place of nonsecure custody must be designated by the head of law enforcement with custody of the child.<sup>20</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>21</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>22</sup>
  - Under no circumstances is the child to be held for more than six hours.<sup>23</sup> These same regulations apply to juveniles who are picked up on curfew violation charges.<sup>24</sup> After six hours the child may be: (1) released to a responsible adult;<sup>25</sup> (2) released upon issuance of a citation;<sup>26</sup> or (3) taken before a magistrate and released on a personal bond.<sup>27</sup>

## **C. Transfers and Referral to Juvenile Court**

A juvenile may be taken into custody and presented or detained in a 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>28</sup>

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

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

<sup>21</sup> Article 45.058(d), Code of Criminal Procedure.

<sup>22</sup> Section 58.002(a), Family Code.

<sup>23</sup> *Id.*

<sup>24</sup> Article 45.058(e), Code of Criminal Procedure.

<sup>25</sup> Article 45.058(a), Code of Criminal Procedure.

<sup>26</sup> Article 14.06(b), Code of Criminal Procedure.

<sup>27</sup> Article 17.03, Code of Criminal Procedure.

<sup>28</sup> Article 45.058(f), Code of Criminal Procedure.

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### III. Chapter 45 of the 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 procedures 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>29</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 courts 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>30</sup>

#### 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>31</sup> They are not allowed to appear by mail or by delivery of a plea or fine to the clerk's office. With the exception of interest of justice appointments, indigent juveniles in municipal or justice courts do not have a right to appointed counsel. All defendants, of course, have a right to retain counsel. However, an attorney cannot appear on behalf of the child; a 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>32</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>33</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>34</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 of the 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.

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<sup>29</sup> Article 45.001, Code of Criminal Procedure.

<sup>30</sup> Article 45.002, Code of Criminal Procedure.

<sup>31</sup> Article 45.0215, Code of Criminal Procedure.

<sup>32</sup> *Id.*

<sup>33</sup> Article 45.057(g), Code of Criminal Procedure.

<sup>34</sup> Article 45.0215(d), Code of Criminal Procedure.

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(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(k).

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>35</sup> The judgment is rendered by the court in which the complaint is filed, and all fines and costs go to the original court.

#### **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 of the Code of Criminal Procedure. Other orders, including those for parents or guardians, are enforceable under the municipal and justice court contempt provisions as defined in Section 21.002(c) of the Government Code.<sup>36</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

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<sup>35</sup> Article 45.0215(c), Code of Criminal Procedure.

<sup>36</sup> Municipal or justice court contempt, with the exception of children, is punishable by a fine of \$100 and/or three days incarceration.

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may refer a child to these services if the Department of State Health Services has contracted with the county to provide the services.<sup>37</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 violation), the municipal or justice court shall notify the juvenile court of the pending complaint and furnish a copy of the final disposition.<sup>38</sup>

### **IV. Sentencing**

As previously mentioned, criminal violations alleged against children stem from various statutes. Thus, when it comes to sentencing, it is important that judges become familiar with the varying nuances contained in such statutes.

#### **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>39</sup>

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

An alternative to a fine is placing the juvenile on deferred disposition.<sup>40</sup> Deferred disposition is available for most offenses. The exceptions are:

- Traffic offenses committed in a construction or maintenance work zone when workers are present;<sup>41</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>42</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>43</sup>
- A minor charged with consuming an alcoholic beverage if he or she has previously been convicted twice or more for consuming an alcoholic beverage.<sup>44</sup>

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<sup>37</sup> Section 264.302, Family Code.

<sup>38</sup> Section 51.08(c), Family Code.

<sup>39</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>40</sup> Article 45.051, Code of Criminal Procedure.

<sup>41</sup> Sections 472.022 and 542.404, Transportation Code, and Article 45.051, Code of Criminal Procedure.

<sup>42</sup> Section 106.071(i), Alcoholic Beverage Code.

<sup>43</sup> Section 106.041(f), Alcoholic Beverage Code.

<sup>44</sup> Section 106.04(d), Alcoholic Beverage Code.

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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>45</sup>

If a minor is charged with minor in possession, minor in consumption, 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>46</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.

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 that could be imposed at the time the court grants the deferral. This fee can be collected at any time prior to the end of the probation period. 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. 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>47</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>48</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>49</sup> All defendants requesting a

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<sup>45</sup> Section 106.115, Alcoholic Beverage Code.

<sup>46</sup> Section 106.071, Alcoholic Beverage Code.

<sup>47</sup> Article 45.051(d), Code of Criminal Procedure.

<sup>48</sup> Article 45.0511, Code of Criminal Procedure.



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driving safety course must give the court a plea of guilty or *nolo contendere*. The court must enter a judgment on the plea.<sup>50</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 of the Code of Criminal Procedure provides authority for municipal and justice courts to defer disposition via a teen court program. Perhaps more properly described as peer sentencing, teen court is not court. Rather, it is a deferral program in which other teens sentence a juvenile defendant using a locally developed sanction grid. The sanction grid typically consists of a varying number of community service hours and other remedial measures (including but not limited to serving on a teen court jury). The deferral period under Article 45.052 may last up to 180 days. The court must approve the teen court program. To be eligible, the defendant must:

- Enter a plea of guilty or no contest in open court in the presence of parents or guardian and request, either in writing or orally, the teen court program;
- Be under the age of 18 or enrolled full time in an accredited secondary school in a program leading toward a high school diploma;
- Be charged with a misdemeanor punishable by fine only or a violation of a penal ordinance of a political subdivision, including a traffic offense punishable by fine only;
- Not have successfully completed a teen court program in the two years preceding the date that the alleged offense occurred; and
- Before the 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>51</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>52</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>53</sup> Those justice or municipal courts located in the Texas-Louisiana border region may charge \$20 for each of the fees discussed above.<sup>54</sup>

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<sup>49</sup> Article 45.0215, Code of Criminal Procedure.

<sup>50</sup> Article 45.0511(c), Code of Criminal Procedure.

<sup>51</sup> Article 45.052(f), Code of Criminal Procedure.

<sup>52</sup> Article 45.052(d), Code of Criminal Procedure.

<sup>53</sup> Article 45.052(e) and (g), Code of Criminal Procedure.

<sup>54</sup> Article 45.052(i), Code of Criminal Procedure.

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The judge may exempt a defendant who has requested a teen court program from paying court costs or the fees.<sup>55</sup> This and Article 45.0491 of the 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**

As discussed in Chapter 3, regardless of their age, an indigent defendant may perform community service to discharge fines and costs imposed by a municipal or justice court.<sup>56</sup> However, it needs to be reemphasized that community service, depending on the offense, may be required as a statutorily mandated remedial measure in cases involving a child or minor accused of a status offense. In such cases, remedial community service is mandated even in cases in which the defendant is placed on deferred disposition.<sup>57</sup>

The coordinating of community service performed by juvenile defendants may be performed by a juvenile case manager. Alternatively, in some municipal courts, the court clerk coordinates community service. This includes developing a method of keeping track of defendants' community service orders and completion of services and making certain defendants submit documentation confirming the completion of community service.

## **V. Juvenile's Failure to Appear or Failure to Pay**

### **A. Reporting to the Department of Public Safety (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>58</sup> DPS will revoke the driver's license of any minor charged with a traffic offense who fails to appear or defaults in payment of fine unless the court files an additional report on final disposition of the case.<sup>59</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>60</sup> The fee is not required if 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 of the 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>61</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>62</sup>

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<sup>55</sup> Article 45.052(h), Code of Criminal Procedure.

<sup>56</sup> Article 45.049, Code of Criminal Procedure.

<sup>57</sup> The amount of hours depends on the offense. See, *TMCEC Bench Book: Juvenile and Minor Proceedings*.

<sup>58</sup> Section 521.201(7), Transportation Code.

<sup>59</sup> Section 521.294(5), Transportation Code.

<sup>60</sup> Section 521.313, Transportation Code.

<sup>61</sup> Article 45.058, Code of Criminal Procedure.

<sup>62</sup> Article 45.058(f), Code of Criminal Procedure.

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### C. Violation of a Court Order / Contempt

When a child fails to obey an order of a municipal 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: (1) fine the child up to \$500, or (2) order the suspension or denial of the child's driver's license or permit until the child has fully complied with the orders of the court. A court that orders suspension or denial of a driver's license or permit is required to notify DPS on receiving proof that the child has fully complied with the orders of the court.<sup>63</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.

It is also important to note that the underlying case remains with the municipal or justice court. Only the contempt case is transferred.

### D. Parents in Contempt

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>64</sup>

## VI. 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 17<sup>th</sup> birthday unless: (1) the court has already attempted to bring the child into compliance via juvenile contempt (Article 45.050 of the Code of Criminal Procedure); (2) the individual is 17 years of age or older; and (3) the court finds that the issuance of the *capias pro fine* is justified after considering the:

- Sophistication and maturity of the individual (the judge should use his or her notes taken when the juvenile made an appearance before the judge);
- Criminal record and history of the individual (generally, this will be a history of cases filed in municipal or justice 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 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>65</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**

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<sup>63</sup> Article 45.050, Code of Criminal Procedure.

<sup>64</sup> Section 21.002(c), Government Code.

<sup>65</sup> Article 45.060(b), Code of Criminal Procedure.

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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>66</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>67</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>68</sup> This will, undoubtedly, come as a surprise to young adults and others unfamiliar with the law.

## VII. Court Records and Expunction

When court records are expunged the records are destroyed pursuant to a court order. In a technological age, however, 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>69</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), 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 order of expungement.<sup>70</sup>

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<sup>66</sup> Article 45.060(e), Code of Criminal Procedure.

<sup>67</sup> Article 45.060(c), Code of Criminal Procedure.

<sup>68</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>69</sup> Section 106.12, Alcoholic Beverage Code.

<sup>70</sup> Section 106.12(d), Alcoholic Beverage Code. Also see, Article 102.006, Code of Criminal Procedure.

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## **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>71</sup> This section exclusively applies to the expunction of records of individuals convicted of Failure to Attend School (Section 25.094, Education Code). 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 of the 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 order of expungement.<sup>72</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>73</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. The municipal or justice court shall charge \$30 for each application for expungement to defray the cost of notifying state agencies of the order of expungement.<sup>74</sup>

## **D. Penal Code Offenses**

Article 45.0216 of the 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 the 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 order of expungement.<sup>75</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>76</sup>

## **E. Transportation Code and Other Offenses**

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

## **VII. Nondisclosure Orders**

In the summer of 2009, during the waning days of the 81st Regular Legislature, an amendment to S.B. 1056 brought nondisclosure, a concept familiar to many criminal law practitioners, into the world of municipal and justice courts. In comparison to expunction, where criminal records are destroyed, records subject to non-disclosure are not destroyed, but rather prohibited from disclosure to the general public. Such documents may only be inspected by entities expressly authorized by statute. Section 411.081(f-1) of the Government Code requires a court convicting a child 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. A criminal justice agency, including a court, may disclose any criminal history record information that is the subject of the order only to other criminal justice agencies for a criminal justice purpose, to the defendant (not the child's parent or parents), or to agencies specifically enumerated on the list in Subsection (j). It must be emphasized that Section 411.081(f-1) applies only in instances where a child is convicted; it does not apply to a child who successfully completes a form of

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<sup>71</sup> Article 45.055, Code of Criminal Procedure.

<sup>72</sup> Article 45.055(d), Code of Criminal Procedure. Also see, Article 102.006, Code of Criminal Procedure.

<sup>73</sup> Section 161.255, Health and Safety Code.

<sup>74</sup> Section 161.255(b), Health and Safety Code. Also see, Article 102.006, Code of Criminal Procedure.

<sup>75</sup> Article 45.0216(i), Code of Criminal Procedure. Also see, Article 102.006, Code of Criminal Procedure.

<sup>76</sup> Article 45.0216(h), Code of Criminal Procedure.

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probation pursuant to Chapter 45 of the Code of Criminal Procedure (*i.e.*, deferred disposition, completion of teen court, commitment of chemically dependent person, or a driving safety course). “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.

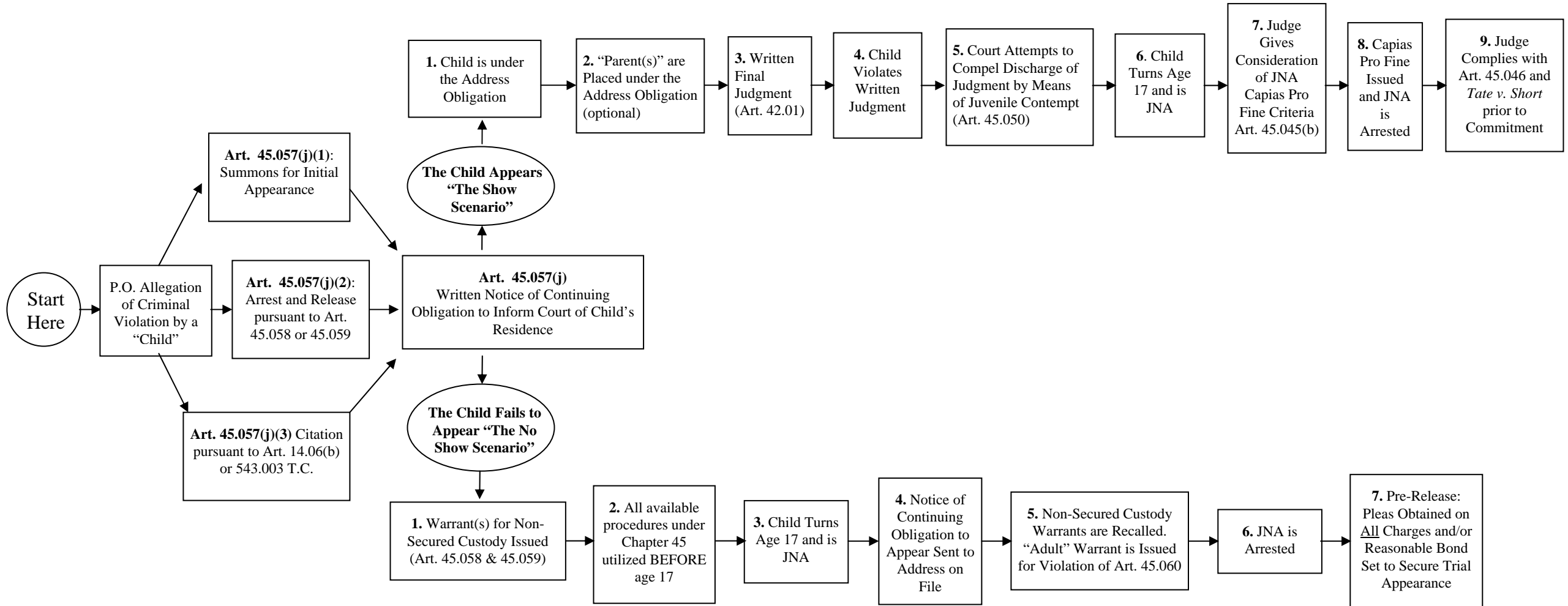
The use of nondisclosure in municipal and justice courts is intended to provide parity to children in the juvenile justice system. Under the previously described discretionary waiver provisions, most conduct that results in a child being adjudicated of a fine-only offense can be filed as conduct indicating a need for supervision (CINS) in juvenile court. Such juvenile court records are confidential. The language of S.B. 1056 sought to extend that confidentiality to criminal court records (which until now were subject to the common-law right of inspection just like adult records).

A child convicted of a fine-only misdemeanor before the effective date (June 19, 2009) may still petition the court for a nondisclosure order, which the court shall issue upon petition. S.B. 1056 also amended provisions of the Public Information Act to reflect that information subject to a nondisclosure order is protected from disclosure.<sup>77</sup>

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<sup>77</sup> Section 552.142, Government Code.

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



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

# **The Adjudication of** *Juveniles* **in Municipal and Justice Courts**



• presented by •

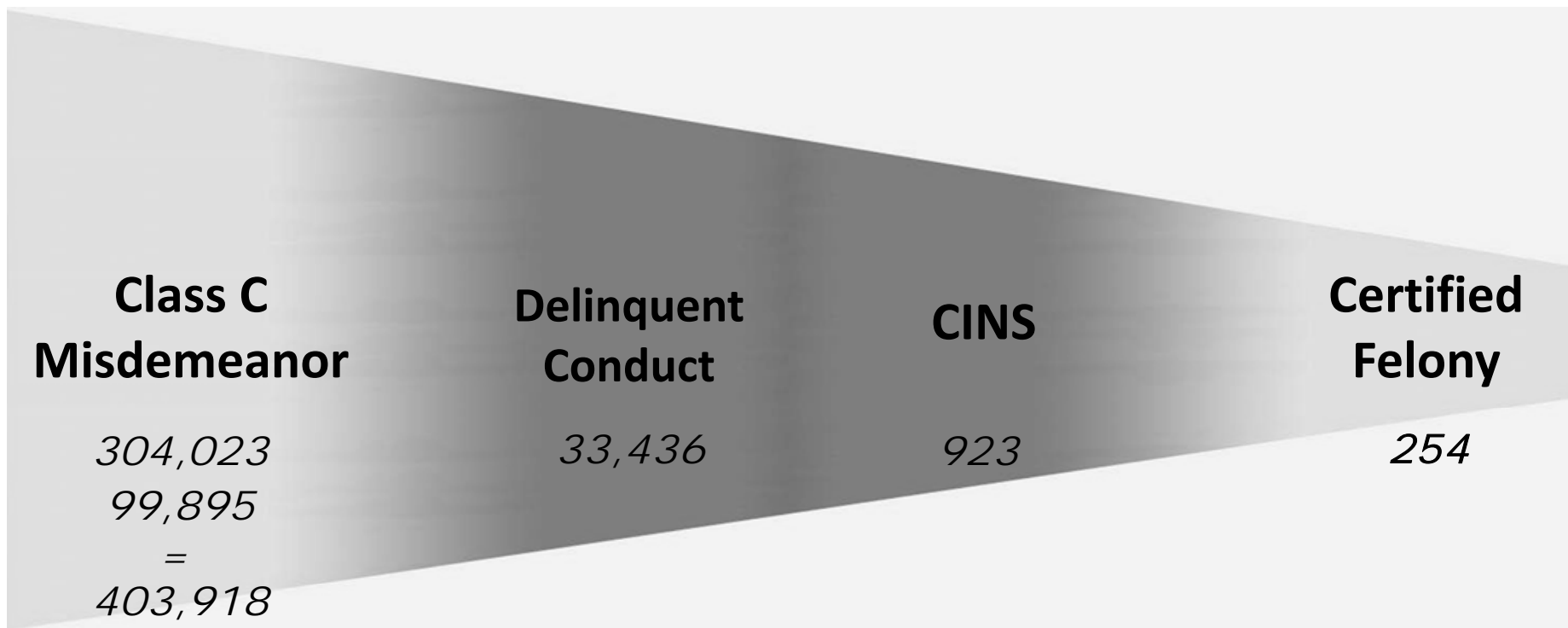
Katie Tefft

Program Attorney

Texas Municipal Courts Education Center



# Who are the “shadow courts”?



Criminal

Civil

# **Municipal and Justice Court Jurisdiction**

- **Criminal subject matter**
- **Fine-only misnomer**
- **Prominent codes**

# Alcoholic Beverage Code



- Purchase
- Attempted purchase
- Consumption
- Possession
- Misrepresentation of age
- Driving or boating under the influence

# Education Code

- Failure to Attend School
- Violation of Rules
  - Enacted by School Board
- Trespass on School Grounds
- Possession of Intoxicants on School Grounds
- Disruption of Classes
- Disruption of Transportation



# Health & Safety Code



- Possession
- Purchase
- Consumption
- Acceptance
- Display Fake ID

# Penal Code



## All fine-only offenses

- Includes public intoxication (eff. 9-1-09)

# Transportation Code



## UPDATES:

- Cell phone ban
- Minor driving restrictions

# Waiver of Jurisdiction

- General Rule: THREE STRIKES, YOU'RE OUT!
  - Mandatory transfer vs.
  - Discretionary transfer
- Exceptions:
  - Health & Safety Code (tobacco offenses)
  - Transportation Code (traffic offenses)
  - Juvenile Case Manager
- Enhancements



# **Top 5** things to know when dealing with juveniles in municipal or justice court:

## **5. Appearance**

- In open court
- With **PARENT**

# **Top 5** things to know when dealing with juveniles in municipal or justice court:

## **4. Penalties**

# Penalties

- **Fines**
  - **Payment Plans**
  - **Community Service**
- **Related Community Service**
- **Awareness Programs or Classes**
- **Reasonable Conditions (Deferred)**
- **Driving Safety Courses**
- **Teen Court**

*depends on the offense and plea*

# **Top 5** things to know when dealing with juveniles in municipal or justice court:

## **3. Contempt**

# **JUVENILE CONTEMPT**

**\* Article 45.050, CCP:**

**- “Punt & Pray”**

**Delinquent conduct**

**v.**

**- “Keep & Play”**

**\$500 max fine**

**Indefinite conditional lien on DL**

**\* Section 21.002, GC (for 17+ years old)**

**\$100 max fine and/or**

**3 days confinement**

# **Top 5** things to know when dealing with juveniles in municipal or justice court:

## **2. Confidentiality**

*Non-disclosure Orders*

# **Top 5** things to know when dealing with juveniles in municipal or justice court:

## **1. Expunction**

# **Dealing with JNAs**

## **Juveniles now adults (JNAs)**



**No more surprise birthday warrants**