

YOUR RIGHTS IN MUNICIPAL COURT

Prepared by

Texas Municipal Courts Association and Texas Municipal Courts Education Center

The purpose of this pamphlet is to provide you with information about court proceedings.

Court Appearances: The law requires you to appear in court on your case. If you were issued a citation, your appearance date is noted on the citation. If you have been released on bond, your appearance date is set on the bond. If you request a continuance (read the specific section in the pamphlet on continuances), the court will notify you of your new appearance date. You or your attorney may appear in person in open court, by mail or you may deliver your plea in person to the court. (Juveniles have a separate set of rules for their appearance. Please read the specific section on juveniles in this pamphlet.)

Your first appearance is to determine your plea. If you waive a jury trial and plead guilty or nolo contendere (no contest), you may talk to the judge about extenuating circumstances that you want the judge to consider when setting your fine, but the judge is not required to reduce your fine. Before pleading guilty or no contest, you will want to read the section on pleas. If you plead not guilty, the court will schedule a jury trial unless you waive that right. If you do, the trial will be before the judge. When you make your appearance by mail, the court must receive your plea before your scheduled appearance date. If you plead guilty or no contest, you must include a waiver of jury trial. If you plead not guilty, the court will notify you of the date of your trial.

Pleas: Under our American system of justice, all persons are presumed to be innocent until proven guilty. On a plea of not guilty, a trial is held. As in all criminal trials, the State must prove the guilt of a defendant "beyond a reasonable doubt" of the offense charged in the complaint before the defendant can be found guilty by a judge or jury.

Your decision concerning which plea to enter is very important. You should read the following explanation of all three types of pleas and think carefully before making your decision. If you plead guilty or nolo contendere, you should be prepared to pay the fine. You should contact the court regarding how to make payment.

Plea of Guilty – By a plea of guilty, you admit that the act is prohibited by law and that you committed the act charged. Before entering your plea of guilty, however, you should understand the following:

- (1) The State has the burden of proving that you violated the law (the law does not require that you prove you did not violate the law);

- (2) You have the right to hear the State's evidence and to require the State to prove you violated the law; and
- (3) A plea of guilty may be used against you later in a civil suit if there was a traffic accident (another party can say you were at fault or responsible for the accident because you pled guilty to the traffic charge).

Plea of Nolo Contendere (No Contest) – A plea of nolo contendere means that you do not contest the State's charge against you. You will almost certainly be found guilty, unless you are eligible and successfully complete a driving safety course and/or court ordered probation. Also, a plea of nolo contendere may not be used against you in a subsequent civil suit for damages.

Plea of Not Guilty – A plea of not guilty means that you deny guilt, and that the State must prove the charge that it filed against you. If you plead not guilty, you need to decide whether to hire an attorney to represent you. If you represent yourself, the following section on The Trial may help you to understand your rights and trial procedure.

Driving Safety Courses: If you are charged with a traffic offense, you may be eligible to ask the judge to take a driving safety course to dismiss the charge. The request must be made before the appearance date on the citation. It may be made either orally or in writing. If you were operating a motorcycle and request to take a driving safety course, you must take a motorcycle operator's training course. At the time of the request, you must do the following:

- (1) Present proof of financial responsibility (liability insurance);
- (2) Plead guilty or nolo contendere; and
- (3) Pay court costs and an administrative fee, if required.

The case will be postponed for 90 days to allow you time to complete the course. You must attend a driving safety course that has been approved by the Texas Education Agency or a motorcycle operator's course approved by the Department of Public Safety.

You are eligible to request this course if you:

- (1) Have not requested and taken a driving safety course for a traffic offense within the last 12 months;
- (2) Are not currently taking the course for another traffic violation;

- (3) Have not committed the offense of speeding 25 mph over the speed limit;
- (4) You do not have a CDL driver's license; and
- (5) Have not committed one of the following offenses:
 - Failure to Give information at an Accident Scene;
 - Leaving Scene of Accident;
 - Fleeing or Attempting to Elude Police Officer;
 - Passing a School Bus;
 - A serious traffic violation, which applies to commercial motor vehicle operators;
 - An offense in a construction maintenance zone when workers are present.

To show the court that you are eligible, you must:

- (1) present a certified copy of your driving record from the Department of Public Safety that shows that you have not had a driving safety course within the preceding 12 months; and
- (2) swear to an affidavit that you are not currently taking a driving safety course and that you have not taken one that is not shown on your driving record.

If you do not take the course in the time required and/or fail to present the court with a certificate of completion, the court will notify you to return to court and explain why you failed to show proof of completion. No extensions will be granted. Your failure to be present at that hearing will result in a warrant for your arrest being issued. An additional charge may also be filed.

The Trial: A trial in Municipal Court is a fair, impartial and public trial as in any other court. Under Texas law, you may be brought to trial only after a sworn complaint is filed against you. A complaint is a document that alleges the act you are supposed to have committed and that the act is unlawful. You may be tried only for what is alleged in the complaint. You have the following rights in court:

- (1) The right to have notice of the complaint not later than the day before any proceedings;
- (2) The right to inspect the complaint before trial and have it read to you at the trial;
- (3) The right to have your case tried before a jury, if you so desire;
- (4) The right to hear all testimony introduced against you;

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- (5) The right to cross-examine witnesses who testify against you;
- (6) The right to testify in your behalf;
- (7) The right to not testify, if you so desire. If you choose not to testify, your refusal to do so may not be held against you in determining your innocence or guilt; and
- (8) You may call witnesses to testify in 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. The request for a subpoena may be oral or in writing.

If you chose to have the case tried before a jury, you have the right to question jurors about their qualifications to hear your case. If you think that a juror will not be fair, impartial or unbiased, you may ask the judge to excuse the juror. The judge will decide whether or not to grant your request. In each jury trial, you are also permitted to strike three members of the jury panel for any reason you choose, except an illegal reason (such as a strike based solely upon a person's race or gender).

Continuances: If you need a continuance for your trial, you must put the request in writing and submit it to the court with your reasons prior to trial. The judge will make a decision whether or not to grant the continuance. You may request a continuance for the following reasons:

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

Presenting the Case: As in all criminal trials, the State will present its case first by calling witnesses to testify against you.

After prosecution witnesses have finished testifying, you have the right to cross-examine. In other words, you may ask the witnesses questions about their testimony or any other facts relevant to the case. You may not, however, argue with the witness. Your cross-examination of the witness must be in the form of questions only. You may not tell your version of the incident at this time. You will have an opportunity to do so later in the trial.

After the prosecution has presented its case, you may present your case. You have the right to call any witness who knows anything about the incident. The State has

the right to cross-examine any witness that you call.

If you so desire, you may testify in your own behalf, but as a defendant, you may not be compelled to testify. It is your choice, and your silence cannot be used against you. If you do testify, the State has the right to cross-examine you.

After all testimony is concluded, both sides can make a closing argument. This is your opportunity to tell the court why you think that you are not guilty of the offense charged. The State has the right to present the first and last arguments. The closing argument may be based only on the testimony presented during the trial.

Judgment/Verdict: If the case is tried by the judge, the judge's decision is called a judgment. If the case is tried by a jury, the jury's decision is called a verdict.

In determining the defendant's guilt or innocence, the judge or jury may consider only the testimony of witnesses and any evidence admitted during the trial.

If you are found guilty by either the judge or jury, the penalty will be announced at that time. Unless you plan to appeal your case, you should be prepared to pay the fine at this time.

Fines: The amount of fine the court assesses is determined only by the facts and circumstances of the case. Mitigating circumstances may lower the fine, even if you are guilty. On the other hand, aggravating circumstances may increase the fine. The maximum fine for most Municipal Court traffic violations is \$200; penal violations is \$500.

Court Costs: In addition to a fine, court costs mandated by state law will be charged. The costs are different depending on the offense. You need to check with the court for the amount that will be assessed to the violation for which you are charged. If you request a trial, you may have to also pay the costs of overtime paid to a peace officer spent testifying in the trial. If you request a jury trial, an additional \$3 jury fee is assessed. If a warrant was served or processed by a peace officer, an additional \$50 fee is also assessed.

Court costs are assessed if you are found guilty at trial, if you plead guilty or nolo contendere, if your case is deferred for a driving safety course or your case is deferred and you are placed on probation. If you are found not guilty, court costs cannot be assessed.

New Trial: 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 a judgment of guilt has been rendered against you. The judge may grant a new trial if the judge is persuaded that justice has not been done in the trial of your case. Only one new trial may be granted for each offense.

Appeal: If you are found guilty and are not satisfied with the judgment of the court, you have the right to appeal your case. To appeal, unless you are in a court of record, you must file an appeal bond with the Municipal Court within 10 days of the judgment if you appeared in open court. If you pled guilty or nolo contendere, waived your right to a jury trial and requested the amount of fine and appeal bond, put the request in writing and mail or deliver it to the court before your initial court appearance date. You have up to 31 days from the time you received a certified notice from the court to pay the fine or file an appeal bond with the Municipal court. Defendants in courts of record should check with the court for rules regarding appeals.

Juveniles: The Municipal Court has jurisdiction over juveniles (16 years or younger) charged with Class C misdemeanor offenses except public intoxication. All juveniles are required to appear in open court for all proceedings in their cases. The parent of a juvenile charged in Municipal Court must be present in court with their child. Juveniles who fail to appear in court may have an additional charge of failure to appear filed against them. Juveniles who fail to appear or who fail to pay their fine will be reported to the Department of Public Safety who will suspend or deny issuance of a driver's license. Juveniles who disobey a court order may be found in contempt and assessed a fine not to exceed \$500 or referred to juvenile court for contempt.