

Municipal Court Procedures: Children Ages 10-16

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Purpose

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

Your Rights

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

they may not act as your counsel (or attorney) unless they are, in fact, a licensed attorney.

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

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

Appearance

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

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

Your first appearance is to determine your plea. If you waive a jury trial and plead guilty or nolo contendere (no contest), you may present extenuating circumstances for

the judge to consider when determining the proper punishment. However, the judge is not required to reduce your fine. If you plead not guilty, the court will schedule a jury trial. You may waive a jury trial and request a bench trial.

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

Pleas

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

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

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

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

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

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

Fines, Costs, and Fees

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

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

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

Deferred Disposition

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

Discharge by Community Service

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

Judge's Ability to Dismiss

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

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

Trial Procedures

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

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

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

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

Continuing Obligation to Appear

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

Obligation to Notify Court of Address Change

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

Mandatory Alcohol and Tobacco Courses and Community Service

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

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

Contempt

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

- 1) Determine that you are not in contempt;

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

Failure to Pay a Fine and Turning Age 17

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

Driver's License Suspension

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

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

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

Expunction Rights

The records of this court, including all records in your case, are public and accessible to the public. However, if you are convicted of an offense in this court,

the records in your case will be subject to an order of nondisclosure prohibiting release of the records to anyone except you or other criminal or specified noncriminal justice agencies.

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

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

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

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

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

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

New Trial and Appeal

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

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