

# **No-Show, Now What?:**

**When the Defendant Doesn't Appear**

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Funded by a Grant from the Texas Court of Criminal  
Appeals

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## **Areas to Cover!**

- Courtesy Letters
- Arrest Warrants or Capias
- New Charges
- Reporting Options
- Bond Forfeiture

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## **Remember!**

- Most of these are options (i.e. not mandatory)!
- Think of it as a menu and pick what sounds best or fits the occasion.
- Defendant is not guilty for no plea or nonappearance.

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## Courtesy Letter

- Not required
- No specifics required
- This could be used for the notice requirement for warrants! (See later Slides- don't jump ahead)
- Be basic.

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## Bad Example

### Complaint/Information

The people of the state of Texas vs. Criminal Defendant:

Your appearance was requested because the charge must be answered post haste and the adversarial proceeding must come to fruition because the charges cannot be held in perpetuity due to the statute of limitations.

However, you failed to appear at your first scheduled court proceeding.

Moreover, your attendance is requested in three fortnights at fifteen hundred hours at the corner of Plebs Road and Royal Circle.

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## **Embrace the Basic**

### **Criminal Court Appearance Ticket**

- You must show up to court on this time and date.
- If you fail to appear, these are the consequences.

(Be short; Be simple; Most important items go at the top.)

Ever heard of TLDR?

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## **Courtesy Quiz:**

- True or False: Courtesy letters are required as the first step in dealing with defendants who do not appear.

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## **Arrest Warrant or Capias**

- Basically, these are the same things in Justice Court.
- Justice Court Warrant: go to court, not jail or magistrate
- Note: Capias and Capias Pro Fine are not the same thing!
- Pro Fine is a Writ ONLY after a Judgment is rendered.

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## **Warrant Prerequisites:**

- Sworn Complaint
- Notice of warrant is provided

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## **Warrant Notice Requirement**

- Date and time within 30-day period after notice
- Name and address of court
- Inability to Pay Information
- Jail Credit Notice
- Consequences for Failing Appear

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## **Contents of Warrant**

- it is issued in the name of "The State of Texas";
- it is directed to the proper peace officer, or some other person specifically named in the warrant;
- it includes a command that the body of the accused be taken, and brought before the authority issuing the warrant, at the time and place stated in the warrant;

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## Contents of Warrant 2

- it states the name of the person whose arrest is ordered, if known, or if not known, it describes the person as in the complaint;
- it states that the person is accused of some offense against the laws of this state, naming the offense; and
- it is signed by the justice or judge, naming the office of the justice or judge in the body of the warrant or in connection with the signature of the justice or judge.

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## Warrant Forms

- Training Center has a form for notice and arrest warrant!
- See Handouts!
- <https://www.tjctc.org/tjctc-resources/forms.html>

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# Working with Defendant

- Defendant can request alternative date and time to appear.
- If defendant appears voluntarily to resolve the issue, judge must recall the warrant.

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# Warrant Quiz

- Old lady gets a ticket. No complaint is filed. She received a written letter providing notice stating a warrant will be issued. The notice has all the requirements necessary. Can we issue a warrant? Why or why not?

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## **Warrant Quiz Continued:**

- If defendant shows up at the clerks' office, he has a warrant, and tries to resolve the warrant: what does the court have to do?

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## **New Charges?**

- Court can charge a new criminal offense.
- Violation of Promise to Appear (VPTA), and
- Failure to Appear (FTA).

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## **Violation of Promise to Appear (VPTA) and Failure to Appear (FTA)**

- No Notice Requirement to file these new cases,
- Unless a warrant is issued due to the new charges.

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## **Violation of Promise to Appear (VPTA)**

The elements of the offense of Violation of Promise to Appear are:

- being issued a citation for a Rules of the Road offense,
- signing the citation, and
- then “willfully violating” the promise to appear represented by that signature.

*Transportation Code § 543.009*

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## **Rules of the Road Offense**

- Only found in Subtitle C of Title 7 of the Transportation Code, Chapters 541-600
- If not in these chapters, not a Rules of the Road Offense

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## **Signature Required**

Defendant must have  
signed the citation  
promising to appear!

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### **Someone mailed a citation and never appears?**

- Can they be charged with VTPA?
- No—they never signed!

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### **Failure to Appear Offense (FTA)**

~Failure to Appear is also referred to as Bail Jumping, and has three elements under the Penal Code:

- The defendant must have been in custody;
- The defendant was released from custody on condition that they subsequently appear; and
- The defendant intentionally or knowingly failed to appear as required. Penal Code § 38.10.

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## **FTA Note**

- Be careful distinguishing between description of failing to appear and the offense of failing to appear.

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## **What counts as “in custody”?**

- When defendant was detained by a peace officer
- Even when given a citation, rather than jailed.

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## FTA Requirements

Must have secured release by:

- Posting bail (can be personal appearance bond)
- Signing a promise to appear to secure their release from custody

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## VPTA and FTA Best Practices

- Have law enforcement or prosecutor file the complaint!
  - ❖ even though clerks can file complaint too:
  - ❖ If Clerk does, judge should recuse or exchange benches on the matter.
- Must avoid the appearance of impropriety.

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## **VPTA vs. FTA**

What if they both fit?

- Must use VPTA because it is more specific.

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## **New Charge Rules**

- Generally, a plea counts as an “appearance”.
- New charges are not available for pretrial hearings.

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## **Defendant has Two Cases Set at the Same Time!**

- Multiple Counts of VPTA or FTA?
- NO! Remember Ashely Judd and Tommy Lee Jones

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## **Double Jeopardy**

One charge per one non-appearance

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## **Yes or No—Quiz**

- Defendant charged via complaint only (i.e. no citation) and never appears?

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## **Yes or No Quiz 2**

- Defendant does not appear for pre-trial hearing?

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## **Yes or No Quiz 3**

- Defendant missed payment plan payment?

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## **Yes or No Quiz 4**

- Defendant is on Deferred Disposition or a Driving Safety Course and does not appear for the Show Cause Hearing?

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# Reporting Options

- Omni
- Pretrial Collections
- Scofflaw Program
- Non-Resident Violators Compact (NRVC)
- Driver's License Offences

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## Report to Omni

Organization that stops defendants from:

- Renewing their driver's license

Until they:

- Resolve the court issue
- Pay \$10 fee (can be waived)

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## **OMNI Requirement**

- Must be based on failure to appear pursuant to a citation or complaint
- Or if fail to satisfy a judgment (different class)

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## **Sworn Complaint Required?**

**No!**

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**Cannot  
Report to  
Omni if:**

- They don't have a current driver's license.
- Failed to appear at a show cause hearing on deferred disposition or driving safety course.

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**Get Her Out of  
Here (OMNI)  
with no Fee:**

- Acquitted
- Case Dismissed with Prejudice by Prosecutor due to lack of evidence.
- Reported case in error
- Case records no longer exist

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## **Get Defendant Out of Here (Omni) with Fee:**

- Pay \$10 fee or get it waived
- Appeal Perfected
- Dismissal of Case
- Plea of Not Guilty and Posting of Appearance Bond
- Payment or Discharge of the Fine and Cost of Outstanding Judgment
- Other arrangements with court have been made

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## **When Omni Fee is Waived:**

- \$10 fee must be waived if defendant is found indigent.
- Indigence is:
  - Full time student as required by Educational Code;
  - Income is or below 125% of Federal Poverty Guideline; or
  - Receives help from certain governmental assistance programs.

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## **Pretrial Collections**

- Court can contract with entity to collect money
- Broader than everything we talked about up to this point
- No judgment in the case
- Any situation where defendant was lawfully directed to appear
- Case is 60 Days past due

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## **Collection Fee**

- Collection entity may add 30% fee to all amounts collected on cases
- Only money actually collected

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## **Fee Scenario--**

What if?

- Defendant did not appear,
- Case referred to collections,
- Defendant was later found not guilty,  
and
- Case was dismissed?

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## **Fee Answer**

No, collection agency would not be able to collect any  
money for the case.

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## **Communication is Key**

- Defendant does not owe money so cannot say money is due (not due without judgment).
- Cannot say failure to pay will result in warrant.
- Inform them that payment will result in criminal conviction.
- Inform them that they have a right to plead not guilty and have trial.
- Tell them they have alternative ways to satisfy fines and costs

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## **Scofflaw Program**

- Can report to DPS if failed to appear or failed to satisfy judgment
- If reported, defendant cannot renew vehicle registration
- Broad definition of failure to appear, like collections

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## **Scofflaw Program Rules:**

- Referral expires after 2 years; and
- Cannot be referred again on new failures to appear or new failures to satisfy judgments unless the original one has been resolved

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## **How do they get Scofflaw Removal?**

- Resolve issue; and
- Pay \$20 or get it waived.

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## **Scofflaw Fee Waived:**

- Unable to pay; or
- There is good cause not to impose fee.

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## **Non-Resident Violators Compact (NRVC)**

- 43 states Agreed
- Out-of-State Defendant gets ticket and
- Fails to appear or resolve issue
- Report it to DPS!

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# DPS

- They report it to home jurisdiction
- That jurisdiction suspends defendant's license until they complied with citation terms.
- Texas fee is \$100

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## Disagreeable States:

Not part of agreement

- Alaska
- California
- Michigan
- Montana
- Oregon
- Wisconsin
- Virginia

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## **NRVC Restrictions**

- Only applies to “traffic violations”, similar to “Rules of the Road”
- Except traffic violations is not defined

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## **Not “Traffic Violations”**

- Equipment violations
- Inspection violations
- Parking or standing violations
- Size or weight violations
- Hazardous materials violation
- Motor carrier violations
- Lease law violations
- Registration violations

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## **NRVC Time Limit**

- Failing to appear must be reported within 6 months from citation to DPS

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## **Driver's License Offenses**

Report when person is charged and final disposition to DPS

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## **What offenses are Driver's Licenses Offenses?**

- No Driver's License
- Expired
- Violation of License restriction
- Violation of Occupational License Requirements
- Fake License
- Driving While License is Invalid

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## **Reporting Pop Quiz:**

- True or False: When you report a defendant for pretrial collections, the court and the collection agency must provide notice of the amount that is owed.

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## Reporting Pop Quiz 2:

When is it okay to report a defendant to OMNI?

- A.) Failed to appear at a show cause hearing, deferred disposition, or driving safety course.
- B.) They don't have a current driver's license.
- C.) There was no sworn complaint filed.

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## Bond Forfeiture

- Defendant loses money put up for bond.
- This is not a conviction.
- Does not pay court costs and fees (except Deferred).

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## **The Judgment Nisi**

- This is the judgment in the amount of the Bond
- Must wait for defendant a reasonable time (longer than five minutes) to be valid.
- Not a Final Judgment yet.

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## **Nisi Contents**

- Amount owed by defendant (principal on a surety bond)
- Amount owed by sureties
- State it will be final unless good cause is shown for nonappearance.

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## **Citation (like a civil action)**

- Includes a copy of bond and Judgment Nisi
- Notice to show good cause why judgment should not be final
- Send to Sureties
- Must send to Defendant if they posted cash bond or surety

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## **Nisi to Final**

- Placed on show cause docket
- State vs. Principal and Sureties
- Issued can be settled between State and parties
- If no settlement, hold hearing

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## **Nisi Rules –No Liability if:**

- Invalid Bond
- Defendant died before forfeiture
- Defendant sick or other “uncontrollable circumstance”
- Incarceration

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## **Otherwise, Nisi:**

- Becomes final judgment
- Just like other civil judgments
- If Bond Forfeiture is ordered, *capias* should be issued for the defendant’s re-arrest.
  - Court can require a Cash Bond set by the court
  - Defendant and Sureties remain bound by original bond if forfeiture set aside.

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## **Bond Quiz:**

- True or False: Cash bonds are always required for tickets involving Rule of the Road offenses.

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## **TJCTC Other Resources**

- Criminal Deskbook—Pages 15-33
- Flowcharts on website
- Online Module

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# Questions?

Thank you!

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