

Tricky Issues: Criminal Cases

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1

Resources

- Criminal Deskbook
- Fines, Fees, & Costs Deskbook
- Juvenile Deskbook
- Code of Criminal Procedure Chapter 45
- www.tjctc.org
 - Flowcharts
 - Legal Question Board

2

What happens when...?

The defendant comes in to enter a plea, but the **citation (ticket)** hasn't been filed yet?

- Do **not** enter the case in your system based on their citation!
- **Do** take the defendant's information and call them or send them a summons once the citation has been filed.
- Why?

3

What if they mail in payment and we have no citation?

- Remember that normally mailing in payment in full is considered a plea of nolo (no contest). But, if you don't have a **charging instrument** (citation or complaint), you don't have a case. So, there isn't anything for the defendant to enter a plea to.
- Your court doesn't have **jurisdiction**, and therefore has no **authority to act**.

4

What happens
when...?

The case isn't filed in the
right court?

5

“Improper Filing” Comparison

Jurisdiction issue

- Wrong **kind of case**
- Court dismisses **automatically**.
- If not dismissed, a judgment convicting the defendant would be **void** (worthless and unenforceable).

Venue issue

- Wrong **location**
- Court transfers **if** the defendant makes the request **or** if your county has transfer rules telling you to transfer.
- If filed in wrong **county**, defendant must be found not guilty at trial.

6

What happens
when...?

The officer mailed the
citation to the
defendant?

7

Mailed Citations

- The most common situation where this occurs is when the defendant is injured in an accident and taken to the hospital. Law enforcement decides to charge the defendant with an offense and mails them a citation.
 - ***Instead of mailing a citation, proper procedure would be for the officer to file a complaint.***
- One problem is that the defendant never signed the citation promising to appear and may not know when to appear. The court should mail this defendant a summons to appear.

8

What happens
when...?

A private citizen wants to
file a complaint?

- **Do** recommend that they speak with law enforcement or a prosecutor.
- **Do not** refuse to accept the filing if they insist.
- **The judge should** evaluate a filed complaint for probable cause on each element of the offense.
- **Do** issue a summons for the defendant if the offense is properly alleged.
- **Do** set the case for pretrial hearing so that the prosecutor can elect how to proceed.

9

What happens
when...?

The defendant doesn't
appear by their
appearance date?

10

Tools in the Toolbox

- There are many tools available to a court to secure a defendant's appearance when they fail to appear and enter a plea by their appearance date.
- For a full and detailed explanation of these options, see Chapter 3 of the Criminal Procedure Deskbook, including the flowchart.
- For most courts, the first step is a courtesy letter, which reminds the defendant of their obligation and sets a new "appearance date."

11

New Criminal Charge

- Frequently, not showing up by their appearance date will constitute a new criminal charge of either **Failure to Appear (FTA)** or **Violate Promise to Appear (VPTA)**.
 - Complaints alleging these offenses should be filed by law enforcement or prosecutors.
 - These new offenses must be processed the same as any other new offense, not treated as "late fees" or "penalties" tacked on to the original case.

12

FTA vs. VPTA

FTA

- Penal Code Sec. 38.10
- Defendant released from custody on condition that they subsequently appear (bond or sign citation).
- Defendant intentionally fails to appear as promised.
- Class C (\$1-500 fine)

VPTA

- Transportation Code Sec. 543.009
- Defendant charged with Rules of the Road offense signs citation promising to appear.
- Defendant willfully violates that promise.
- \$1-200 fine range

13

FTA & VPTA

- What is a Rules of the Road offense?
 - Offense under Chapters 541-600 of the Transportation Code
- What if both FTA/VPTA seem appropriate?
 - must charge VPTA; *Azeez v. State*
- For purposes of FTA, a defendant is “in custody” when they have been detained by a peace officer, even if they are issued a citation rather than being booked into jail.
- See Ch. 3 of Criminal Deskbook for more

14

Issuance of Arrest Warrant

- The court is authorized to issue an **arrest warrant**, which is an order for law enforcement to go pick the defendant up and bring them to court.
 - Code of Criminal Procedure Art. 45.014(b)(3)
- However, there are several safeguards that **must** be followed to ensure that the defendant's rights are not violated.

15

Issuance of Arrest Warrant – Complaint

- An arrest warrant **may not** issue solely based on the filing of a citation or "ticket" in justice court. A sworn complaint, alleging either the original offense (sometimes called the **underlying offense**) or a new offense of FTA or VPTA **must** be filed before a warrant or **capias** may be issued.

16

Issuance of Arrest Warrant – Notice

- An arrest warrant **based on the defendant's failure to appear** (whether the warrant is for the original offense, FTA, or VPTA) **may not** issue until the court has given a notice by mail or telephone providing:
 - A date and time when the defendant must appear before the justice or judge;
 - The name and address of the court with jurisdiction in the case;
 - Information regarding alternatives to the full payment of any fine or costs owed by the defendant, if the defendant is unable to pay that amount;
 - Notice that the defendant may be entitled to jail credit if incarcerated after commission of the offense; **and**
 - An explanation of the consequences if the defendant fails to appear before the justice or judge as required.
 - Code of Criminal Procedure Art. 45.014(e)

17

Referral to collections/Omni

- **Collections** – outside entities that attempt to get the defendant to appear or to satisfy a judgment.
- **Omni** – company with a contract with DPS; defendants in Omni can't renew driver license.
- You can also refer defendants who do not appear to enter a plea in a case to collections and/or to Omni.
- See Chapter 3 of the Criminal Deskbook for specifics.

18

What happens
when...?

The defendant mails in a
guilty plea plus a request
for the amount of the
appeal bond?

- The court **must** mail the defendant a notice (found on TJCTC's website) which gives them the amount of the fine and costs in the case and the amount of the appeal bond, along with information on alternatives to paying the fine and costs.

19

What Happens When...?

The defendant mails in a
guilty plea plus a request for
the amount of the appeal
bond?

**How many days do they
have to perfect their
appeal?**

- The defendant then has **30 days** (instead of 10) to perfect their appeal by posting an appeal bond.

CCP Art. 27.14

Criminal Deskbook Chapter 4.A.1.

20

30 Days to Appeal – Written Plea

- The 30 days is calculated from the time that the defendant **receives** the notice.
- But how does the court know precisely when that is?
- No way to know, best practice is to be consistent.
 - Caselaw indicates presuming 3 days to mail is reasonable.
 - “Mailbox rule” says something mailed on due date is timely if received within 10 days.
 - If you aren’t sure if the appeal was timely or not, send it up to the county court.

21

What happens
when...?

The complaint doesn’t
have any prior offenses
listed, but I **know** they
have priors!

- **Do not** use any outside knowledge to change how you process cases.
- **Do** rely on the charging instrument to dictate how the case is processed.
- Information is “outside knowledge” even if it is contained in your court software system.

22

What happens
when...?

The defendant says they
are a sovereign citizen
and I have no power or
authority over them?

- **Do not** allow yourself to get emotionally frustrated or caught up in the defendant's arguments.
- **Do** follow all applicable procedures and ensure due process for the defendant.
- **Do** go to tjctc.org, go into the webinar archive, and watch our webinar on sovereign citizens.

23

What happens
when...?

The defendant wants to
change their plea?

- **Do** allow the defendant to withdraw a plea of not guilty and enter a plea of guilty or nolo.
- **Do not** allow a defendant to withdraw a guilty/nolo plea and enter a not guilty plea **unless** the guilty plea was **not** given freely, intelligently, and voluntarily.

24

What happens
when...?

The defendant wants to
enter a plea by phone?

- **Do not** accept pleas by telephone. How do you know who you are talking to? Many courts have taken pleas by phone, rendered judgment, and then the defendant came back months later to dispute the conviction. Getting it in writing every time is by far the best practice.

25

What happens
when...?

A defendant who hasn't
been convicted mails in a
partial payment?

26

Mail in a partial payment?

- Remember earlier that payment in full constitutes a plea of nolo? But a partial payment **does not**.
- Also remember that a defendant doesn't owe any money until they are convicted – pleading guilty, pleading nolo or proven guilty at trial
- ***So, a defendant who hasn't pled guilty/nolo or gone to trial cannot mail in a partial payment without including a plea of guilty or nolo.***

27

So, what if they do it?

- Best practice is to contact the defendant and let them know that to start them on a payment plan and take this first payment, you will need a written plea of guilty or nolo.
- If the payment covers the court costs entirely, as well as any minimum fine, the judge can also accept the payment as a payment in full, thus making it a plea of nolo. Remember that a written judgment must always be created.

28

What happens
when...?

Someone wants to come pay
the ticket for their
spouse/child/parent/employee
?

29

Paying someone else's fine?

- As we just discussed, for someone to owe a fine, they first need to be convicted.
- Accepting "payment in full" from someone other than the defendant is allowing them to enter a nolo plea for the defendant.
 - This results in a criminal conviction for the defendant.
 - Would you want someone who isn't your attorney entering a plea for you in a criminal case??

30

What about with kids?

- This applies even for children who are underage. If you have a child in your court, the parent may not enter the plea for them. The child must enter a plea for themselves.
- If and when the defendant is **convicted**, anyone can pay the fine and costs for them.
 - *So, we need a plea of guilty or nolo from the defendant **before or with** the other person's payment.*

31

What happens
when...?

The defendant doesn't
appear for their jury trial?

32

Bond forfeiture/FTA charges/Omni

- If the defendant doesn't appear for trial **and** an appearance bond was posted, the court can begin proceedings for them to **forfeit** the bond amount.
 - Information on bond forfeiture is found in Ch. 22 of the CCP and Ch. 3 of the Criminal Deskbook
- Charges of **Failure to Appear (FTA)** under Sec. 38.10 of the Penal Code, as described above, can also be filed against the defendant if they had posted an appearance bond promising to appear at trial.
- The defendant could also be reported to Omni and be placed on a driver's license non-renewal status with DPS.

33

Assess Costs of Empaneling the Jury

- If the defendant fails to appear for their jury trial, the costs of **empaneling the jury** may be assessed against them.
 - *Empaneling the jury is the process in which a jury is selected.*
- These costs could include the pay that the jurors receive, as well as the costs of mailing the jury summons, etc.
- The judge can decide to not assess these costs on the defendant if the defendant shows good cause for not appearing.

Code of Criminal Procedure Art. 45.026

34

What happens
when...?

The defendant or a
witness in a criminal trial
doesn't speak English or
is deaf?

- The court **must** provide an interpreter if the defendant or a witness has difficulty with speaking or understanding English or is deaf.

Arts. 38.30, 38.31, CCP

- For information on interpreter qualifications and resources to help you locate interpreters, please see Chapter 6, Sec. B of the Criminal Deskbook.

35

Language Access Resources

- <https://www.txcourts.gov/lap/>
- <https://ncaj.org/tools-for-justice/language-access-project>

36

What happens
when...?

The defendant misses a
payment on their
payment plan?

37

Missed Payment on Payment Plan

- A reminder notice (or courtesy letter) can frequently resolve the issue.
- If that fails, you can send the defendant a notice to appear in court and show cause why they should not have a *capias pro fine* issued against them.
- Remember that if the defendant is indigent, they **must** be offered community service to satisfy the fine and costs before considering a *capias pro fine*.
- Also, the judge should consider a full or partial waiver if the defendant is indigent and struggling with payment plans or community service.

38

What happens
when...?

The defendant doesn't
appear for their "show
cause hearing" when
they haven't paid the
judgment?

- If a defendant fails to satisfy a criminal judgment, the court must send a notice of a show cause hearing to determine if there is good cause for that failure.
- If the defendant doesn't appear, the court can issue a *capias pro fine* to have the person arrested and brought to the court directly.

39

What happens
when...?

Someone in jail for
another offense wants jail
credit on my case?

40

Locked up on Other Charges, Wants Jail Credit in Justice Court

- Many inmates who are incarcerated for serious offenses also have fine-only misdemeanors pending in justice court.
- They often will contact the court seeking jail credit toward their misdemeanor for the jail or prison time for the more serious offense. They are entitled to credit on the offense in your court for any time in jail **for any jail or prison sentence which occurs both:**
 - 1) after the commission of the offense in your court, **and**
 - 2) after Sept. 1, 2021.

Code of Criminal Procedure Art. 45.041

41

What if sentence is pre-Sept. 2021?

- If the sentence was before Sept. 1, 2021, a way that the court can dispose of the case legally would be to first ensure that there is a judgment.
 - This means that if the defendant hasn't pled guilty or nolo, the court must get such a plea in writing and generate a judgment.
- The court could then determine that the defendant is unable to immediately pay, and that community service would be an undue hardship, and then waive the fine and costs entirely under Art. 45.0491.

42

What happens
when...?

The county court wants
to send the appeal back
down to the justice
court?

43

Writ of Procedendo?

- A **writ of procedendo** is a tool used by courts of appeal to send a case back to the trial court to “proceed” on the original judgment. Sometimes, county courts attempt to use this tool to send a case back to a justice court following an appeal.
- **However, this is improper** for appeals from justice court since the justice court judgment is vacated and ceased to exist once the appeal was perfected.

Code of Criminal Procedure Art. 45.043

44

What if the Appeal was Improper?

- An appeal is **perfected**, meaning the case is ready for the county court to take jurisdiction, when the defendant posts a timely appeal bond.
- If the appeal was never perfected, the judgment of the justice court still exists, so the county court **may** send the case back to justice court on the grounds that the appeal was never perfected.
- If an appeal bond is not timely filed, the appellate court does not have jurisdiction over the case and shall **remand**, or send back, the case to the justice court for enforcement of the judgment.

Code of Criminal Procedure Art. 45.0426.

45

Thank you! Questions?

46