

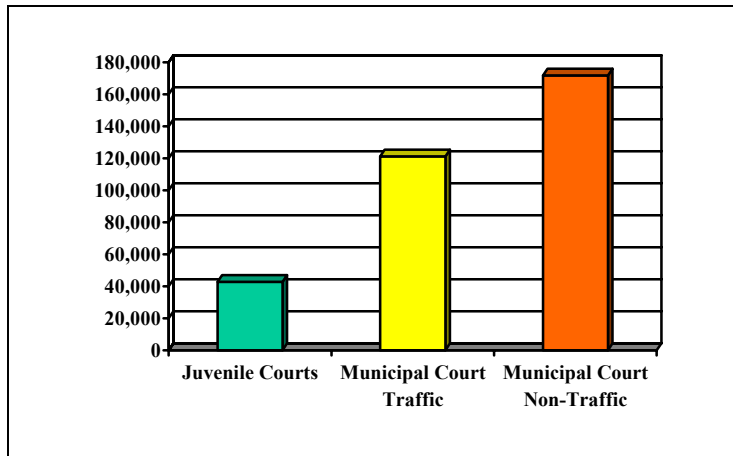
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In Texas, municipal and justice courts are collectively known as

¹ Due to increases in juvenile criminal activity and legislative changes made since 1991, the local trial courts have experienced an explosion in juvenile activity.

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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.

The objectives of this chapter are to provide readers an overview of:

- jurisdiction of local trial court in juvenile courts;
- taking juveniles into custody;
- Chapter 45 of the Code of Criminal Procedure;
- dispositional powers and procedures;
- court records and expunctions;
- school attendance;
- alcohol violations;
- tobacco violations.

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

² Though juvenile activity in municipal court fell by 9.6 percent in FY 2001, OCA reported in FY 2000 that 121,167 juvenile Transportation Code offenses were filed in municipal court. During the same period of time, alcohol, health and safety, education, and “all other non-traffic-fine only offenses” totaled 171,769. *Annual Report of the Texas Judicial System*, Fiscal Year 2001, Office of Court Administration, Austin, Texas at 372.

	869	835
	1,294	835
Statutory		Constitutional
Criminal (exclusive jurisdiction of ordinance violations)		Criminal and Civil
City Limits and ETJ		County Precinct/county
More than 47 municipal courts are courts of record. ³ Appeals from such courts are reviewed in either a county or other designated court pursuant to the Texas Rules of Appellate Procedure. Appeals from non-record municipal courts result in a trial de novo.		All appeals result in a trial de novo.
Determined by city charter or ordinance. While some cities elect municipal judges, the vast majority of municipal judges are appointed by the mayor and confirmed by city counsel. Term of office is two to four years.		Selected by popular election. Term of office is four years.
Varies. Determined by city charter or ordinance. A judge of a municipal court of record, however, must be an attorney licensed to practice in Texas with 2 years experience. (In FY 2000, 46 percent were attorneys).		No specific statutory or constitutional requirements (In FY 2000, 7 percent of justices of the peace were attorneys).

³ Pursuant to the Municipal Court of Record Act, amended by the Legislature in 1999, municipalities may establish a municipal court of record through passage of a local ordinance. Such courts are generally by Chapter 30, Government Code.

Municipal and justice courts have jurisdiction over “fine-only misdemeanors.”⁴ 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.⁵ The increased number of fine-only offenses and growing volume of cases filed has complicated the task of adjudicating juveniles in the local trial courts. Excluding local ordinance violations, the primary source of juvenile-related criminal violations are located in the following codes:

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

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

- Section 51.02(2) of the Family Code defines a child as a person who is 10 years of age or older and under 17 years of age.
- 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 years as a minor.
- Section 106.01 of the Alcoholic Beverage Code defines a person who is under the age of 21 as 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.

⁴ The term “fine-only” deserves emphasis and a word of warning. The typical notion of a fine-only offense is a Class C misdemeanor, punishable by a maximum fine of \$500 (Article 12.23, Penal Code). Be aware, however, that the Penal Code provides that all state law violations defined outside of the Penal Code are to be prosecuted as a Class C misdemeanor as long as they are punishable by fine-only (Article 12.41(3), Penal Code). Thus, for such non-penal code criminal offenses the maximum dollar amount is determined by the Legislature (e.g., passing a school bus, defined in the Transportation Code, is punishable by a maximum fine of \$1,000). Additionally, remember that a municipality may adopt ordinances punishable by a fine not to exceed \$2,000 if the subject matter relates to health, fire safety, or zoning (Section 54.001, Local Government Code). Such violations may only be adjudicated in a municipal court (Section 29.003(a), Government Code).

⁵ Articles 4.11 and 4.14, Code of Criminal Procedure; Section 29.003, Government Code.

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

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

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

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

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

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

⁶ Section 51.03(f), Family Code.

⁷ Section 502.282, Transportation Code.

⁸ Section 502.412, Transportation Code.

⁹ Section 550.021, Transportation Code.

¹⁰ Section 550.022, Transportation Code.

¹¹ Section 550.024, Transportation Code.

¹² The juvenile case manager program (Articles 45.054 and 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).

¹³ Section 51.08(b)(1), Family Code.

¹⁴ Section 51.08(b)(1), Family Code.

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

1. It serves as proof that the defendant has notice that he or she is accused of a criminal offense.
2. It informs the defendant of the time and date in which he or she may personally appear to answer the criminal allegation. Alternatively, in fine-only offenses, an adult may enter a plea by mail.¹⁷ Note, however, that entering a plea by mail is not an option for defendants younger than 17 years of age.¹⁸
3. 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: _____, a Class C misdemeanor,¹⁹ or _____, applicable only to Transportation Code, Subtitle C "Rules of the Road" offenses, punishable by a maximum fine of \$200.²⁰

In light of the U.S. Supreme Court's decision in *Atwater v. City of Lago Vista*,²¹ and Governor Perry's veto of a bill 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 presence or within his view.²² By eliminating the requirement that the offense be committed in the officer's presence or view, the Family Code gives peace officers even broader authority to arrest juveniles. Thus, with the exception of arresting a juvenile in his or her home, a peace officer generally does not need a warrant. Rather, all that is required is probable cause.

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

¹⁶ While not a full custodial arrest, Section 543.005 of the Transportation Code provides that the brief detention period in which a citation is issued constitutes an arrest. While after September 1, 2001, a peace officer may arrest for violation of the open container law, it is still mandatory that peace officers issue a citation for the offense of speeding (Section 543.004, Transportation Code).

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

¹⁸ Article 45.0215, Code of Criminal Procedure.

¹⁹ Section 38.10, Penal Code.

²⁰ Sections 542.401 and 543.009, Transportation Code.

²¹ 121 S.Ct. 1536 (2001).

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

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

However, if the offense is within the jurisdiction of a municipal or justice court then a more specific rule applies. Recodified in 2001, Article 45.058 of the Code of Criminal Procedure²³ provides procedures for taking children (ages 10-16) into custody. Under Article 45.058, a child may be:

- released to a parent, guardian, custodian, or other responsible adult;
 - taken before a municipal or justice court; or
 - taken to a place of nonsecure custody.
1. A place of nonsecure custody is defined as an unlocked multipurpose area. A lobby, office, or interrogation room is suitable if the area is not designated, set aside, or used as a secure detention area and is not part of a secure detention area. A juvenile processing office may be used as a nonsecure custody as long as it is not locked when being used as nonsecure custody area.²⁴
 2. Must be designated by the head of law enforcement with custody of the child.²⁵
 3. While in the custodial area, the juvenile cannot be handcuffed to a chair, rail, or any object and he or she must be under continuous visual observation by a law enforcement officer or a member of the facility staff. The juvenile cannot be held in the facility for longer than is necessary to take the child before a judge or to release the child to the parents. If the juvenile is being held on charges other than municipal or justice court matters, he or she may be held long enough to be identified, investigated, processed, and for transportation to be arranged to a juvenile detention facility.²⁶ Unless authorized by the juvenile court, a juvenile apprehended for a fine-only offense may neither be fingerprinted nor photographed while in law enforcement custody.²⁷
 4. Under no circumstances is the child to be held for more than six hours.²⁸ These same regulations apply to juveniles who are picked up on curfew violation charges.²⁹ After six hours the child may be: (1) released to a responsible adult;³⁰ (2) released upon issuance of a citation;³¹ or (3) taken before a magistrate and released on a personal bond.³²

²³ Formerly, Section 52.027 of the Family Code.

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

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

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

²⁷ Section 58.002(a), Family Code.

²⁸ *Id.*

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

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

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

³² Article 17.03, Code of Criminal Procedure.

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

Effective September 2001, to be processed as a “child,” an individual must be: (1) older than the age of 10 but younger than 17, and (2) charged with or convicted of an offense within municipal or justice court jurisdiction.³⁴ Accordingly, regardless if the offense is a status offense, individuals who are 17 years of age when charged are taken into custody and handled in the same manner as an adult.

One area of juvenile law impacting municipal and justice courts remains unresolved: How do such courts enforce their judgments against juvenile defendants who are now adults?

Over the years, the lack of legal authority in this area coupled with mounting frustration amongst judges has resulted in inconsistent judicial practices throughout the State. At the core of such practices, however, remains another fundamental unanswered question: Can a municipal or justice court enforce a judgment or order against an adult defendant, who violated a court order as a juvenile, in the same manner you would a defendant who is an adult. In other words, may the court commit the defendant to jail on a *capias pro fine*? We know that you cannot commit a defendant to jail on a *capias pro fine*,³⁵ but what about when the defendant is now an adult?

Of all the different responses courts have taken on this issue, there appears to be three general approaches:

1. Reluctance – A growing number of courts appreciate that there is neither case law nor statutory law that answers the question. Accordingly, many courts make little effort to enforce their orders. Contrary to Article 45.058 of the Code of Criminal Procedure, some judges mistakenly believe that they have no authority to even order the juvenile be taken into custody. Other than ordering DPS to deny the renewal of the juvenile’s driver’s license, many courts believe there is little or nothing else they can do to enforce their orders.
2. Attrition – Some judges take the perspective that compelling a juvenile to comply with the court’s order is a battle of wills between the juvenile and the judge. Consequently, some judges are willing to take the juvenile into custody as many times as necessary. The rationale being that sooner or later the juvenile will ultimately get tired of repeatedly being taken into custody.

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

³⁴ Article 45.058(h), Code of Criminal Procedure.

³⁵ Article 45.050(a), Code of Criminal Procedure.

3. Passive Aggression – Other judges feel that regardless of a juvenile’s age, once a juvenile defendant has been found guilty and given an order by the court, no further efforts are necessary on the court’s part. Such courts wait for the defendant to turn age 17 and then commit the defendant to jail on a *capias pro fine* warrant. Though relatively few judges are believed to engage in this practice, it is common enough to have its own name: “throwing the defendant a birthday party.”³⁶

Each of the three stated perspectives debatably has merits. None of them, however, are free from criticism.

“Reluctance” does not bring about compliance. “Attrition” may be ideal but is often infeasible. Neither does it provide answers to the previously stated legal questions. “Passive-aggression,” because of a judge’s duty to “dispose of all matters promptly, efficiently, and fairly,”³⁷ is not ethical. Additionally, it inherently advocates judges “lying in wait” for youthful offenders to reach age 17. Critics have claimed that this practice may be illegal and that “birthday parties” are “the domain of the small of mind and little of heart.”

The bottom line is that of the time of this publication, Texas law contains more questions than answers when it comes to enforcing municipal courts orders on juvenile offenders who are now adults. Caution is encouraged. Ultimately, until either the Legislature or the Court of Criminal Appeals resolves such lingering questions, courts are encouraged to consult with local legal counsel.

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:

1. to provide fair notice and meaningful opportunity for people to be heard;
2. to ensure appropriate dignity in court procedure without undue formalism;
3. to promote adherence to the rules with sufficient flexibility to serve the ends of justice; and
4. to process cases without unnecessary expense or delay.³⁸

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.³⁹

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

³⁷ Canon 3(B)(9), Code of Judicial Conduct.

³⁸ Article 45.001, Code of Criminal Procedure.

³⁹ Article 45.002, Code of Criminal Procedure.

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.⁴⁰

An alternative to a fine is placing the juvenile on deferred disposition.⁴¹ Deferred disposition is available for most offenses. The exceptions are:

- traffic offenses committed in a construction maintenance zone when workers are present;⁴²
- 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;⁴³
- a minor who commits the offense of driving under the influence of alcohol and has been previously convicted twice or more of that offense;⁴⁴
- 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.⁴⁵

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.⁴⁶

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.⁴⁷ 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.

⁴⁰ Another form of deferral not discussed in this paper pertains to the dismissal of a misdemeanors charge upon commitment of a chemically dependent person (Article 45.053, Code of Criminal Procedure).

⁴¹ Article 45.051, Code of Criminal Procedure.

⁴² Sections 472.022 and 543.117, Transportation Code.

⁴³ Section 106.071(i), Alcoholic Beverage Code.

⁴⁴ Section 106.041(f), Alcoholic Beverage Code.

⁴⁵ Section 106.04(d), Alcoholic Beverage Code.

⁴⁶ Section 106.115, Alcoholic Beverage Code.

⁴⁷ Section 106.071, Alcoholic Beverage Code.

The judge may require any of the following conditions:

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

At the end of the deferral period, if the juvenile presents satisfactory evidence of compliance with the requirements imposed, the judge must dismiss the complaint and show that there is not a final conviction. At this time, the judge may impose a special expense fee up to the amount of fine that was assessed at the beginning of the deferral but not imposed. If the defendant does not comply with the conditions or present satisfactory evidence of compliance, the court should set the defendant for a show cause hearing and summons 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.⁴⁸

Driving safety courses are an offense-specific form of deferred disposition.⁴⁹ Juveniles who want to take a driving safety course must make the request in open court in the presence of a parent or guardian.⁵⁰ 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.⁵¹ If a minor fails to complete a driving safety course, the court is required to notify the minor of a show cause hearing. The court may need to summon the parent again depending on the original instructions the court gave the parents or guardian when he or she first appeared with their child. At the hearing, the court may grant an extension of time to present the driving safety course certificate or may impose the fine. When a minor fails to appear at a show cause hearing, the minor may be charged with the offense of failure to appear at show cause hearing.⁵²

⁴⁸ Article 45.0511(d), Code of Criminal Procedure.

⁴⁹ Article 45.0511, Code of Criminal Procedure.

⁵⁰ Article 45.0215, Code of Criminal Procedure.

⁵¹ Article 45.0511(c), Code of Criminal Procedure.

⁵² Article 45.0511(i), Code of Criminal Procedure.

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. Effective September 1, 2001, the deferral period may last up to 180 days. The court must approve the teen court program. To be eligible, the defendant must:

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

A court may transfer a case deferred under the teen court program to a court in another county if the court to which the case is transferred consents. A case may not be transferred unless it is within the jurisdiction of the court to which it is transferred.⁵³

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.⁵⁴

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.⁵⁵

The judge may exempt a defendant who has requested a teen court program from paying court costs or the fees.⁵⁶ 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.

⁵³ Article 45.052(f), Code of Criminal Procedure.

⁵⁴ Article 45.052(d), Code of Criminal Procedure.

⁵⁵ Article 45.052(e) and (g), Code of Criminal Procedure.

⁵⁶ Article 45.052(h), Code of Criminal Procedure.

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.⁵⁷ 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 to work additional hours does not create a hardship on the defendant or the defendant's dependents. A defendant is considered to have discharged \$100 of fines or costs for each eight hours of community service performed.

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

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

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

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

If a defendant defaults in the payment of a fine and the court concludes that community service would constitute an undue hardship, the court may waive the payment of the fine and court cost.⁵⁸

⁵⁷ Section 729.003(f), Transportation Code; Article 45.049, Code of Criminal Procedure.

⁵⁸ Article 43.091, Code of Criminal Procedure.

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.⁵⁹ With the exception of traffic offenses, 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.⁶⁰ 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.

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.⁶¹ The judgment is rendered by the court in which the complaint is filed, and all fines and cost go to the original court.

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

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

⁵⁹ Article 45.0215, Code of Criminal Procedure.

⁶⁰ Problematically, Article 45.057(b), Code of Criminal Procedure expressly provides that it is inapplicable to "traffic offenses." Thus, presumably, parents of children charged with "traffic cases" cannot be penalized in the same manner as parents whose children have committed non-traffic offenses. See, Article 45.057(g), Code of Criminal Procedure.

⁶¹ Article 45.0215(c), Code of Criminal Procedure.

Article 45.057, Code of Criminal Procedure contains a general list of conditions that the court may impose on both children and their parents. The court may require the parents, managing conservator, or guardian of a child required to attend one of the above mentioned programs to pay an amount not greater than \$100 to pay for the costs of the program. The child, parent, managing conservator, or guardian required attending 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.⁶²

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.⁶³ The services may include:

- crisis family intervention;
- emergency short-term residential care for child ten years of age or older;
- family counseling;
- parenting skills training;
- youth coping skills training;
- advocacy training; and
- mentoring.

When a municipal or justice court has a pending complaint against a child alleging a violation of a misdemeanor offense punishable by fine-only (including ordinance violations) other than a traffic offense (or a traffic ordinance violation), municipal or justice court shall notify the juvenile court of the pending complaint and furnish a copy of the final disposition.⁶⁴

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.⁶⁵

⁶² Municipal or justice contempt, with the exception of children, is punishable by a fine of \$100 and/or three days incarceration.

⁶³ Section 264.302, Family Code.

⁶⁴ Section 51.08(c), Family Code.

⁶⁵ Section 729.003(d) and (e), Transportation Code.

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.⁶⁶ 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.⁶⁷ 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.⁶⁸ 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.

Article 45.050, Code of Criminal Procedure says 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. Section 729.003(e) of the Transportation Code provides that a minor may not be committed to a jail in default of payment of a fine imposed for a traffic offense.

However, courts can order juveniles be taken into custody. As previously described, however, the Code of Criminal Procedure now provides procedures for handling juvenile offenders taken into custody for traffic offenses, other fine-only misdemeanor offenses and statute offenses.⁶⁹

When a child, as defined by the Family Code, fails to obey an order of either a municipal court or justice court, the court is authorized to either refer the child to juvenile court for delinquent conduct for contempt of a justice or municipal court order or retain the case and do one or both of the following: (1) fine the child up to \$500 or (2) order the suspension or denial of the child's driver's license or permit until the child has fully complied with the orders of the court. A court that orders suspension or denial of a driver's license or permit is required to notify DPS on receiving proof that the child has fully complied with the orders of the court.⁷⁰

It is important to note that effective September 1, 2001, Section 45.050 of the Code of Criminal Procedure will serve as general rule applicable to most juvenile matters adjudicated by municipal and justice courts. Juveniles convicted of Failure to Attend School (Section 25.094, Education Code) who subsequently violate a court order now face a specific contempt provision.⁷¹ Under Section 54.023, the child either may be referred to juvenile court or, if the local court opts to retain the contempt matter, may incur the sanctions listed above and be detained in a place of nonsecure custody for single period up to six hours.

⁶⁶ Section 521.201(7), Transportation Code.

⁶⁷ Section 521.294(5), Transportation Code.

⁶⁸ Section 521.294(5), Transportation Code.

⁶⁹ Article 45.058, Code of Criminal Procedure.

⁷⁰ Article 45.050, Code of Criminal Procedure.

⁷¹ Section 54.023, Family Code.

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. Prior to September 1, 2001, the court was required to refer the child to the juvenile court. Parents held in municipal or justice court contempt may be fined up to \$100 and/or incarcerated up to three days in jail.⁷²

Expungement 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 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.⁷³ 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.

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.⁷⁴ This section exclusively applies to the expunction of records of individuals convicted of Failure to Attend School. The request may be made on or after the individual's 18th birthday. While the applicant may determine the form, the request must be in writing, under oath, and state that the applicant had no more than one conviction. The court may expunge the conviction without a hearing or order a hearing if facts are in doubt. Subsection (c) specifies what documents are to be expunged, including documents in the possession of the school district, special programs

⁷² Section 21.002(c), Government Code.

⁷³ Section 106.12, Alcoholic Beverage Code.

⁷⁴ Article 45.055, Code of Criminal Procedure.

provider, the police department, and the prosecutor's office. Courts are prohibited from ordering that the applicant pay any fee or court cost for seeking an expunction.

Minors may apply to the court to have a conviction of a tobacco-related offense expunged.⁷⁵ 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.

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

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

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

This perceived shortcoming in the civil truancy law led policymakers to create a separate criminal school attendance offense in 1993. Codified in the Education Code, an individual who is subject to the State's compulsory school attendance law may be charged with Failure to Attend School,⁷⁶ a Class C misdemeanor.

While initially juvenile courts adjudicated all matters involving delinquency, by 1995 the growing number of juveniles entering the judicial system forced the State to fundamentally reconsider its approach to juvenile justice. To alleviate congested juvenile court dockets, the Legislature gave the municipal and justice courts jurisdiction of all Class C misdemeanor cases involving juveniles (with the exception of public intoxication).⁷⁷ Additionally, juvenile courts were authorized, with permission, to transfer civil truancy cases to the municipal court and justice courts.

⁷⁵ Section 161.255, Health and Safety Code.

⁷⁶ Section 25.094, Education Code.

⁷⁷ Section 8.07 (a)(4), Penal Code.

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

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

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

Subsection 54.021(b) of the Family Code provides that a municipal court or justice court may exercise authority over a person engaged in truant conduct, which is conduct indicating a need for supervision, if the juvenile court has waived its original jurisdiction and a complaint is filed by the appropriate authority in the municipal or justice court charging an offense under Section 25.094 of the Education Code (Failure to Attend School). Subsection 54.021(c) of the Family Code provides that the failure to attend school proceedings are governed by Chapter 45, Code of Criminal Procedure. Similarly, the Education Code provides that a proceeding in a justice or municipal court based on a complaint under either Section 25.093 (Parent Contributing to Truancy) or under Section 25.094 (Failure to Attend School), except as otherwise provided, is governed by Chapter 45 of the Code of Criminal Procedure.⁷⁸ Effectively, the change in law means that municipal courts will only handle the offense of "failure to attend school" and will no longer handle "truancy" which required compliance with pertinent Family Code provisions.

The failure to attend school offense may be prosecuted in the justice court of any precinct in the county in which the individual resides or in which the school is located or in a municipal court in the municipality in which the individual resides or in which the school is located. If the school district is in a county with a population of less than 100,000, the school district may file the a complaint in the municipal or justice court or refer the student to the juvenile court.⁷⁹

Section 25.0951 of the Education Code regulates when a complaint by a school district is permissible and when it is mandatory. If a student fails to attend school without an excuse on 10 or more days or parts of days within a six-month period in the same school year, it is mandatory that the school district file a complaint against the student, the student's parents, or both in a municipal or justice court. Alternatively, a school district in a county with a population of less than 100,000 may refer the student to a juvenile court for conduct indicating a need for supervision. If a student fails to attend school without an excuse on three or more days or parts of days within a four-week period, the school district may, but is not required to, file a complaint against the student or the student's parent. Complaints may be filed in either municipal or justice

⁷⁸ Section 25.094, Education Code.

⁷⁹ Section 25.0951, Education Code.

courts. Alternatively, in counties with a population of less than 50,000, complaints may be filed in juvenile court.

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

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

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

The Education Code provides an affirmative defense to the prosecution of the offense of failure to attend school.⁸⁰ It says that if one or more of the absences required to be proven was excused by a school official or should be excused by the court it is an affirmative defense. The burden is on the defendant to show by a preponderance of the evidence that the absence has been or should be excused. A decision by the court to excuse an absence for purposes of this section does not affect the ability of the school district to determine whether to excuse the absence for another purpose. It is also an affirmative defense to the prosecution that one or more of the absences required to be proven was involuntary. The burden is on the defendant to show by a preponderance of the evidence that the absence was involuntary.

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

- school without unexcused absences;
- a preparatory class for the high school equivalency examination administered under Section 7.111, Education Code, if the court determines that the individual is too old to do well in a formal classroom environment; or take the high school equivalency examination administered under Section 7.111, Education Code if the individual is at least 16 years of age;
- an alcohol and drug abuse program;

⁸⁰ Section 25.094(f), Education Code.

- a rehabilitation program;
- a counseling program, including self-improvement counseling;
- a program that provides training in self-esteem and leadership;
- a work and job skills training program;
- a program that provides training in parenting, including parental responsibility;
- a program that provides training in manners;
- a program that provides training in violence avoidance;
- a program that provides sensitivity training; and
- a program that provides training in advocacy and mentoring.

The court can also require the individual to:

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

The court can require the individual and the individual's parent to attend a class for students at risk of dropping out of school designed for both the individual and the individual's parent. An order that requires the parent of an individual to attend a class for students at risk of dropping out of school is enforceable in the justice or municipal court by contempt. In addition to any other order, the court may order the Department of Public Safety to suspend or deny issuance of the driver's license or permit of the individual for a period specified by the court not to exceed 365 days.⁸¹

If an individual violates a court order, the court may proceed as authorized by Section 54.023 of the Family Code by holding the child in contempt and imposing a fine not to exceed \$500 or by referring the child to the juvenile court for delinquent conduct.⁸² Section 54.023 provides that if a child intentionally or knowingly fails to obey a lawful order of disposition after an adjudication of guilt, the court may refer the child to the juvenile court for delinquent conduct for contempt or retain jurisdiction of the case and:

- hold the child in contempt of the municipal court order and impose a fine not to exceed \$500;
- order the child be held in a place of nonsecure custody for a single period not to exceed six hours; or
- order the Department of Public Safety to suspend the driver's license or permit of the child or, if the child does not have a license or permit, to deny the issuance of a license or permit to the child and, if the child has a continuing obligation under the court's order, require that the suspension or denial be effective until the child fully discharges the obligation.

⁸¹ Article 45.054(f), Code of Criminal Procedure.

⁸² Section 25.094(d), Education Code.

If the court is unable to hold contempt proceedings before the individual's 17th birthday, the court may still hold him or her in contempt and impose a remedy under Section 54.023. If the individual was placed under a court order when still a child but disobeys the court order while 17 years of age or older and the failure to obey occurred under circumstances that constitutes contempt of court, the court may hold a person in contempt and impose a remedy listed above.

The 77th Legislature recognized the importance of keeping children in school by providing additional rehabilitation remedies to ensure compliance with the compulsory attendance laws. The Legislature also recognized that the handling of truants required courts to oversee these individuals for extended periods of time and required diligence on the part of the court staff to ensure that the truants complied with all of the court orders. Because of the complexity of handling juvenile cases, the Legislature provided authority for the municipal court, with approval of the city council, to employ case managers in failure to attend school cases.⁸³ The case manager plan must be a comprehensive plan to reduce truancy in the entity's jurisdiction that addresses the role of the case manager in that effort.

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

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

Upon conviction or if the court grants deferred disposition, the court may order the parent to attend a program, if one is available, that is designed to assist parents in identifying problems that contribute to the student's absences and to assist in developing strategies for resolving those problems. If the court orders deferred disposition, the court may require the defendant to provide personal services to a charitable or educational institution as a condition of the deferral. If the parent refuses to obey a court order, the court may punish the parent for contempt under Section 21.002 of the Government Code.

⁸³ Article 45.056, Code of Criminal Procedure.

Section 54.022 of the Family Code was repealed by the 77th Legislature. This statute included a provision that a parent who failed to appear with his or her child committed a Class C misdemeanor. However, the Legislature codified the same provision in Article 45.054, Code of Criminal Procedure. This statute requires the court, when an individual is charged with the offense of failure to attend school, to endorse a summons issued to the parent of the individual to appear personally at the hearing and to bring his or her child (individual) to the hearing. If the parent fails to attend the hearing after being served with a summons, he or she commits a Class C misdemeanor offense. The warning advising a parent of the possibility of being charged with a Class C misdemeanor for failing to appear with their child that was required by Section 54.022 to be on the summons issued to the parent. This provision was not carried over to Article 45.054. The general provision regarding the handling of a child requires the court to summon the parent and to include in the summons a warning that the failure of the parent, managing conservator, or guardian to appear may be punishable as a Class C misdemeanor.⁸⁴ However, it should be noted that this provision uses the word “child” instead of “individual.”

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

Specific authority over alcohol offenses is given to municipal and justice courts.⁸⁵ That statute says that municipal or justice court has jurisdiction over cases that arise under Chapter 106, Alcoholic Beverage Code that do not include confinement as an authorized sanction. The penalty provisions regarding Alcoholic Beverage Code offenses committed by a minor are found in Sections 106.041 and 106.071 of the Alcoholic Beverage Code. Those sections provide that first and second offenses are fine-only offenses, but convictions for third and more offenses by minors older than age 17 include confinement as part of the penalty. Those cases must be filed in county court. For jurisdiction regarding third (and more) offenses over defendants under the age of 17, see the following section, Waiver of Jurisdiction.

A court waive jurisdiction over a child under the age of 17 and transfer the case to juvenile court if the child has two previous convictions of any of the following offenses: Penal Code offenses, Alcoholic Beverage Code offenses, or any fine-only offenses other than traffic offenses or tobacco-related offenses.⁸⁶ A municipal or justice court judge waive jurisdiction over a juvenile’s case, except for traffic violations and tobacco-related offenses, regardless of whether there are prior convictions. When a judge waives jurisdiction and transfers a case to the juvenile court, all pertinent documents in the case need to be forwarded to the juvenile court with a transfer order. When a case is being transferred under the mandatory provision because of two prior convictions, information about the two prior cases should be included.

⁸⁴ Article 45.057, Code of Criminal Procedure

⁸⁵ Articles 4.11 and 4.14, Code of Criminal Procedure.

⁸⁶ Section 51.08(b)(1), Family Code; Section 161.257, Health and Safety Code.

The Alcoholic Beverage Code provides specific procedures for handling minors charged with alcohol offenses. All minors must appear in open court to plead guilty to an Alcoholic Beverage Code offense.⁸⁷ Minors under the age of 18 must appear in open court with a parent or legal guardian.⁸⁸

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

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

- purchase of alcohol by a minor (Section 106.02);
- attempt to purchase alcohol by a minor (Section 106.025);
- consumption of alcohol by a minor (Section 106.04);
- driving under the influence of alcohol by a minor (Section 106.041);
- possession of alcohol by a minor (Section 106.05); and
- misrepresentation of age by a minor (Section 106.07).

Except for the offense of driving under the influence of alcohol by a minor (DUI),⁸⁹ the penalties for the above listed offenses are in Section 106.071 of the Alcoholic Beverage Code. These penalties also apply to persons under the age of 21 charged with the offense of public intoxication. Section 106.071 provides that first and second offenses are Class C misdemeanors. Since the Alcoholic Beverage Code does not define Class C misdemeanor, the court must use the Section 12.23, Penal Code definition, which provides for a punishment of a fine not to exceed \$500. This is also the amount of fine for subsequent offenses, except when a minor is at least 17 years of age and has two previous convictions for any of the following offenses: purchase, attempt to purchase, possession, consumption of alcohol, or misrepresentation of age by a minor. Then the current offense is punishable by a fine of not less than \$250 or more than \$2,000 and/or confinement in jail for a term not to exceed 180 days. Hence, the municipal or justice court lacks jurisdiction. Although the penalty is not enhanced for

⁸⁷ Section 106.10, Alcoholic Beverage Code.

⁸⁸ Section 106.11, Alcoholic Beverage Code.

⁸⁹ Section 106.041, Alcoholic Beverage Code.

third and subsequent offenses for defendants under the age of 17, the municipal or justice court must waive jurisdiction.⁹⁰

In addition to a fine, a minor convicted of possession, consuming, purchasing or attempting to purchase alcohol, misrepresentation of age by a minor, or public intoxication (under age 21) must perform community service. If the conviction is for a first time offense, the minor must perform between eight and 12 hours of community service. If the conviction is for a subsequent offense, the minor must perform between 20 and 40 hours of community service. Community service must be related to education about or prevention of misuse of alcohol if those programs are available in the community where the court is located. If there are no programs available, the court may order community service that it considers appropriate for rehabilitative purposes.⁹¹

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

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

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

⁹⁰ Section 51.08, Family Code.

⁹¹ Section 106.071, Alcoholic Beverage Code.

The Texas Commission on Alcohol and Drug Abuse must approve alcohol awareness programs. Courts can locate a program in their area by calling the Commission at 800/832-9623.

In addition to a fine, community service, and an alcohol awareness program, the court must order DPS to suspend or deny issuance of a driver's license of a minor convicted of any of the following offenses: minor possessing, consuming, purchasing, attempting to purchase alcohol, misrepresentation of age, or public intoxication (under age 21).⁹² The suspension or denial is for a period of 30 days if the minor has not been previously convicted. If the conviction is a second conviction, the suspension or denial is for 60 days. If the conviction is a third or more, the suspension or denial is for 180 days.⁹³ A minor's driver's license suspension takes effect on the 11th day after the date the minor was convicted.⁹⁴ When a minor is convicted, clerks should immediately notify DPS of the order to suspend the license so that DPS will have the notice before the 11th day after judgment.

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

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

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

⁹² Section 106.071(2), Alcoholic Beverage Code.

⁹³ Section 106.071(d)(2), Alcoholic Beverage Code.

⁹⁴ Section 106.071(h), Alcoholic Beverage Code.

In addition to a fine and community service, the court must require the minor to attend an alcohol awareness program for a conviction of a first offense of driving under the influence of alcohol.⁹⁵ As previously states, if the defendant is younger than 18 years of age, the court may require the parent or guardian of the defendant to attend the alcohol awareness program with the minor. If the conviction is for a second offense, the court has the option of requiring completion of an alcohol awareness program. Also, the court may order the minor's parents, conservator, or guardian to refrain from doing anything that may increase the likelihood that the minor will not complete the alcohol awareness program.

A minor must complete the course and show proof of completion within 90 days of the final conviction. If the minor completes the course, the court may reduce the fine to half of the original fine. If a minor fails to present the evidence within the 90 days, the court should set the defendant for a show cause hearing and notify the defendant of the hearing. If the defendant is under the age of 18, the court must summon the parent or legal guardian to the hearing. At the hearing, the judge may or may not grant an extension. If a judge grants an extension, the case is reset for 90 days later. If the court does not grant the extension, the court should explain about the driver's license suspension for failing to complete the program. If the minor fails to complete the course, the court must order DPS to suspend or deny issuance of the driver's license for a period not to exceed six months.

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

For the purpose of determining whether a minor has been previously convicted of an offense for a minor possessing, consuming, purchasing, attempting to purchase alcohol, misrepresentation of age, driving under the influence of alcohol, or public intoxication, an order of deferred disposition is considered a conviction.⁹⁶ This means that an order of deferred disposition is considered a conviction for the purpose of enhancing a charge to a subsequent offense.

A minor who is not a child and who has been previously convicted at least twice of an offense to which Section 106.07, Alcoholic Beverage Code applies is not eligible to receive a deferral of final disposition of a subsequent offense.⁹⁷ A minor who commits the offense of driving under the influence of alcohol and has been previously convicted twice or more of that offense is not eligible for deferred disposition.⁹⁸ A minor charged with consuming an alcoholic beverage is not eligible for deferred disposition if he or she has been previously convicted twice or more of consuming an alcoholic beverage.⁹⁹

⁹⁵ Section 106.041(d), Alcoholic Beverage Code.

⁹⁶ Sections 106.04(d), 106.041(h)(2), and 106.071(f)(2), Alcoholic Beverage Code.

⁹⁷ Section 106.071(i), Alcoholic Beverage Code.

⁹⁸ Section 106.041(f), Alcoholic Beverage Code.

⁹⁹ Section 106.04(d), Alcoholic Beverage Code.

When a court grants deferred disposition to a minor charged with an Alcoholic Beverage Code offense or public intoxication (the court has jurisdiction if the person is at least age 17), the court must require the minor to attend an alcohol awareness program approved by the Texas Commission on Alcohol and Drug Abuse.¹⁰⁰

When a court grants deferred disposition to a minor charged with possessing, consuming, purchasing, or attempting to purchase alcohol, misrepresentation of age, or public intoxication (under age 21), the court must require the minor to perform not less than eight or more than 12 hours community service if the minor does not have any previous convictions. If the minor has a previous conviction, the minor must perform not less than 20 or more than 40 hours community service.¹⁰¹

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

- purchase of alcohol by a minor (Section 106.02);
- attempt to purchase alcohol by a minor (Section 106.025);
- consumption of alcohol by a minor (Section 106.04);
- driving under the influence of alcohol by a minor (Section 106.041);
- possession of alcohol by a minor (Section 106.05); and
- misrepresentation of age by a minor (Section 106.07).

The report must be in the form prescribed by the Commission.¹⁰²

Courts are required to furnish the Department of Public Safety notice of conviction or an order of deferred disposition of an Alcoholic Beverage Code offense and an acquittal of the offense of driving under the influence of alcohol by a minor.¹⁰³ The notice must be in a form prescribed by the Department of Public Safety and must contain the driver's license number of the defendant, if the defendant holds a driver's license.¹⁰⁴ Courts that report manually are required to use DPS form DIC-15 to file this report.

The Department of Public Safety maintains the information contained in the notices and provides the information to law enforcement agencies and courts as necessary to enable them to carry out their official duties. The information is admissible in any action in which it is relevant. A person who holds a driver's license having the same number that is contained in a record maintained by DPS is presumed to be the person to whom the records relates. The presumption may be rebutted only by evidence presented under oath.¹⁰⁵ The information on Alcoholic Beverage Code offenses maintained by DPS is confidential and may not be disclosed except as provided by Section 106.117(d).

¹⁰⁰ Section 106.115, Alcoholic Beverage Code.

¹⁰¹ Section 106.071, Alcoholic Beverage Code.

¹⁰² Section 106.116, Alcoholic Beverage Code.

¹⁰³ Section 106.117(a)(2), (3), and (4), Alcoholic Beverage Code.

¹⁰⁴ Section 106.117(b), Alcoholic Beverage Code.

¹⁰⁵ Section 106.117(c), Alcoholic Beverage Code.

Under the Health and Safety Code, minor is defined as an individual who is younger than 18 years of age.¹⁰⁶

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

A minor commits an offense if he or she possesses, purchases, consumes, or accepts a cigarette or tobacco product.¹⁰⁷ Also, when a minor falsely represents himself or herself as being 18 years of age or older to obtain possession of, purchase, or receive a cigarette or tobacco product, he or she commits an offense.¹⁰⁸

Section 161.257 of the Health and Safety Code provides that "Title 3 of the Family Code, does not apply to a proceeding under this subchapter." The Subchapter referred to is Subchapter N, Chapter 161, entitled "Tobacco Use by Minors." It includes the offenses of and penalties for possession, purchase, consumption, and receipt of cigarettes or tobacco products by minors as well as misrepresentation of age by a minor to obtain a cigarette or tobacco product. Title 3 of the Family Code is the Juvenile Justice Code. It includes Chapter 51 through Chapter 60, Family Code and embodies numerous procedures involving child defendants in municipal or justice court, including the transfer provisions in Section 51.08(b). Section 161.257, Health and Safety Code prevents a third or subsequent case involving tobacco use by a child from being transferred to juvenile court. Also, these offenses should not be counted when determining whether to waive jurisdiction for other non-traffic convictions.

The penalty for all tobacco offenses is a fine not to exceed \$250.¹⁰⁹

Section 161.253 of the Health and Safety Code governs tobacco awareness programs. Upon a first conviction of a tobacco offense, the court must suspend execution of the fine and require the minor to attend a tobacco awareness program approved by the Texas Health and Human Services Commission. The court may also require the parent or guardian of the minor to attend the tobacco awareness program with the minor. If a minor resides in an area in which access to a tobacco awareness program is not readily available, the court must require the minor to perform eight to 12 hours tobacco-related community service instead of attending the tobacco awareness program. The tobacco awareness program and the tobacco-related community service are remedial and not punishment. The minor must present proof to the court of

¹⁰⁶ Section 161.252(a), Health and Safety Code.

¹⁰⁷ Section 161.252(a)(1), Health and Safety Code.

¹⁰⁸ Section 161.252(a)(2), Health and Safety Code.

¹⁰⁹ Section 161.252(d), Health and Safety Code.

completion of the tobacco awareness program no later than the 90th day after the date of conviction. When a court receives the evidence of completion from a minor who has not been previously convicted of a tobacco offense, the court must dismiss the complaint. If a minor has been previously convicted, the court must impose the fine and require attendance of a tobacco awareness program. However, the court may reduce the fine to not less than half of the original fine assessed.

If a minor does not present evidence of completion of a tobacco awareness program within the 90 days of the conviction, the court must order the Department of Public Safety to suspend or deny issuance of a driver's license or permit. The order must specify the period of the suspension or denial, which may not exceed 180 days after the date of the order.¹¹⁰ Courts must use DPS form DIC-15 to report the order of suspension.

When a second or subsequent offense is filed, the charge may be enhanced. Although the first offense was dismissed, it is considered a conviction for the purpose of enhancing subsequent violations.¹¹¹ Second or subsequent offenses filed with the court must be charged as second or subsequent offenses or the court must process and handle it like a first time offense.

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¹¹⁰ Section 161.254, Health and Safety Code.

¹¹¹ Section 161.253(g), Health and Safety Code.