

Citations, Complaints, & When Criminal Defendants Don't Appear

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Resources

Code of Criminal Procedure Arts. 4.11, 4.12, 12.02, 14.06, 27.14, 45.019

Transportation Code 542.401

Penal Code 38.10

Atwater v. Lago Vista

Criminal Deskbook Ch. 3, 8

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What Will We Cover?

- ◆ What is a charging instrument
- ◆ What is required on a charging instrument
- ◆ How does the court receive a charging instrument
- ◆ Required notices to the Defendant
- ◆ What can be done if the Defendant does not appear
- ◆ FTA vs. VPTA
- ◆ Other options the Court has

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Filing of a Charging Instrument

Criminal cases begin with the filing of a document, called a **charging instrument**, which alleges that the defendant committed a specific offense.

There are two types of charging instruments used in justice court:

- Citations (often called tickets)
- Complaints

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Citations

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What is a Citation?

Whenever a peace officer sees a person commit a criminal offense, they may place the person under arrest.

Instead of taking a person to jail to be booked on minor misdemeanor offenses, the officer can give the person a notice to appear before the proper court at a later date.

This notice is called a **citation**, or “ticket.”

- Art. 14.06(b), Code of Criminal Procedure

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Does the Officer Have to Give the Defendant a Citation?

For most offenses, even fine-only misdemeanors, the officer **does** have authority to take the person to jail instead of issuing them a ticket.

- In fact, one Texas case went all the way to the U.S. Supreme Court after someone was taken to jail on a seat belt ticket!
 - *Atwater v. Lago Vista*

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When a Citation Must be Given

There are only 3 offenses in Texas for which the officer must issue a citation and where the defendant **may not** be taken to jail if they sign the citation promising to appear in court:

- Speeding, Open Container, and “Texting While Driving”

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What Does the Citation Have to Contain?

The citation tells the person which court, date and time to appear and answer to the charge.

A duplicate copy of the citation is filed with the court (CCP.27.14(d))

Rules of the Road offense the defendant must be given at least 10 days from the date of the offense to appear and enter a plea to the offense (TRC 543.006)

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What Does a Citation Look Like?

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<p>What happens when...?</p>	<p>The defendant comes in to enter a plea, but the citation hasn't been filed yet?</p> <ul style="list-style-type: none"> <input type="checkbox"/> Do not enter the case in your system based on their citation! <input type="checkbox"/> Do take the defendant's information and call them or send them a summons once the citation has been filed. <input type="checkbox"/> May sit down and have a general discussion with others (L.E., prosecutors) about getting cases timely filed
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<p>Why not just take the citation?</p> <p>After all, the defendant is here and wants to dispose of it now. If we send them away, they may never come back. Isn't it a win-win to just scan their ticket into our system and take the plea and payment?</p> <p>No. In many cases the ticket was actually sent to another court. So, the defendant assumes it has been taken care of since they paid you, and then gets arrested when they ignore notices from the other court of the pending case.</p>
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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.

You don't have **jurisdiction**, and therefore you have no **authority to act**.

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So What Should We Do If That Happens?

If you receive a mailed payment for a case that hasn't been filed, you should immediately notify the prosecutor.

If the prosecutor can quickly get the case filed, you can apply the payment to the case, and enter the plea of nolo.

If they cannot get it filed quickly, you should mail the payment back.

It is an auditing nightmare to hold money in your court without a case that it goes to.

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What happens when...?

An electronic copy of a citation is filed?

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Electronic Citations

If a defendant is released on a citation, a duplicate copy of the citation must be filed with the court, and that duplicate copy serves as a complaint to which the defendant may enter a plea. - *Code of Criminal Procedure Art. 27.14(b)*

That duplicate copy **can** be an electronic copy.

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Electronic Citations vs. “Data Dumps”

- However, often what the court receives electronically is **not** a duplicate copy of the citation, but instead is just data that is uploaded from the citation.
- These electronic “data dumps” from the Automatic Ticket Downloader are not duplicate copies, and so are **not** charging instruments that give your court **jurisdiction** over a case.

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What happens when...?

The officer mailed the citation to the defendant?

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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.

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Required Notices

- There is no requirement that the court give the defendant notice that the citation has been filed.
- If a sworn complaint is filed with the court (no citation issued), the court should notify the defendant that they are facing a criminal charge.

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Complaints

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Discussion Time!

Who can file a sworn complaint?

Who can notarize a sworn complaint?

What are the requirements of a complaint?

CCP. 45.019

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What is a Complaint?

A **complaint** is a formal charging instrument.

It is sworn to and should be filed by a prosecutor or law enforcement officer.

It must meet the requirements of **Art. 45.019** of the Code of Criminal Procedure, which include that it must identify the defendant, identify when and where the offense occurred, and identify specifically which offense is alleged.

- It must begin with “In the name of and by authority of the State of Texas” and end with “against the peace and dignity of the State.”

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When is a Complaint Filed? Not Guilty or Non-Appearance

If a citation is issued to a defendant, and the defendant either pleads not guilty, or does not appear by the appearance date on the citation, a sworn complaint **must** be filed.

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When is a Complaint Filed? Offense Not “On View”

Additionally, when an offense is charged that was not committed “on view” of a peace officer, a complaint will be filed instead of a ticket to initiate the case.

- Common examples of this include Parent Contributing to Nonattendance, where a school or school district files the complaint, and Theft by Check, where the merchant or the Hot Check Division of a District Attorney’s office frequently will file a complaint.

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<div style="border: 1px solid black; padding: 10px; margin: 0 auto; width: 80%;"> <h2 style="margin: 0;">What Does a Complaint Look Like?</h2> </div>	<p style="text-align: center; font-size: small;">SPEEDING (Sec. 545.351, T.C.)</p> <p style="text-align: center; margin: 10px 0;">CAUSE NUMBER: _____</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 40%;">STATE OF TEXAS</td> <td style="width: 10%; text-align: center;">§</td> <td style="width: 50%; text-align: right;">IN THE JUSTICE COURT</td> </tr> <tr> <td style="text-align: center;">VS.</td> <td style="text-align: center;">§</td> <td></td> </tr> <tr> <td>_____</td> <td style="text-align: center;">§</td> <td style="text-align: right;">_____ COUNTY, TEXAS</td> </tr> </table> <p style="margin: 10px 0 0 0;">In the name and by the authority of the State of Texas:</p> <p style="font-size: x-small; margin: 0 0 0 0;">I, the undersigned affiant, do solemnly swear that I have good reason to believe and do believe that _____, hereinafter called Defendant, on or about the ____ day of _____, 20__, and before the making and filing of this complaint, in the territorial limits of the City of _____, and the State of Texas, the Defendant did then and there drive and operate a motor vehicle upon a public street, to wit: _____, therein situated, at a speed which was greater than was reasonable and prudent under the circumstances then existing, (to wit: _____) (at a speed of ____ miles per hour, at which time and place the lawful maximum prima facie reasonable and prudent speed indicated by an official sign then and there lawfully posted was ____ miles per hour.)</p> <p style="margin: 10px 0 0 0;">Against the peace and dignity of the State.</p> <p style="text-align: right; margin: 0 0 0 0;">Affiant: _____</p> <p style="margin: 10px 0 0 0;">Sworn and subscribed before me by _____, a credible person, this ____ day of _____, 20__.</p> <p style="margin: 10px 0 0 0; font-size: x-small;">(court seal)</p> <p style="text-align: right; margin: 0 0 0 0;">_____ (Judge)(Clerk)(Deputy Clerk), Justice Court</p>	STATE OF TEXAS	§	IN THE JUSTICE COURT	VS.	§		_____	§	_____ COUNTY, TEXAS
STATE OF TEXAS	§	IN THE JUSTICE COURT								
VS.	§									
_____	§	_____ COUNTY, TEXAS								

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How Do I Notify the Defendant of a Complaint?

Although CCP 45.014 authorizes the judge to issue an arrest warrant once a complaint based on a probable cause is filed, the best practice is to issue a summons to the defendant giving them notice of the charge and a date by which they must appear.

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Required Notice – Complaint Before Trial

A Defendant is entitled to notice of a complaint against the defendant not later than the day before the date of any proceeding in the prosecution of the defendant under the complaint.

The defendant may waive the right to notice (CCP 45.018(b))

If the defendant does not object to a defect, error, or irregularity of form or substance in a complaint before the day of trial, the defendant waives and forfeits the right to object to the defect, error, or irregularity.

CCP 45.019(f)

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Statute of Limitations

Misdemeanor offenses must have a complaint filed within two years, or the offense is barred by the statute of limitations. CCP 12.02, 12.04.

If a case is outside the statute of limitations, the prosecutor should file a motion to dismiss the case, and it is unethical for them to continue to attempt to prosecute it.

It is not up to the Defendant to have to raise the issue.

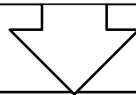
Court is **not** authorized to dismiss a case due to the expiration of the statute of limitations without a motion from the prosecutor.

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Statute of Limitations – “Tolling”

A sworn **complaint** stops the statute of limitations from running out.

The legal term for this is that the complaint **tolls** the statute of limitations.



However, a **citation (ticket)** does not! Many cases ended up without having complaints filed, and the statute of limitations ran out, costing counties millions of dollars in revenue.

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Statute of Limitations – Required Complaint

This caused a change in the law where now a complaint must be filed if:

- The defendant pleads not guilty, or
- Doesn't appear by their appearance date!

Code of Criminal Procedure Arts. 12.05, 27.14(d)

This complaint should be filed by police or prosecutors. Since filing the complaint tolls the statute of limitations, it directly benefits the state. The court **should not** take actions designed to benefit one side over the other.

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Citation and Complaint Combined?

- DPS (and some other agencies) had begun including a full formal complaint as part of the citation. DPS has stopped doing so, requiring counties to revisit plans to ensure that complaints are timely filed as required by law.

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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.
- **Do** 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.

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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.
- The information is “outside knowledge” even if it is contained in your court software system.

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When the
Defendant
Doesn't
Appear

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What happens when...?

The defendant doesn't
appear by their
appearance date?

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<h2>Tools in the Toolbox</h2>	<p>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.</p>
	<p>For a full and detailed explanation of these options, see Chapter 3 of the Criminal Procedure Deskbook, including the flowchart.</p>
	<p>For most courts, the first step is a courtesy letter, which reminds the defendant of their obligation and sets a new "appearance date."</p>

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Courtesy Letters

- One option that the court can utilize is a Courtesy Letter mailed to the Defendant's last known address and/or the address on the citation.
- This is just a reminder notice to the defendant that they have a pending case that needs to be addressed. There are no specific requirements to send a courtesy letter, and no specific contents are required.

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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.

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New Offenses and Plea Bargaining

Often, VPTA or FTA charges are used as a “bargaining chip” in plea bargaining, with the offer being “plead guilty to the original offense and we will dismiss the VPTA/FTA” (or vice versa).

Plea bargaining is the role of the prosecutor.

The Judge and Clerk must **never** participate in any plea bargaining or negotiating with the defendant.

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FTA vs. VPTA

FTA	VPTA
<ul style="list-style-type: none"> • 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) 	<ul style="list-style-type: none"> • 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

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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

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FTA – Common Mistakes

Failure to appear (FTA) is an often misunderstood offense.

To commit the crime of Failure to Appear, the defendant must have secured their release on the condition that they subsequently appear. There are two ways that a defendant can do this:

- Posting bail
- Signing a promise to appear

If a defendant hasn't done either, new charges of Failure to Appear would **not** be applicable.

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FTA – Discussion Time!

Which of the following situations would be appropriate for FTA?

- Person never appears after a complaint was filed for Parent Contributing
- Person refuses to show up for a show cause hearing after a deferred disposition
- Person signed a citation for disorderly conduct and did not appear
- Person signed a citation for no insurance and did not appear
- Person signed a citation for unsafe lane change and did not appear
- Person does not appear at a show cause hearing to determine why they have failed to make payments on a payment plan

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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.

- A **capias** is an order, very similar to a warrant, ordering a law enforcement officer to bring the defendant directly to the court. This is different than a **capias pro fine**, which is the order to bring a defendant who **has been convicted but not satisfied the judgment**, to court to determine how the judgment may be satisfied.

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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)*

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Notice Prior to Issuance of Warrant

CAUSE NO. 061257

THE STATE OF TEXAS	§ <u> </u> IN THE JUSTICE COURT
v.	§ PRECINCT NO. TWO
<u>DEBBIE DEFENDANT</u>	§ POLK COUNTY, TEXAS

NOTICE OF FAILURE TO APPEAR PRIOR TO ISSUANCE OF WARRANT

RE: THE STATE OF TEXAS vs. DEBBIE DEFENDANT
 ALLEGED CHARGE: FAIL TO MAINTAIN FINANCIAL RESPONSIBILITY
 AMOUNT DUE: \$ 283.00

***** PLEASE CONTACT THE COURT TO MAKE ARRANGEMENTS 936-646-3674 *****

The Court records indicate that the Defendant in the above-styled case failed to appear as required on 09/01/2023. The Defendant is hereby ORDERED to appear in front of the Honorable Judge SARAH RASBERRY in the above-named court, located at 14115 US HWY 190 WEST ONALASKA, TEXAS 77360, On or before SEPTEMBER 21, 2024 to answer to the allegations in this case, or by filing with the Court this form containing a plea and your current information for the Court to contact you. Failure to contact/comply with the court, with the above information, can result in suspension of your driver's license, warrant being issued, inability to register your vehicle(s) and/or being reported to a collection agency.

I HEREBY ENTER A PLEA OF:

 I wish to plea GUILTY or NOLQ CONTENDRE and waive my right to trial.

 I wish to plea NOT GUILTY and request a trial by (circle one) JUDGE / JURY

NOTICE OF ALTERNATIVES TO PAYMENT OF FINE AND COSTS: A defendant who is convicted of a criminal offense punishable by fine only is entitled to alternative methods of satisfying the judgment against them if they are unable to pay the fine or costs, in whole or in part, including:

- 1) A payment plan, allowing the defendant to make payments toward the fine and costs in designated intervals. Note that if any amount is paid more than 30 days after the judgment assessing the fine or costs then a \$15 time payment fee must be assessed.
- 2) Disposition of the amount assessed by performing community service. There are many options that meet the requirements of the law for community service, see Art. 45.049 of the Code of Criminal Procedure for full details. A defendant is entitled to a minimum of \$150 credit for every 8 hours of community service performed.
- 3) If performing community service imposes an undue hardship, a defendant who is indigent or who lacks sufficient resources to pay is entitled to a waiver of the fine and costs, in whole or in part.
- 4) You may be entitled to jail credit if you were confined in jail or prison after the commission of the offense for which this notice has been sent.

ISSUED AND SIGNED this 09-11-2023

SHERILYN EFFERSON, CHIEF COURT CLERK
 JILL CHAPMAN, COURT CLERK

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Referral to Collections/Omni

You can also refer defendants who do not appear to enter a plea in a case to collections and/or to 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.

See Chapter 3 of the Criminal Deskbook for specifics.

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What happens when...?

The defendant doesn't
appear for their jury trial?

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Bond Forfeiture

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. For example, if the court set a \$300 appearance bond, and the defendant no-shows, a bond forfeiture would result in a judgment against the defendant for \$300.

Information on bond forfeiture is found in Ch. 22 of the CCP and Ch. 3 of the Criminal Deskbook

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FTA charges

Charges of **Failure to Appear (FTA)** under Sec. 38.10 of the Penal Code, as described above, can also be filed against the defendant **only if** they had posted an appearance bond promising to appear at trial.

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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

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Report to Omni

As described earlier, the defendant could also be reported to Omni and be placed on a driver's license non-renewal status with DPS.

Ch. 706, Transportation Code

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Questions?

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