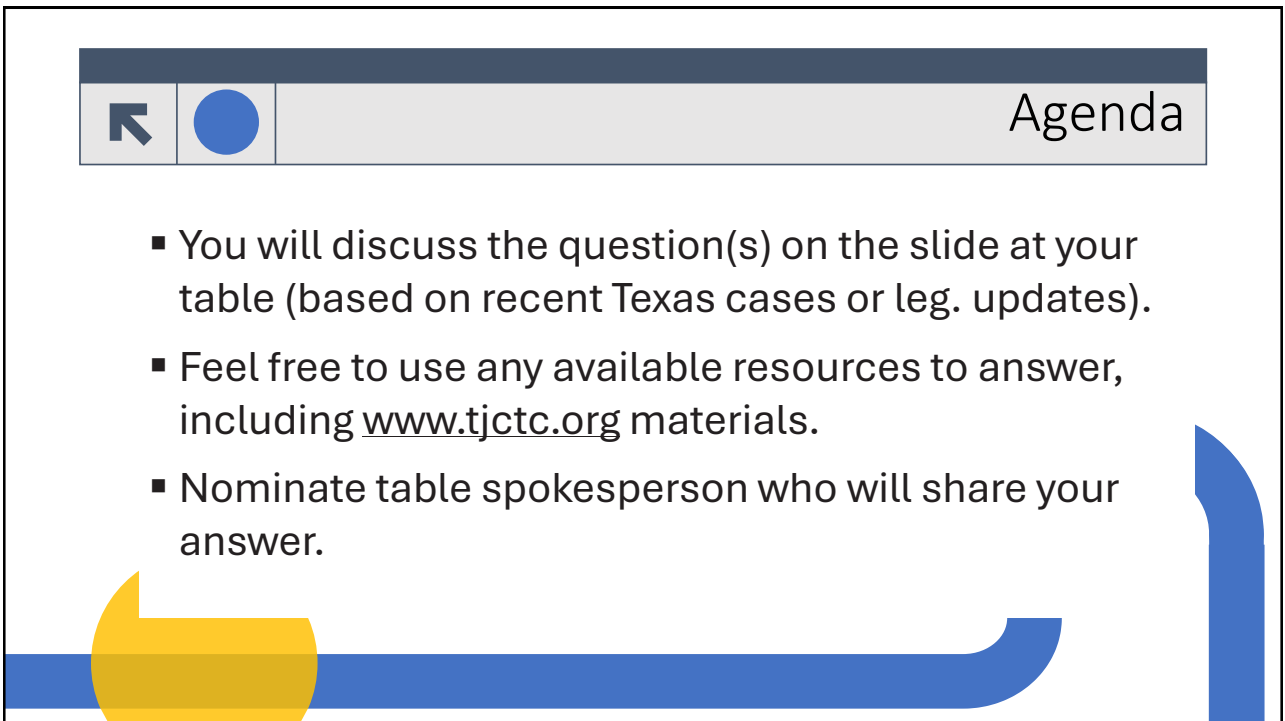
The slide features a dark blue header bar with a white navigation icon (a square with a black arrow pointing up and left) on the left. The main title "Facilitated Scenarios" is centered in a large, dark blue font. To the right, there is a large yellow circle and orange curved lines. Below the title, two white boxes with black text identify the facilitators: "Hon. Laura Weiser, Texas Center for the Judiciary" and "John Lackey, Texas Justice Court Training Center". The slide is decorated with horizontal blue and white stripes and a large blue arrow pointing up and left on the left side.

# Facilitated Scenarios

Hon. Laura Weiser  
Texas Center for the Judiciary

John Lackey  
Texas Justice Court Training Center

1

The slide has a dark blue header bar with a white navigation icon (a square with a black arrow pointing up and left) and a blue circle on the left. The word "Agenda" is written in a large, dark blue font on the right side of the header. The main content consists of three bullet points in a dark blue font. The slide is decorated with a large yellow circle and blue curved lines at the bottom and right side.

## Agenda

- You will discuss the question(s) on the slide at your table (based on recent Texas cases or leg. updates).
- Feel free to use any available resources to answer, including [www.tjctc.org](http://www.tjctc.org) materials.
- Nominate table spokesperson who will share your answer.

2

## Scenario 1

Officer dispatched to investigate single vehicle accident at 8:47. Officer followed skid marks to a nearby home, where he discovered a damaged car. Officer spoke to resident at 9:12 pm at his home, who admitted to driving and having a glass of wine at home. Officer noticed the odor of alcohol on his breath, slurred speech, and bloodshot eyes. Resident consented to field sobriety tests but then withdrew consent after failing the first test in his front yard. Officer then arrested resident and charged him with DWI and failure to meet duty on striking a fixture. When looking at the Texas Code of Criminal Procedure (CCP) Art. 14.03(a)(1) below, was the arrest legal? Can the defendant's own yard be a suspicious place? Was there a breach of the peace? Explain.

“Any peace officer may arrest, without warrant:

(1) persons found in suspicious places and under circumstances which reasonably show that such persons have been guilty of some felony, violation of Title 9, Chapter 42, Penal Code (disorderly conduct), breach of the peace, or offense under Section 49.02 Penal Code (Pub. Intox.) , or threaten, or are about to commit some offense against the laws;”

3

## Scenario 2



Defendant is arrested for a subsequent offense of Boating While Intoxicated with Child Passenger. At magistration, are you required to impose ignition interlock device (IID) as a bond condition? If so, under what circumstances would you not impose an IID for this offense? What other bond conditions would you order?

Note: this issue might also be presented to you after information or indictment in a motion to modify bond conditions.

4

## Scenario 3

Defendant was arrested for DWI in 2023. He is charged with DWI third or more, which is a third-degree felony. Defendant was previously arrested for misdemeanor DWI in 1979 and 1996. He pleaded guilty to the 1979 charge and was awarded probation. The probation was never revoked, and the defendant submitted evidence that established that the 1979 charge was dismissed when he completed the probation. He does not contest his conviction of the 1996 DWI. He is arguing that the 1979 charge cannot be used as a previous DWI because it failed to result in a conviction. The State is arguing that it can because the plea in that case establishes that he previously committed DWI. Can the 1979 charge be used to enhance the charge to DWI third or more? Why or why not?

5

## Scenario 4

The officer stopped the defendant for failure to maintain a single lane, §545.060(a) of the Texas Transportation Code. After further investigation, the officer determined the defendant was driving while intoxicated. The dashcam video showed that while the defendant had failed to stay in his lane of travel multiple times, there was never any traffic around the vehicle nor anything else unsafe about his driving. At the time of the stop, the Court or Criminal Appeals had not yet decided *State v. Hardin*, 664 S.W.3d 867 (Tex. Crim. App. 2022), and the lower appellate courts were divided over whether §545.060(a) set out one offense with two elements or two separate offenses.

Does an officer's mistake of law nonetheless give rise to reasonable suspicion to stop a driver when the status of the law is unclear?

6

## Scenario 5

Defendant, charged with unlawful possession of a firearm by felon, moved to suppress evidence seized from warrantless search. Two officers were sitting in parked vehicles talking to each other through open windows. A truck drove by them and the officers detected a strong odor of marijuana. The smell dissipated as the truck drove away. Officers conducted stop and searched the vehicle finding the firearm. Officers have training and experience regarding detecting marijuana but acknowledge in order to differentiate the between hemp and marijuana, they would need a lab test. Defendant files motion to suppress and argues that officers lacked probable cause to conduct the stop. He reasons that hemp is now legal in Texas and smells the same as marijuana. Thus, the officers can no longer rely on their training and experiences of marijuana detection because they cannot determine if it is legal hemp or marijuana. How would you rule on the motion and why?

7

## Scenario 6

Defendant was arrested for Misdemeanor DWI. The night the defendant was arrested she was out at a club with her brother and his wife. Defendant admitted to drinking beyond the ability to safely drive. She called a sober friend to come drive her group home. However, when the friend arrived, the defendant's brother was not ready to leave, so the sober friend left. Later, when the brother was ready to leave, he said he was okay to drive home. Defendant was sitting in the front seat next to her brother, and his wife was in the back seat. During the drive home, defendant's brother got sick, started throwing up, and stopped the vehicle abruptly in the middle of a busy road. Although she did not feel safe to drive because she believed she was still intoxicated, she felt like she must get the car out of the middle of the road and drive to the closest parking lot. Yet, defendant could not get the car to drive because she did not realize the parking brake was on. Officers saw the stopped car, which had smoke coming from the hood. Officers saw defendant in the driver's seat with two passengers. Officers never saw the car moving, but it was running when they approached. Defendant is timely requesting a necessity instruction for the jury instructions. Should the court grant the request?

8

## Scenario 7

The court holds a hearing on an application for an occupational driver's license (ODL) and sends a notice to the prosecutor. Applicant's license was suspended due to having over a .08 blood alcohol content during a DWI stop. It is the first time they have been arrested for a DWI and there is no bond condition or other order currently in place restricting them to only drive vehicles equipped with an IID. The prosecutor attends and provides evidence that the defendant has had numerous traffic offenses and states that they do not support the granting of the ODL. The applicant is otherwise eligible and has demonstrated an essential need to drive and evidence of financial responsibility.

Should the court grant or deny the application? What if the prosecutor did not attend, but the court had the same information from the driving record? What must and what may be included in the ODL order if granted?

9

## Scenario 8

During the investigation of a one car accident, the Defendant failed all the SFSTs and gave conflicting answers about medication she ingested before the accident. Three separate prescription medications were found in her purse. Two of those prescriptions included warnings to take medication at bedtime. At trial, DRE Officer Henry was allowed to testify as an expert in determining whether the defendant was intoxicated by a substance other than alcohol. Henry testified that he had been certified as a DRE for 8 months and that he was trained to use given data to determine whether a person was under the influence of drugs and explained in detail the methodology used by DREs. The defense objected to the admission of his expert testimony. How would you rule on that objection?

10

## Scenario 9

Defendant was involved in a traffic stop. He refused to consent to the officer searching his vehicle. The officer prolonged the traffic stop to allow a canine sniff because the defendant refused to consent. The canine sniff indicated the presence of drugs, and the defendant was found with 20 grams of meth. At trial, the defendant filed a motion to suppress arguing that the police officer lacked reasonable suspicion to prolong the traffic stop to conduct the canine sniff of his vehicle.

How would you rule on his motion and why?

11



## Scenario 10

At 1:17 a.m., officer was turning left at a light. While stopped, he saw black Sedan driving vehicle without the headlights and taillights being illuminated in violation of TX Transp. Code Section 547.302. Officer turned left when his light turned green and followed the Sedan. Officer says he was trying to catch up the Sedan and get directly behind the vehicle before pulling him over. Before the officer initiated the stop, the driver turned on the vehicle's headlights and taillights. At 1:21 a.m., the officer stopped the Sedan. Based on facts found during the traffic stop, defendant is charged with DWI. Defendant filed a motion to suppress arguing that because everyone agrees that his lights were on when the traffic stop was initiated, there was not reasonable suspicion for the stop. Further, the motion argues that the ultimate traffic stop occurred too long after the officer first observed the violation.

How do you rule? Explain.

12