

# CITATIONS AND COMPLAINTS

Presented by

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By the end of the session, judges will be able to:

- Determine whether a citation meets the requirements of Texas law; and
- Assess the sufficiency of a formal complaint filed with the court.

# COMPLAINTS

## CITATION – INTERIM CHARGING INSTRUMENT

- Article 27.14(d), TCCP

“(d) If written notice of an offense for which maximum possible punishment is by fine only...has been prepared, delivered, and filed with the court and a legible duplicate copy has been given to the defendant, the written notice to appear serves as a complaint to which the defendant may plead ‘guilty,’ ‘not guilty,’ or ‘nolo contendere.’”

- *See State v. Shaw*, 822 S.W.2d 807 (Tex.App.—Austin 1992) – “...the written notice of traffic violation serves as a complaint to which the defendant may enter his plea. A formal complaint must be filed only if the defendant pleads not guilty, thus necessitating a trial...a formal complaint is required to be filed in traffic offenses such as this only if the defendant pleads not guilty. If the defendant pleads guilty or no contest, no formal complaint is required and there is nothing for the defendant to waive. Because appellee pleaded no contest, the requirement that a formal complaint be filed was never triggered and, as a logical consequence, no waiver was necessary.”

## PURPOSE OF FORMAL, SWORN COMPLAINT

- Article 45.018(a), TCCP

“For purposes of this chapter, a complaint is a sworn allegation charging the accused with the commission of an offense.”

- A complaint notifies a defendant of the offense charged so that he or she may prepare defense. *Kindley v. State*, 879 S.W.2d 261 (Tex.App.—Austin 1982, pet. ref’d)

## **WHEN MUST COMPLAINT BE FILED?**

- When “not guilty” plea entered OR defendant fails to appear – Article 27.14(d), TCCP

“If the defendant pleads ‘not guilty’ to the offense or fails to appear based on the written notice, a complaint shall be filed that conforms to the requirements of Chapter 45 of this code, and that complaint serves as an original complaint.”

- The “or fails to appear” language was added by amendment in 2009.

## **FILING OF FORMAL COMPLAINT MAY BE WAIVED**

- Article 27.14(d), TCCP

“A defendant may waive the filing of a sworn complaint and elect that the prosecution proceed on the written notice of the charged offense if the defendant agrees in writing with the prosecution, signs the agreement, and files it with the court.”

## **NOTICE TO DEFENDANT OF CONTENT OF COMPLAINT**

- Article 45.018(b), TCCP

“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 granted by this subsection.”

## **STATUTE OF LIMITATIONS**

- Article 12.02(b), TCCP

“A complaint or information for any Class C misdemeanor may be presented within 2 years from the date of the commission of the offense, and not afterward.”

- See The Recorder (Vol. 21, No.4), "Statute of Limitations" by Cathy Reidel

"The Court of Criminal Appeals has made it clear in the *Phillips* decision that prosecution is barred in cases without a sworn complaint filed within two years of the charged offense."

## **REQUIREMENTS OF COMPLAINT- ARTICLE 45.019, TCCP**

- **STATUTORY BEGINNING AND ENDING**

"In the name and by the authority of the State of Texas...Against the peace and dignity of the State."

- **ELEMENTS OF OFFENSE**

Each element necessary to constitute and offense must be alleged in the complaint. Villareal v. State, 729 S.W.2d 348 (Tex.App.—El Paso 1987, no pet.). The complaint must negate any exception in the statute that the State is required to negate. Bird v. State, 927 S.W.2d 136 (Tex.App.—Austin 1982, pet. ref'd).

- **LOCATION OF OFFENSE**

See State v. Lang, 916 S.W.2d 63 (Tex.App.—Houston [1<sup>st</sup> Dist.] 1996, no pet.) – complaint for speeding was not substantially defective for failure to allege the offense occurred within the justice precinct in which case was tried.

See Bedwell v. State, 155 S.W. 2d 930 (Tex. 1940) – certain types of charges can occur anywhere within a particular jurisdiction, and, therefore, it is not necessary that the complaint allege a specific location in those instances.

All complaints filed in municipal court must allege that the violation occurred within the territorial limits of the municipality. Article 45.019(c), TCCP

- **CULPABLE MENTAL STATE**

A complaint must allege the applicable culpable mental state, if one is required for the offense. The statutory culpable mental states are, from highest to lowest, (1) intentional, (2) knowing, (3) reckless, and (4) criminal negligence. Section 6.02, Texas Penal Code. If the definition of the offense does not provide a required culpable mental state one is still required unless the definition clearly indicates one is not required. If a statute or ordinance does not specifically provide the required culpable mental state, and the offense definition does not clearly dispose of the requirement, then any one of the first three states, from highest to lowest, will suffice.

Most traffic-related offenses do not require a culpable mental state. Offenses charged under the Texas Transportation Code do not require pleading a culpable mental state in the complaint. Zulauf v. State, 591 S. W. 2d 869 (Tex.Crim.App. 1979).

“A person commits an offense if the person performs an act prohibited or fails to perform an act required by this subtitle.”  
Article 542.301, TTC

- **NAME OF VICTIM, IF APPLICABLE**

- **MANNER AND MEANS OF OFFENSE**

“Manner” is the way, mode, or method of doing something.  
“Means” is how the end is achieved. If the complaint does not properly allege the manner and means it is defective because the defendant has not been provided notice of how the offense is alleged to have been committed. Haecker v. State, 571 S.W.2d 920 (Tex.Crim.App. 1978).

A charging instrument must be specific enough to inform the accused of the nature of the allegations so that he may prepare a defense. State v. Moff, 154 S.W.3d 599 (Tex.Crim.App. 2004). However, although a complaint alleging a Class C misdemeanor must state facts sufficient to show commission of the offense charged, it need not show the same particularity or specificity as is necessary in an information or indictment. Vallejo v. State, 408 S.W.2d 113 (Tex.Crim.App. 1966)

If the definition of an offense allows or provides for more than one manner or means by which a violation may occur, then fair notice to the defendant requires that the State allege in the charging instrument the particular manner and means it will seek to establish. *Gowin v. State*, S.W.2d 672 (Tex.App.—Tyler 1988, no pet.)

- **DATE OF OFFENSE**

- **SWORN AND SIGNED**

The person swearing to the complaint is the affiant. It may be a person with personal knowledge of the factual content of the complaint, such as the officer who wrote the citation. It may also be a "hearsay affiant," such as a court clerk who has reviewed the report filed with the officer. There is no requirement that the affiant have first-hand knowledge. *Rose v. State*, 799 S.W.2d 381, Tex.App.—Dallas 1990, no pet.). The affiant makes and subscribes/signs an affidavit, which is a sworn statement. This must be done before a qualified person administering an appropriate oath. There is no specific wording prescribed for the oath.

A complaint must be signed in order to be valid. *State v. Bender*, 353 S.W.2d 39 (Tex.Crim.App. 1962). It may be a genuine signature, a rubber stamp, or electronic signature.

The "*jurat*" is the certificate of the person before whom the complaint is being sworn. A complaint is defective if it does not contain a proper *jurat*. If the *jurat* shows that the affidavit was sworn before someone who had no authority to administer the oath, then the complaint is invalid. An undated *jurat* also renders a complaint defective, and the date of the *jurat* must be a specific date, rather than an "on or about" date. *Brown v. State*, 294 S.W.2d 772 (Tex.Crim.App. 1956).

- **COURT SEAL**

"A justice or municipal court shall have a court seal, the impression of which must be on all papers issued out of the court except subpoenas... ." Article 45.012(g), TCCP

## WAIVER OF DEFECTS IN COMPLAINT

- Article 45.019(f), TCCP

“If the defendant does not object to the defect, error, or irregularity of form or substance in a charging instrument before the date on which the trial on the merits commences, the defendant waives and forfeits the right to object to the defect, error, or irregularity. Nothing in this article prohibits a trial court from requiring that an objection to a charging instrument be made at an earlier time.”

## CHALLENGE OF COMPLAINT

It is the defendant’s burden to prove a complaint is defective. Bagsby v. State, 721 S.W.2d 567 (Tex.App.—Fort Worth 1986, no pet). The customary means by which the sufficiency of a complaint is challenged is a motion to set aside or “quash” the complaint. Such a motion can be made orally or in writing, as the pleadings of a defendant in municipal or justice court may take either form (unless otherwise required by local rule). If a pre-trial hearing has been set, the motion must be raised or filed at least 7 days before the hearing or it is waived (again, unless otherwise required by local rule). Article 28.01, TCCP.

If the motion to quash is granted then the State normally has an opportunity to refile, and the statute of limitations is tolled for the time period that the quashed complaint was in effect. Article 12.05 (b), TCCP

## AMENDMENT OF COMPLAINT

Because a complaint is a sworn document, it can be “amended” only if the amended complaint is “re-sworn” by the affiant. Cannon v. State, 925 S.W.2d 126 (Tex.App.—Amarillo 1996, pet. ref’d).

