

Introduction To Civil Process

**CB “Buck” Stevens
Constable**

Brazoria County Precinct 3

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Civil
Vs.
Criminal

“It’s a civil matter.
Let the Constable
handle it.”

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Topics

- Civil Law vs Criminal Law
 - What is the difference in the application of the law?
- Civil Judgments vs. Criminal Judgments
 - What’s the difference?
- Certain Writs that require seizure and Attachment
 - Which Civil Writs allow use of reasonable force?
 - What is reasonable force?
- Liability issues
 - Failure to execute/levy/damages
- Officer approach & Officer Safety
 - Civil vs. Criminal
- Integrity & Duty

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Resources

- www.txcourts.gov
 - Texas Rules of Civil Procedure (TRCP)
- www.statutes.capitol.texas.gov
 - All statutes other than the Rules of Civil Procedure
- TJCTC website (www.tjctc.org)
 - Texas Civil Process Field
 - Practical Guide to Writs of Execution (includes chapter on liability)

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How long have you worked at the Constable's Office?

1. 1 year or less
2. 1-5 years
3. 6-10 years
4. 10+ years

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How would you describe the civil process volume in your office, currently?

1. We are back to serving papers like we did prior to the pandemic.
2. We are at approximately 50% of the volume.
3. We are at approximately 25% volume or less.

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1. Civil Law vs. Criminal Law

- **Criminal Law** regulates the conduct of individuals through threats of fines and imprisonment.
- **Civil Law** defines the legal significance of public and private acts and regulates conduct through injunctions and the award of money damages.

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2. Civil Law vs. Criminal Law

- In a **criminal case**, the state brings an action against an individual to punish him for breaking one of their laws.
- In a **civil case**, a person brings a lawsuit seeking some sort of redress for an injury he claims to have suffered. The redress is usually in the form of money or return of property.

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3. Civil Law vs. Criminal Law

- **Criminal Judgments** may result in the guilty party being assessed a fine only or a fine and a period of confinement or community service.
- **Civil Judgments** usually require the party adjudged of a wrongful act to compensate the wronged party in the form of money or the return of, or possession of, property.

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4. Civil Law vs. Criminal Law

- **Civil Judgments** usually require the party adjudged of a wrongful act to compensate the wronged party in the form of money, or the return of, or possession of, property.
- In a **civil case**, the peace officer is required to follow the rules and the laws that govern the execution of civil documents.

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COVID-19 Precautions

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What precautions has your office put in place related to COVID-19?

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Writs that
Require
Seizure or Attachment

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1. Writs that Require Seizure or Attachment

What is a writ?

An order or mandatory process in writing issued in the name of the sovereign or of a court or judicial officer commanding the person to whom it is directed to perform or refrain from performing an act specified therein.

Source: Merriam-Webster online dictionary

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2. Writs that Require Seizure or Attachment

- Writ of Execution - Seize property to satisfy a judgment by sale.
- Property Attachment - Seize property and dispose of as directed (sale or return).
- Distress Warrant - Seize business property on a commercial non-payment of rent.
- Writ of Possession - Enter and remove tenant from the property.
- Sequestration - Seize property from subject while case is pending.
- Person or Child Attachment - Directs officer to attach person and deliver as instructed by court.

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Use of Reasonable Force

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Reasonable Force

“The level of power that is necessary used against another person that is appropriate to protect yourself, family members or property.”

Mostly applicable in criminal matters and limited in civil matters.

The Law Dictionary (2022). Retrieved from <https://thelawdictionary.org/reasonable-force/>

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Writs that allow use of reasonable force

- Writ of Possession (TPC 24.0061)
- Writ of Re-Entry (TPC 92.009)
- Writ of Retrieval (TPC 24A.003)
- Writ of Attachment for a Child (TFC Sec. 152.311(e))

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1. Use of Force When Serving Process

- In levying the writ the officer may remove bodily the defendant and his goods and possessions from the property but must use ordinary care to avoid injury.
- Officer may not use excessive force such as kicking in a door or committing assault on the defendant.
- Can't use force to get in, but can use force to get out.

T.R.C.P. 699; Patton v. Slade, 38 S.W. 832, 833 (Tex. Civ. App. 1897, no writ); Mendoza v. Singer Sewing Mach. Co., 84 S.W.2d 715, 716 (Tex. 1935)

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2. Use of Force When Serving Process

“The Officer Executing this Writ may use reasonable force as necessary to enforce this order.”

May not be a valid order!!

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**Officer
Approach**

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Did you work as a police officer, sheriff's deputy, or other criminal law enforcement officer prior to working at the Constable's Office?

1. Yes
2. No

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What we know:

- Not a criminal matter and only the Rules of Civil Procedure apply;
- We have a limited use of force and entry (if any at all);
- Officer safety must be a priority;
- Writs may turn volatile at any moment;
- Contact & Cover principles.

OFFICER APPROACH TIPS

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Liability & Scope of Your Role

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Liability For agency & officer

USC Title 42, Section 1983

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Do you have a phone number to contact an attorney at your county or district attorney's office to ask liability questions?

1. Yes
2. No

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An officer is not liable for damages resulting from the execution of a writ issued by a court of this state if the officer in **good faith** executes the Writ as provided by law and by the TRCP.

CPRC §7.003 (a)

Duties and Liabilities

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- A reasonably prudent officer,
- Under the same or similar circumstances,
- Could have believed that the officer’s conduct was justified base on the information the officer possessed when the conduct occurred.

CPRC §7.003 (c)

Good Faith

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Government employees are entitled to official immunity from a suit arising from performance of their discretionary duties in **good faith**, so long as they are acting **within the scope of their authority**.

Richardson v. Parker, 903 S.W. 2d 801, 804 (Tex. 1994) (applying definition of “good faith” from City of Lancaster v. Chambers, 883 S.W. 2d 650 (Tex. 1994))

Immunity

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a) If a constable fails or refuses to execute and return according to law a process, warrant, or precept that is lawfully directed and delivered to the constable, the constable shall be fined for contempt before the court that issued the process, warrant, or precept on the motion of the person injured by the failure or refusal. This section does not apply to actions brought under or that could have been brought under Chapter 34, Civil Practice and Remedies Code.

b) The fine shall be set at not less than \$10 or more than \$100, with costs. The fine shall be for the benefit of the injured person. The constable must be given 10 days' notice of the motion.


Liability Issues

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- Refusal or Neglect-liable for actual damages and contempt of court (CPRC 7.001)
- Improper Endorsement of Writ (CPRC 34.063)
- Improper Return of Writ (CPRC 34.064)
- Failure to Levy or Sell (CPRC 35.065)
- Improper Sales (CPRC 34.066)
- Failure to Deliver Money Collected (CPRC 34.067)
- Wrongful Levy (CPRC 34.075)
- Failure to execute process - Local Government Code §86.024


Liability Issues- Helpful Citations

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NOTICE: This document contains sensitive data.

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SERVICE INFORMATION SHEET

In order to expedite service, please provide as much information as possible. Please use additional pages for multiple defendants.

Defendant's (the Person Being Served) Information - PLEASE PRINT CLEARLY									
Full Name: _____					Nickname(s): _____				
Phone 1: _____			Phone 2: _____			Other: _____			
Service Address: <input type="checkbox"/> Home <input type="checkbox"/> Work <input type="checkbox"/> Other <input type="checkbox"/> Serve here ONLY									
STREET ADDRESS		STREET NAME		CITY		STATE		ZIP CODE	
Other Address Person may be found: <input type="checkbox"/> Home <input type="checkbox"/> Work <input type="checkbox"/> Other <input type="checkbox"/> Serve here ONLY									
STREET ADDRESS		STREET NAME		CITY		STATE		ZIP CODE	
Color or Other descriptions of the Service Location:									
Vehicle Info: Color: _____ Year: _____ Make: _____ Model: _____ License Plate: _____ State: _____									
Description of Person being served - PLEASE PRINT CLEARLY									
Sex: <input type="checkbox"/> Male <input type="checkbox"/> Female		Hair Color: _____		Eye Color: _____		Eye Weight: _____		Race: <input type="checkbox"/> Hispanic <input type="checkbox"/> Non Hispanic	
Age: _____		Date of Birth: _____		Driver's License #: _____		State: _____		Social Security: _____	
Other Identifying Features: <small>(Glasses, tattoos, scars, facial hair, etc.)</small>									
<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown <small>Other important information about individual or location for service such as known to be visited, other people calls, services, normally or otherwise, IL, etc. to serve, lock on gate, etc.</small>									
Other Occupants at location: <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown									
The best time to serve the Defendant: <input type="checkbox"/> Morning <input type="checkbox"/> Afternoon <input type="checkbox"/> After 5pm OR Between _____ and _____									
How may we contact YOU? (PRINT CLEARLY)									
Your Name: _____			Phone: _____			Your email: _____			
GATE CODE (IF APPLICABLE): _____									
Any other information you would like to add or that deputies should know:									

Constable Service Info Sheet

Revised: 07/12/2022

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Rule 21c. Privacy Protection for Filed Documents.

(a) Sensitive Data Defined.

Sensitive data consists of:

- (1) a driver's license number, passport number, social security number, tax identification number, or similar government-issued personal identification number;
- (2) a bank account number, credit card number, or other financial account number; and
- (3) a birth date, a home address, and the name of any person who was a minor when the underlying suit was filed.

(b) Filing of Documents Containing Sensitive Data Prohibited.

Unless the inclusion of sensitive data is specifically required by a statute, court rule, or administrative regulation, an electronic or paper document, except for wills and documents filed under seal, containing sensitive data may not be filed with a court unless the sensitive data is redacted.

(c) Redaction of Sensitive Data; Retention Requirement.

Sensitive data must be redacted by using the letter "X" in place of each omitted digit or character or by removing the sensitive data in a manner indicating that the data has been redacted. The filing party must retain an unredacted version of the filed document during the pendency of the case and any related appellate proceedings filed within six months of the date the judgment is signed.

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Rule 21c. Privacy Protection for Filed Documents (cont.).

(d) Notice to Clerk.

If a document must contain sensitive data, the filing party must notify the clerk by:

(1) designating the document as containing sensitive data when the document is electronically filed; or

(2) if the document is not electronically filed, by including, on the upper left-hand side of the first page, the phrase: "NOTICE: THIS DOCUMENT CONTAINS SENSITIVEDATA."

(e) Non-Conforming Documents.

The clerk may not refuse to file a document that contains sensitive data in violation of this rule. But the clerk may identify the error to be corrected and state a deadline for the party to resubmit a redacted, substitute document.

(f) Restriction on Remote Access.

Documents that contain sensitive data in violation of this rule must not be posted on the Internet

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Integrity

❖ **Personal**

❖ **Organizational**

❖ **Professional**

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The duty to execute is the foundation of your role.

The reputation of the office of the Constable is riding on your diligence.

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Questions?

Contact Information:

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281-997-9777

bucks@brazoriacountytexas.gov

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