

Basics of Civil Process



Course Number 3131

**TEXAS COMMISSION ON LAW ENFORCEMENT
OFFICERS STANDARDS AND EDUCATION**

September 2000

Revised 06-04

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Learning Objectives

1 Occupations Code and Texas Commission on Law Enforcement (Commission) Rules

1.1.1 The student will be able to identify the selected statutory requirements of Chapter 1701 of the Occupations Code.

1.1.2 The student will be able to identify Commission Rules for officer reporting, continuing education, and achievement awards.

2 Criminal Justice System

2.1.1 The student will be able to define types of law.

2.1.2 The student will be able to identify differences between civil and criminal law.

2.2.1 The student will be able to identify the court structure of Texas.

3 Civil Process

3.1 Rules of Civil Procedure

3.1 The student will be able to identify the basis of the TRCP.

3.2 Fees

3.2.1 The student will be able to identify the statutes that relate to the fees for Civil Process.

3.3 Civil Citations

3.3.1 The student will be able to identify sections in PC, Chapter 38, Obstructing Governmental Operations.

3.3.2 The student will be able to define citation.

3.3.3 The student will be able to identify the TRCP sections which apply to citations.

3.4 Civil Subpoenas

3.4.1 The student will be able to identify the rules which apply to civil subpoenas.

3.5 Criminal Subpoenas

3.5.1 The student will be able to identify the rules that apply to criminal subpoenas.

3.6 Eviction Suits

3.6.1 The student will be able to define Eviction suits.

3.6.2 The student will be able to identify which court has jurisdiction over Eviction proceedings.

3.6.3 The student will be able to identify the sections of the TPC that define the difference between Forcible Entry and Detainer and Forcible Detainer.

3.6.4 The student will be able to identify the sections of the TPC that govern Notice to Vacate requirements.

3.6.5 The student will be able to identify the TRCP that describe the methods of service for Forcible Entry and Detainer citations.

3.7 Writ Of Possession

3.7.1 The student will be able to identify Writ of Possession.

3.8.1 Writ Of Execution

3.8.1.1 The student will be able to define writ of execution.

3.8.1.2 The student will be able to identify the requisites of an execution.

3.8.1.3 The student will be able to identify when an execution can be issued.

3.8.1.4 The student will be able to identify the sections of the TRCP and CRPC that direct the officer once an Execution is received.

3.8.1.5 The student will be able to identify what liabilities are imposed by the CPRC upon the officer when executing writs.

3.8.1.6 The student will be able to identify and discuss the sections of the TPC that pertain to exemptions.

3.8.1.7 The student will be able to identify the requirements for selling seized property.

3.8.1.8 The student will be able to identify requirements of and calculations for judgements.

3.8.2 Tax Suits

3.8.2.1 The student will be able to identify requirements for Tax Suits according to the Tax Code.

3.9 Distress Warrant

3.9.1 The student will be able to define Distress Warrant.

3.9.2 The student will be able to identify the sections of the TRCP as they apply to a Distress Warrant.

3.9.3 The student will be able to identify the sections of the TPC as they apply to a Distress Warrant.

3.10 Writ Of Reentry

3.10.1 The student will be able to define reentry.

3.10.2 The student will be able to identify sections of the TPC and CPRC as they apply to residential and commercial property.

3.11 Writ Of Attachment

3.11.1 The student will be able to define writ of attachment.

3.11.2 The student will be able to identify which courts may issue writs of attachment on property.

3.11.3 The student will be able to identify duties related to writ.

3.11.4 The student will be able to identify “Exempt Property” as described in the TPC.

3.12 Writ Of Sequestration

3.12.1 The student will be able to define Writ of Sequestration

3.12.2 The student will be able to identify general provisions of sequestration.

3.13 Writ Of Garnishment

3.13.1 The student will be able to define garnishment.

3.13.2 The student will be able to identify general provisions of garnishment.

3.14 Writ Of Habeas Corpus

3.14.1 The student will be able to define habeas corpus

3.14.2 The student will be able to identify courts with jurisdiction to issue Habeas Corpus.

3.14.3 The student will be able to identify the purpose of the Habeas Corpus Writ

3.14.3 The student will be able to identify the statutes which gives the authority to issue:

3.15 Capias & Attachments

3.15.1 The student will be able to define Capias and Attachments.

3.15.2 The student will be able to identify who may issue.

3.15.3 The student will be able to identify the statutes which gives the authority to issue:

3.16 Temporary Restraining Order And Injunctions

3.16.1 The student will be able to define temporary restraining orders and injunctions.

3.16.2 The student will be able to identify general provisions of temporary restraining orders and injunctions.

3.16.3 The student will be able to identify examples that writ may be issued for.

3.17 Protective Orders

3.17.1 The student will be able to define family violence terms from the FC.

3.17.2 The student will be able to identify general provisions of Protective Orders.

3.17.3 The student will be able to explain the application procedure for a Protective Order.

3.17.4 The student will be able to describe the Protective Order court hearing process.

3.17.5 The student will be able to discuss what a Protective Order is, what it means, and consequences of violation.

3.17.6 The student will be able to identify law enforcement duties relating to protective orders

3.17.7 The student will be able to identify a Magistrate's Order for Emergency Protection.

3.17.8 The student will be able to identify Temporary ex parte Orders.

3.17.9 The student will be able to identify Final Orders.

3.17.10 The student will be able to identify the ability of family violence victims to receive compensation.

3.18 Mental Health Services

3.18.1 The student will be able to identify HSC sections governing cases dealing with chemical dependency

3.18.2 The student will be able to identify HSC sections governing cases dealing with mental impairments.

3.19 Estray

3.19.1 The student will be able to identify sections of the Agriculture Code relating to the Sheriff's duty for Estray.

1 Occupations Code and Texas Commission on Law Enforcement (Commission) Rules

1.1 Unit Goal: The student will gain a working knowledge of the Texas Occupations Code and Commission Rules, specifically related to maintaining licensure and reporting responsibilities.

1.1.1 Learning Objective: The student will be able to identify the selected statutory requirements of Chapter 1701 of the Occupations Code.

Continuing Education Required for Peace Officers	1701.351
Continuing Education for Constables and Deputy Constables	1701.354
Continuing Demonstration of Weapons Proficiency	1701.355

Note: The license holder must meet these requirements in order to maintain their license in an active status.

1.1.2 Learning Objective: The student will be able to identify Commission Rules for officer reporting, continuing education, and achievement awards.

Reporting Responsibilities of Individuals	211.27
Responsibilities of Agency Chief Administrator	211.29
Continuing Education for License Holders	217.9
Minimum Standards for Annual Firearms Proficiency	217.21
Law Enforcement Achievement Awards	211.33

Copies of these rules and statutes are mandatory handouts for this section of the course. The instructor has the responsibility to ensure these rules and statutes are current.

2 Criminal Justice System

2.1 Civil and Criminal Law

2.1 Unit Goal: The student will gain a working knowledge of the differences in civil and criminal law.

2.1.1 Learning Objective: The student will be able to define types of law.

Law – The body of authoritative grounds of judicial and administrative action (Black’s Law Dictionary, 1996)

Civil Law (Common Law) - The law of civil or private rights (Black’s Law Dictionary, 1996)

Criminal Law - The body of law defining criminal offenses, regulating how suspects are investigated, charged, and tried, and establishing punishments for convicted offenders (Black’s Law Dictionary, 1996)

2.1.2 Learning Objective: The student will be able to identify differences between civil and criminal law.

Criminal law regulates the conduct of individuals through the threat of fines and imprisonment.

In criminal cases, the state brings an action against an individual to punish him for breaking one of their laws.

Criminal judgments may result in the guilty party being assessed a fine only or a fine and period of confinement or community service.

In a criminal case, the defendant is adjudicated guilty or innocent based upon the evidence presented to a judge or jury beyond a reasonable doubt.

Civil law defines the legal significance of public and private acts and regulates conduct through injunctions and the award of money damages.

In a civil case, a person brings a lawsuit seeking some sort of redress for an injury he claims to have suffered. The person may be an individual, partnership, corporation, or sometimes the state. The redress that the person seeks is usually in the form of money. He asks the court to order his opponent to pay him monetary compensation or an injunction to the defendant for the wrongful act.

Civil judgments usually require the part adjudged of a wrongful act to compensate the wronged party in the form of money or the return or possession of property.

In a civil case, a judgment is rendered in favor of the complaining party or the defendant or somewhere in between based upon the preponderance of the evidence before a judge or jury.

2.2 Courts And Their Jurisdiction

2.2 Unit Goal: The student will have a basic understanding and working knowledge of courts and their jurisdiction.

2.2.1 Learning Objective: The student will be able to identify the court structure of Texas.

The appellate courts of Texas include a Supreme Court, a Court of Criminal Appeals, and 14 intermediate courts of appeals. In addition, the Texas Constitution establishes district courts as the state trial courts of general jurisdiction and provides for a single constitutional county court in each county, presided over by the county judge. In more populous counties, the Legislature has established statutory county courts to function as county courts at law and probate courts. Also, the Constitution provides for justice of the peace courts in each county. These justice courts handle criminal misdemeanor cases and serve as small claims courts. Finally, the Legislature has established municipal courts in each incorporated city of the State to handle criminal misdemeanor cases and city ordinance violations.

Supreme Court

JURISDICTION: The Supreme Court of Texas has statewide, final appellate jurisdiction in civil and juvenile cases, and original jurisdiction to issue writs. It has general responsibility for the efficient operation of the Texas judicial system; is empowered to make and enforce all necessary rules of civil trial practice and procedure, evidence, and appellate procedure; and promulgate rules of administration of justice in the State. In addition, the Court has final authority over the involuntary retirement or removal of all judges in the State, and the authority to transfer cases between the 14 courts of appeals.

Court Of Criminal Appeals

JURISDICTION: The Court of Criminal Appeals has statewide, final appellate jurisdiction in criminal cases; exclusive jurisdiction over automatic appeals in death penalty cases; and the power to issue writs. It is empowered to promulgate rules of evidence and rules for appellate procedure in criminal cases.

Courts Of Appeals

JURISDICTION: These 14 courts have intermediate appellate jurisdiction in civil and criminal cases from trial courts in each respective geographical court of appeals district of the State. These courts have limited original writ jurisdiction.

District Courts

JURISDICTION: There are 396 separate district courts, identified by separate numbers, each having its own geographical jurisdiction. Each district court has one judge. In a number of areas, the geographical jurisdiction of two or more district courts is overlapping. District courts are trial courts of general subject-matter jurisdiction. They have "exclusive, appellate, and original jurisdiction of all actions, proceedings, and remedies, except in cases where exclusive, appellate, or original jurisdiction may be conferred by (the) Constitution or other law on some other court. . ." Generally, this jurisdiction includes original jurisdiction of felony criminal prosecutions, suits for divorce, suits over title to land, election contests, and civil suits with an amount in controversy of at least \$200.

County courts at law and constitutional county courts also exercise limited subject-matter jurisdiction over civil suits and thus, to a limited extent, share jurisdiction with the district courts. Individual statutes stipulate maximum amounts in controversy over which each county-level

court may exercise jurisdiction. To the extent that such "dollar amount" jurisdiction coincides with the district court, the two courts have concurrent jurisdiction. Such concurrent jurisdiction of the district and county-level courts begins with suits involving \$200 and extends to the maximum amount stipulated by the applicable statute pertaining to the individual county-level court. Above such maximum jurisdictional amount of the county-level courts, the district court exercises exclusive jurisdiction.

The district courts hear contested matters involved in probate cases and have general supervisory control over commissioners courts. In addition, these courts have general original jurisdiction over all causes of action for which a remedy or jurisdiction is not provided by law or by the Constitution, and have the power to issue writs of habeas corpus, mandamus, injunction, certiorari, sequestration, attachment, garnishment, and all writs necessary to enforce their jurisdiction.

Most district courts exercise both criminal and civil jurisdiction, but in the metropolitan areas there is a tendency for the courts to specialize in either civil, criminal, or family law cases. In some instances, the courts that hear criminal cases exclusively are designated criminal district courts. A limited number of district courts also have the subject-matter jurisdiction normally exercised by county courts.

Appeals from judgments of the district courts are to the courts of appeals, except those capital offense cases in which the death penalty has been assessed, which are appealed directly to the Court of Criminal Appeals.

"Constitutional" County Courts

JURISDICTION:

a. Legal jurisdiction: The Texas Constitution establishes one county court in each of the 254 counties of the State, but not all such courts exercise judicial functions. In populous counties, the "county judge" may devote full time to the administration of county government.

By statute (Government Code, 26.042), constitutional county courts have juvenile jurisdiction and concurrent civil jurisdiction with justice of the peace courts in cases in which the matter in controversy exceeds \$200 but does not exceed \$5,000, exclusive of interest, and concurrent civil jurisdiction with district courts in cases in which the matter in controversy exceeds \$500 but does not exceed \$5,000, exclusive of interest. County courts have the general jurisdiction of a probate court (Probate Code, Sec. 4), and they have exclusive original jurisdiction of misdemeanors, other than those involving official misconduct, where the fine allowed exceeds \$500 or where a jail sentence may be imposed (Government Code, 26.045).

Decisions from the municipal and justice of the peace courts may be appealed to the county court, and the appeal takes the form of a completely new trial (trial *de novo*). Appeals from municipal courts of record are an exception in which the county court reviews only the written record from the trial. Original and appellate judgments of the county court may be appealed to the court of appeals, with certain limitations.

In addition to these general grants of statutory jurisdiction, many constitutional county courts are granted additional jurisdiction by statutory provisions which apply only to those courts (Government Code, 26.101 to 26.354).

b. Geographical jurisdiction: Countywide.

NOTE: The commissioners court is not a judicial entity; rather it is the governing body of the county. It is presided over by the constitutional county judge and includes four elected commissioners. Although it performs no judicial duties, the commissioners court can issue certain writs and contempt citations.

Statutory County Courts

JURISDICTION:

a. Legal jurisdiction: Under the constitutional provision which authorizes the Legislature to establish such other courts as it may deem necessary and to prescribe the jurisdiction of such courts, the Legislature has established 197 statutory county courts in 74 counties, primarily in metropolitan areas, to relieve the constitutional county judge of all or part of his judicial duties. (Three additional courts have been authorized by the Legislature but have not been implemented as of September 1, 1998. Four additional courts have been authorized by the Legislature to become operational at a later date.) The legal jurisdiction of the special county courts varies considerably according to the statute under which they are created. Some are intended to exercise subject-matter jurisdiction in only limited fields, such as civil, criminal, probate or appellate (from justice courts or municipal courts). The concurrent civil jurisdiction of these statutory county courts with the district court extends to greater amounts in controversy than the constitutional county courts.

b. Geographical jurisdiction: Countywide.

Justice Of The Peace Courts

JURISDICTION: The Texas Constitution provides that each county shall have, depending on the population, one to eight justice precincts. In each such precinct, depending on the population, one or more justices of the peace are to be elected. As of Fiscal Year 1998, there were 843 Justice of The Peace Courts.

Justice of the peace courts have original jurisdiction in misdemeanor criminal cases when punishment is by fine only. They have exclusive jurisdiction over civil cases where the amount in controversy is \$200 or less and concurrent jurisdiction with both the county and district courts in civil matters in which exclusive jurisdiction is not in the district or county court and the amount in controversy is \$5000 or less. By statute, they are granted jurisdiction over forcible entry and detainer actions.

A justice of the peace may issue warrants of search and arrest, conduct preliminary hearings, serve as ex officio notary public, perform marriages, and serve as coroner in counties where there is no provision for a medical examiner. The justice court also functions as a small claims court.

Municipal Courts

JURISDICTION: By a general statute, the Legislature has created a municipal court in each of the incorporated cities of the State. Presently, municipal courts are operating in approximately 850 cities and towns. Metropolitan cities usually have more than one municipal court.

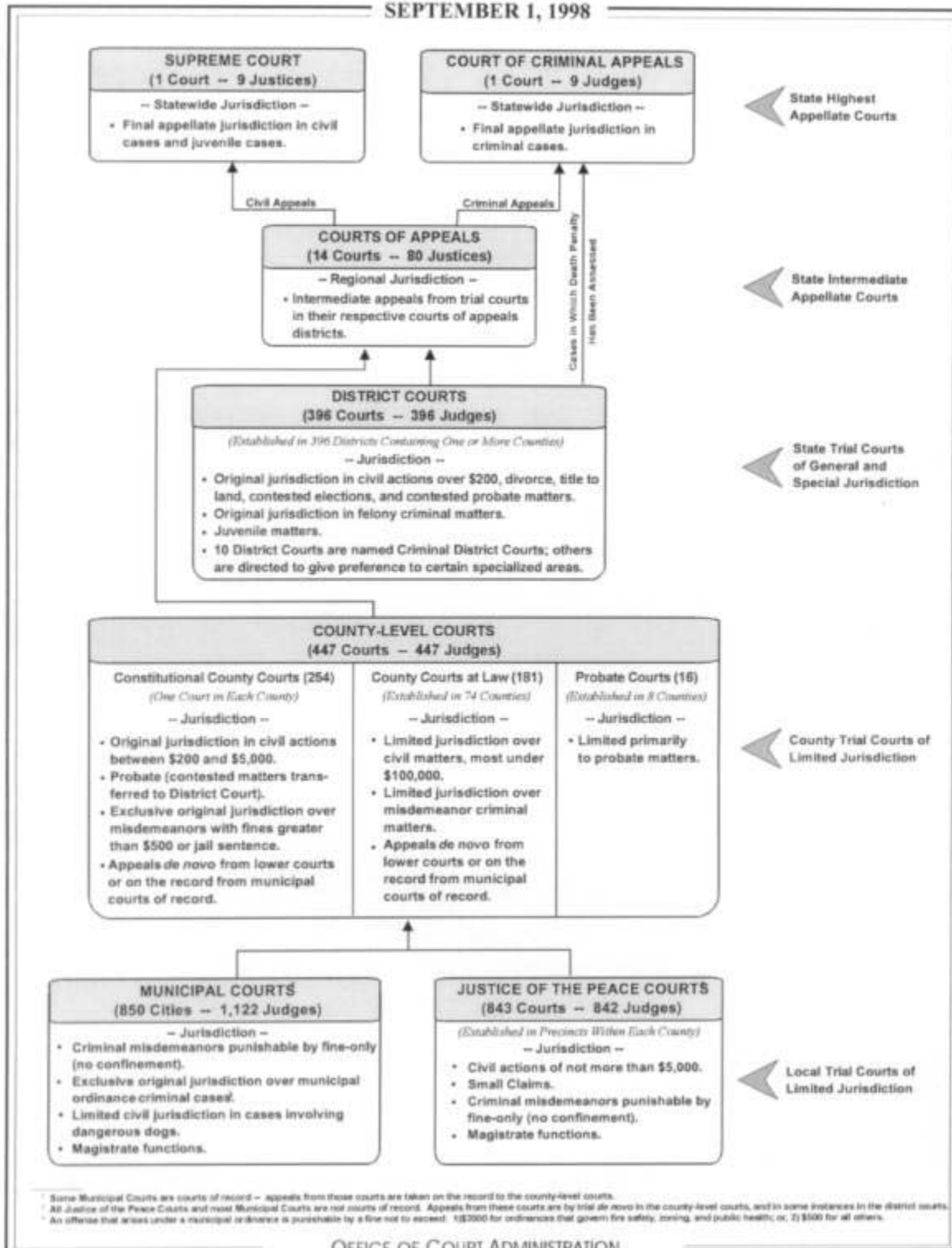
The municipal courts have concurrent jurisdiction with justice of the peace courts in misdemeanor cases resulting from violations of state laws within the city limits (predominantly traffic offenses) when punishment is limited to a fine and in cases arising under Chapter 106 of the Alcoholic Beverage Code relating to minors that do not include confinement as an authorized sanction.

Municipal judges also serve as magistrates of the State. They have original and exclusive jurisdiction over violation of city ordinances punishable by a fine not to exceed: 1) \$2,000 in cases arising under ordinances involving litter, fire safety, zoning, public health, and sanitation; and 2) \$500 in all other cases arising under a municipal ordinance.

Municipal courts generally are not of record--that is, courts where the record of the trial, upon request of either party or at the direction of the court, is reduced to writing--and appeals from them are by trial *de novo* in the county court, county court at law, or district court. The Legislature has authorized the governing body of each city to establish municipal courts of record; appeals from these courts are on the record made therein.

COURT STRUCTURE OF TEXAS

SEPTEMBER 1, 1998



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3 Civil Process

3.1 Rules of Civil Procedure

3.1 Unit Goal: The student will gain a basic understanding of the Rules of Civil Procedure.

3.1 Learning Objective: The student will be able to identify the basis of the Texas Rules of Civil Procedure (TRCP).

Objective of Rules
Scope of Rules

TRCP 1
TRCP 2

3.2 Fees

3.2 Unit Goal: The student will gain a basic understanding and working knowledge of fees for Civil Process.

3.2.1 Learning Objective: The student will be able to identify the statutes that relate to the fees for Civil Process.

Officer to Execute Process	TRCP 17
Parties Responsible	TRCP 125
Fee for Execution of Process, Demand	TRCP 126
Parties Liable for Other Costs	TRCP 127
Fees Set by Commissioners Court	LGC 118.131
Overcharging of Fees; Penalty	LGC 118.801
Definition	LGC 154.001
Salary Paid in Lieu of Fees and Commissions	LGC 154.002
Collection and Disposition of Fees and Commissions of Salaried Officer	LGC 154.003
State and County Prohibited From Paying Fees or Commissions to Salaried Officer	LGC 154.004
Effect of Failure to Collect Fee or Commission	LGC 154.009
Attorney General's Office – Child Support	FC Chapter 231

3.3 Civil Citations

3.3 Unit Goal: The student will gain a basic understanding and working knowledge of Civil Citations, their origination and purpose.

3.3.1 Learning Objective: The student will be able to identify sections in the PC, Chapter 38, Obstructing Governmental Operations.

Preventing execution of civil process 38.16

3.3.2 Learning Objective: The student will be able to define citation.

Citation – A court-issued writ that commands a person to appear at a certain time and place to do something demanded in the writ, or to show cause for not doing so (Black’s Law Dictionary, 1996)

In Texas a citation is ordinarily a notice issued by the court, and served on a party (not necessarily the defendant) telling that party that is has to do something (e.g. file an answer), or not do something (in the case of a TRO or injunction). Sometimes there is a writ attached (i.e. of injunction or restraint), sometimes not. Most commonly a citation is the piece of paper that goes on top of the petition when you get sued. The officer serves the defendant with the citation and a copy of the petition, which serves as notice to the defendant that he has been sued and tells him when the answer is due.

3.3.3 Learning Objective: The student will be able to identify the TRCP sections which apply to citations.

Issuance of Citation	99(a)
Form of Citation	99(b)
Who may serve	103
When service may be made	6
Duty of Officer or Person Receiving	105
Methods of Service	106
Citation by Publication	109
Other Substituted Service	109(a)
Return of Service	107

Note: The instructor should emphasize officer safety when serving citations.

3.4 Civil Subpoenas

3.4 Unit Goal: The student will gain a basic understanding of civil subpoenas.

3.4.1 Learning Objective: The student will be able to identify the rules which apply to civil subpoenas.

Subpoena - A court order commanding the appearance of a witness (Black's Law Dictionary, 1996).

Form	TRCP 176.1
Required Actions	TRCP 176.2
Limitations	TRCP 176.3
Who May Issue	TRCP 176.4
Service	TRCP 176.5
Response	TRCP 176.6
Protection of Person from Undue Burden and Expense	TRCP 176.7
Enforcement of Subpoena	TRCP 176.8
Witness fee	CPRC 22.001

3.5 Criminal Subpoenas

3.5 Unit Goal: The student will gain a basic understanding of criminal subpoenas.

3.5.1 Learning Objective: The student will be able to identify the rules that apply to criminal subpoenas according to the CCP.

Subpoena and application therefore	24.03
Issuance of subpoenas	24.01
Subpoena duces tecum	24.02
Service and return	24.04
Neglect to execute	2.16
Refusing to obey	24.05
Testimony of witness	24.10
Disobedience of a subpoena	24.06
Requisites of an “attachment”	24.11
Duty of officer receiving said subpoena	24.17
Subpoena returnable forthwith	24.18
Certificate to officer	24.19

3.6 Eviction Suits

3.6 Unit Goal: The student will gain a basic understanding of Eviction Suits.

3.6.1 Learning Objective: The student will be able to define Eviction suits.

The Texas Legislature created the forcible entry and detainer action to provide a summary, speedy, simple, and inexpensive remedy for determination of who is entitled to possession of property. *Fandey v. Lee*, 880 S.W. 2d. 164 (1994)

Only Issue TPRC 746

3.6.2 Learning Objective: The student will be able to identify which court has jurisdiction over Forcible Entry and Detainer proceedings.

Jurisdiction TPC 24.004

3.6.3 Learning Objective: The student will be able to identify the sections of the TPC that define the difference between Forcible Entry and Detainer and Forcible Detainer.

Forcible Entry and Detainer 24.001
Forcible Detainer Section 24.002

3.6.4 Learning Objective: The student will be able to identify the sections of the TPC that govern Notice to Vacate requirements.

Notice to Vacate Prior to Filing Eviction Suit 24.005

3.6.5 Learning Objective: The student will be able to identify the TRCP sections that describe the methods of service for Forcible Entry and Detainer citations.

Citation 739
Requisites of Complaint 741
Service of Citation 742
Service by Delivery to Premises 742(a)

3.7 Writ Of Possession

3.7 Unit Goal: The student will gain a basic understanding of Writs of Possession.

3.7.1 Learning Objective: The student will be able to identify Writ of Possession.

Writ of Possession

TPC 24.0061

Writ of Possession

TRCP 310

Warehouseman Lien

TPC 24.0062

Note: The instructor should discuss officer safety.

3.8.1 Writ Of Execution

3.8.1 Unit Goal: The student will gain a basic understanding of Writs of Execution.

3.8.1.1 Learning Objective: The student will be able to define writ of execution .

Writ of Execution – A court order directing a sheriff or other officer to enforce a judgment, usually by seizing and selling the judgement debtor’s property (Black’s Law Dictionary, 1996).

The student will be able to identify the courts that may issue.

Enforcement of Judgment	TPRC 621
Execution	TRCP 622

3.8.1.2 Learning Objective: The student will be able to identify the requisites of an execution.

Requisites of Execution	TPRC 629
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3.8.1.3 Learning Objective: The student will be able to identify when an execution can be issued.

Time for Issuance	TPRC 627
Execution Within Thirty Days	TPRC 628

3.8.1.4 Learning Objective: The student will be able to identify the sections of the TRPC and CRPC that direct the officer once an Execution is received.

Indorsements by Officer	TPRC 636
Improper Endorsement of Writ	CPRC 34.063
Improper Return of Writ	CPRC 34.064
Levy of Execution	TPRC 637
Property not to be Designated	TPRC 638
Levy	TPRC 639
Levy on Shares of Stock	TPRC 641
Levy on Goods Pledged or Mortgaged	TPRC 643
Purchase by Officer Void	CPRC 34.048

3.8.1.5 Learning Objective: The student will be able to identify what liabilities are imposed by the CPRC upon the officer when executing writs.

Liability for Refusal or Neglect in Performance of Official Duties	7.001
Liability Regarding Execution of Writs	7.003
Duty Toward Seized Personalty: Liability	34.061

Note: Discuss the possibility of other existing writs for the defendant.

3.8.1.6 Learning Objective: The student will be able to identify and discuss the sections of the TPC that pertain to exemptions.

Interests in Land Exempt from Seizure	41.001
Definition of Homestead	41.002
Personal Property Exemptions	42.001
Personal Property	42.002
Designation of Exempt Property	42.003
Exempt Property	43.002
Child Support Lien	42.005

3.8.1.7 Learning Objective: The student will be able to identify the requirements for selling seized property.

Sale of Real Property	TRCP 646(a)
Notice of Sale of Real Estate	TRCP 647
Sale of Personal Property	TRCP 649
Notice of Sale of Personal Property	TRCP 650
Failure to Levy or Sell	CPRC 34.065
Improper Sale	CPRC 34.066
Failure to Deliver Money Collected	CPRC 34.067

Note: Instructor should demonstrate how to prepare a constable deed.

3.8.1.8 Learning Objective: The student will be able to identify requirements of and calculations for judgements according to the Finance Code.

Allowable Interest in Absence of Other Law	302.001
Allowable Interest When No Rate Specified	302.002
Interest Rate Required in Judgment	304.001
Judgment Interest Rate: Interest Rate in Contract	304.002
Judgment Interest Rate: Interest Rate Not in Contract	304.003
Accrual of Judgment Interest	304.005
Compounding of Judgment Interest	304.006
Prejudgment Interest Rate for Condemnation Case	304.201
Exception for Delinquent Taxes	304.301
Exception for Delinquent Child Support	304.302
Computation of Term	306.003

Note: Instructor may provide a worksheet and have the student calculate a judgment.

3.8.2 Tax Suits

3.8.2 Unit Goal: The student will gain a basic understanding of Tax Suits.

3.8.2.1 Learning Objective: The student will be able to identify requirements for Tax Suits according to the Tax Code.

Limitation on collection of taxes	33.05
Property Subject to Seizure	33.21
Institution of Seizure	33.22
Tax Warrant	33.23
Bond for Payment of Taxes	33.24
Notice of Tax Sale	33.25
Suit to Collect Delinquent Tax	33.41
Petition	33.43
Joinder of Other Taxing Units	33.44
Recovery of Costs and Expenses	33.48
Liability of Taxing Unit for Costs	33.49
Adjudged Value	33.50
Writ of Possession	33.51
Judgment for Current Taxes	33.52
Judgment for Current Taxes and Postjudgment Taxes, Penalties, and Interest	33.52
Order of Sale; Payment Before Sale	33.53
Limitation on Actions Relating to Property Sold for Taxes	33.54
Sale of Property	34.01
Alternate Manner of Sale	34.015
Distribution of Proceeds	34.02
Disposition of Excess Proceeds	34.03
Claims for Excess Proceeds	34.04
Resale by Taxing Unit	34.05
Distribution of Proceeds of Resale	34.06
Challenge to Validity of Tax Sale	34.08
Right of Redemption	34.21
Evidence of Title to Redeem Real Property	34.22
Distribution of Redemption Proceeds	34.23

Note: Instructor may provide a worksheet and have the student calculate an Order of Sale in Tax Suits.

3.9 Distress Warrant

3.9 Unit Goal: The student will gain a basic understanding of Distress Warrants.

3.9.1 Learning Objective: The student will be able to define Distress Warrant.

A distress warrant is the seizure of another's property to secure the performance of a duty, such as the payment of overdue rent (Black's Law Dictionary, 1996).

3.9.2 Learning Objective: The student will be able to identify the sections of the TRCP as they apply to a Distress Warrant.

Application for Distress Warrant & Order	610
Bond for Distress Warrant	611
Requisites for Distress Warrant	612
Service of Warrant on Defendant	613
Dissolution or Modification of Distress Warrant	614(a)

3.9.3 Learning Objective: The student will be able to identify the sections of the TPC as they apply to a Distress Warrant.

Residential Landlord's Lien	54.041
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3.10 Writ Of Reentry

3.10 Unit Goal: The student will gain a basic understanding of a Writ of Reentry.

3.10.1 Learning Objective: The student will be able to define reentry.

Reentry – is the act or an instance of retaking possession of land by a person who formerly held the land and who reserved the right to retake the land when he or she let it go (Black’s Law Dictionary, 1996).

3.10.2 Learning Objective: The student will be able to identify sections of the TPC and CPRC as they apply to residential and commercial property.

Venue (Residential)	TPC 92.007
Landlord- Tenant	CPRC 15.0115
Residential Tenant’s Right of Reentry after Unlawful Lockout	TPC 92.009
Commercial Tenant’s Right of Reentry after Unlawful Lockout	TPC 93.003

3.11 Writ Of Attachment

3.11 Unit Goal: The student will gain a basic understanding of writs of attachment involving property, both personal and real.

3.11.1 Learning Objective: The student will be able to define writ of attachment.

Attachment – A writ ordering legal seizure of property (especially to satisfy a creditor’s claim) or of a person (Black’s Law Dictionary, 1996).

3.11.2 Learning Objective: The student will be able to identify which courts may issue writs of attachment on property.

Who May Issue	CPRC 61.021
Affidavit	CPRC 61.022
Bond	CPRC 61.023
Application for Writ of Attachment & Order	TRCP 592
Bond for Attachments	TRCP 592(a)
Form of Attachment Bond	TRCP 592(b)
Requisites for Writ	TRCP 593
Form of Writ	TRCP 594
Several Writs	TRCP 595

3.11.3 Learning Objective: The student will be able to identify duties related to writ.

Delivery of Writ	TRCP 596
Duty of Officer	TRCP 597
Levy, How Made	TRCP 598
Service of Writ on Defendant	TRCP 598(a)
Defendant May Replevy	TRCP 599
Sale of Perishable Property	TRCP 600
To Protect Interests	TRCP 601
Bond of Applicant For Sale	TRCP 602
Procedure for Sale	TRCP 603
Return of Sale	TRCP 604
Judge May Make Necessary Orders	TRCP 605
Return of Writ	TRCP 606
Report of Disposition of Property	TRCP 607
Dissolution or Modification of Writ of Attachment	TRCP 608
Amendment	TRCP 609
Subject Property	CPRC 61.041
Attachment of Personalty	CPRC 61.042
Attachment of Realty	CPRC 61.043
Attachment Lien	CPRC 61.061
Judgment and Foreclosure	CPRC 61.062
Judgment on Replevied Property	CPRC 61.063

3.11.4 Learning Objective: The student will be able to identify “Exempt Property” as described in the TPC.

Interests in Land Exempt from Seizure	41.001
Definition of Homestead	41.002
Personal Property Exemptions	42.001
Personal Property	42.002
Designation of Exempt Property	42.003
Exempt Property	43.002

Related Court Case(s)

Gulf Oil Co. v. First National Bank, 503 S.W. 2d 300 (1973)
FDIC v. Texarkana National Bank, 673 S.W. 2d 262, 263 (1984)
McQuade v. EDS Corp., 570 S.W. 2d 33, 35 (1978)
Sharman v. Schbule, 846 S.W. 2d 574 (1993)
Carpenter v. Carpenter, 476 S.W. 2d 469, 470 (1972)
Manhattan Shirt Co. v. Moore, 385 S.W. 2d 486 (1965)
Gulf Stream Realty co. v. Monte Alto Citrus Assn., 253 S.W. 2d 933 (1953)
Williams v. De Baca, 113 S.W. 2d 566 (1938)
Railway Co. v. Harrison, 10 S.W. 566 (1889)

3.12 Writ Of Sequestration

3.12 Unit Goal: The student will gain a basic understanding Writ of Sequestration.

3.12.1 Learning Objective: The student will be able to define Writ of Sequestration

Sequestration – The process by which property is removed from the possessor pending the outcome of a dispute in which two or more parties contend for it (Black’s Law Dictionary, 1996).

3.12.2 Learning Objective: The student will be able to identify general provisions of sequestration.

Grounds	CPRC 62.001
Pending Suit Required	CPRC 62.002
Available for Claim Not Due	CPRC 62.003
Who May Issue	CPRC 62.021
Application	CPRC 62.022
Required Statement of Rights	CPRC 62.023
Officer's Liability and Duty of Care	CPRC 62.061
Compensation of Officer	CPRC 62.062
Indemnification of Officer for Money Spent	CPRC 62.063
Application for Writ of Sequestration & Order	TRCP 696
Petition	TRCP 697
Bond for Sequestration	TRCP 698
Requisites of Writ	TRCP 699
Amendment	TRCP 700
Service of Writ on Defendant	TRCP 700(a)
Defendant May Replevy	TRCP 701
Bond for Personal Property	TRCP 702
Bond for Real Estate	TRCP 703
Return of Bond & Entry of Judgement	TRCP 704
Defendant May Return Sequestered Property	TRCP 705
Disposition of the Property by Officer	TRCP 706
Execution	TRCP 707
Plaintiff May Replevy	TRCP 708
When Bond Forfeited	TRCP 709
Sale of Perishable Goods	TRCP 710
Order of Sale For	TRCP 711
Return of Order	TRCP 712
Dissolution or Modification of Writ of Sequestration	TRCP 712(a)
Sale of Debt Not Due	TRCP 713
Purchaser’s Bond	TRCP 714
Return of Bond	TRCP 715
Recovery of Bond	TRCP 716

Note: The instructor should initiate discussion on service of the writ. There should be plenty of time allocated for scenarios involving the execution of the writ and problems encountered

Note: The instructor should include examples of Writs of Sequestrations and returns.

Related Court Case(s)

Marrs v. South Texas National Bank, 686 S.W. 2d 675, 677, 78 (1985)

Commercial Sec. Co. v. Thompson, 239 S.W. 2d 911, 914 (1950)

Multi-Moto Corp. v. ITT Comm. Fin. Corp., 806 S.W.2d 560, 569 (1990)

3.13 Writ Of Garnishment

3.13 Unit Goal: The student will gain a basic understanding of writs of garnishments.

3.13.1 Learning Objective: The student will be able to define garnishment.

Garnishment – A judicial proceeding in which a creditor (or potential creditor) asks the court to order a third party who is indebted to or is bailee for the debtor to turn over to the creditor an of the debtor’s property (such as wages or bank accounts) held by that third party (Black’s Law Dictionary, 1996).

3.13.2 Learning Objective: The student will be able to identify general provisions of garnishment.

Grounds	CPRC 63.001
Who May Issue	CPRC 63.002
Effect of Service	CPRC 63.003
Current Wages Exempt	CPRC 63.004
Judgement Final for Garnishment	TRCP 657
Application for Writ or Garnishment & Order	TRCP 658
Bond for Garnishment	TRCP 658(a)
Case Docketed	TRCP 659
Form of Writ	TRCP 661
Delivery of Writ	TRCP 662
Execution & Return of Writ	TRCP 663
Service of Writ on Defendant	TRCP 663(a)
Defendant May Replevy	TRCP 664

Related Court Case(s)

- Bank One, Texas, N.A. v. Sunbelt Sav., F.S.B., 824 S.W. 2d 557 (1992)
- Curry Motor Freight, Inc. v. Ralston Purina Co., 565 S.W. 2d 105, 1-6 (1978)
- Lawyers Civil Process, Inc. v. State, 609 S.W. 2d 939, 944 (1985)
- Jacksboro National Bank v. Signal Oil & Co., 482 S.W. 2d 339 (1972)
- Hering v. Noranco Austin I, Ltd., 735 S.W. 2D 638 (1987)
- Metroplex Factors, Inc. v. First National Bank, 610 S.W. 2D 862, 866 (1980)

3.14 Writ Of Habeas Corpus

3.14 Unit Goal: The student will gain a basic understanding of Habeas Corpus orders.

3.14.1 Learning Objective: The student will be able to define habeas corpus

Habeas Corpus – A writ employed to bring a person before a court, most frequently to ensure that the party’s imprisonment is not illegal (Black’s Law Dictionary, 1996).

3.14.2 Learning Objective: The student will be able to identify courts with jurisdiction to issued Habeas Corpus.

County Court
District Court
Appeals Court

3.14.3 Learning Objective: The student will be able to identify the purpose of the Habeas Corpus Writ

Civil, to order the person alleged to be restraining a person, to produce that person at a time or place named.

Criminal, to order the person holding a person in custody to produce and show cause why the person is being held.

3.14.3 Learning Objective: The student will be able to identify the statutes which gives the authority to issue:

Jurisdiction	FC 157.371
What writ is	CCP 11.01
To whom directed	CCP 11.02
Want of form	CCP 11.03
Construction	CCP 11.04
By whom writ may be granted	CCP 11.05
Returnable to any county	CCP 11.06
Procedure after conviction without death penalty	CCP 11.07
Applicant charged with felony	CCP 11.08
Applicant charged with misdemeanor	CCP 11.09
Proceedings under the writ	CCP 11.10
Scope of writ	CCP 11.23
Who may serve writ	CCP 11.26
How writ may be served and returned	CCP 11.27
Return under oath	CCP 11.28
Must make return	CCP 11.29
How return is made	CCP 11.30
Disobeying writ	CCP 11.34
Further penalty for disobeying writ	CCP 11.35
Applicant may be brought before court	CCP 11.36
Death, etc., sufficient return of writ	CCP 11.37
Refusing to execute writ	CCP 11.60
Refusal to obey writ	CCP 11.61
Refusal to give copy of process	CCP 11.62

Related Court Case(s)

Rider v. Farris, 718 S.W. 2d 883 (1996)

Deramus v. Thornton, 333 S.W. 2d 824, 827 (1960)

Ex parte Sealy, 870 S.W. 2d 663 (1994)

3.15 Capias & Attachments

3.15 Unit Goal: The student will gain a basic understanding and working knowledge of Capias and Attachments.

3.15.1 Learning Objectives: The student will be able to define Capias and Attachments.

Capias – Any of various types of writs that require an officer to take a named defendant into custody (Black’s Law Dictionary, 1996).

Attachments – The taking into custody of a person’s property to secure a judgement or to be sold in satisfaction of a judgement (Black’s Law Dictionary, 1996).

3.15.2 Learning Objective: The student will be able to identify who may issue.

Justice Courts

County Courts

District Courts

3.15.3 Learning Objective: The student will be able to identify the statutes which gives the authority to issue:

Methods of Service	TRCP 21(a)
Service & Return	TRCP 689
Disobedience	TRCP 692
Failure to Appear	FC 157.066
Bond or Security for Release of Respondent	FC 157.101
Capias; Duty of Law Enforcement Officials	FC 157.102
Capias Fees	FC 157.103
Definition of a "capias"	CCP 23.01
Its requisites	CCP 23.02
Capias or summons in felony	CCP 23.03
In misdemeanor case	CCP 23.04
Capias after forfeiture	CCP 23.05
Capias does not lose its force	CCP 23.07
Reasons for retaining capias	CCP 23.08
Capias to several counties	CCP 23.09
Who may arrest under capias	CCP 23.13
Return of bail and capias	CCP 23.17
Return of capias	CCP 23.18

3.16 Temporary Restraining Order And Injunctions

3.16 Unit Goal: The student will gain a basic understanding of temporary restraining orders and injunctions.

3.16.1 Learning Objective: The student will be able to define temporary restraining orders and injunctions.

Temporary Restraining Order – A court order preserving the status quo until the plaintiff’s application for a preliminary or permanent injunction can be heard (Black’s Law Dictionary, 1996).

Injunction – A court order commanding or preventing an action (Black’s Law Dictionary, 1996).

Preliminary Injunction – A temporary injunction issued before or during a trial to prevent an irreparable injury from occurring before the court has a chance to decide the case (Black’s Law Dictionary, 1996).

Permanent Injunction – An injunction granted after a final hearing on the merits; despite its name, a permanent injunction does not necessarily last forever (Black’s Law Dictionary, 1996).

3.16.2 Learning Objective: The student will be able to identify general provisions of temporary restraining orders and injunctions.

Conflict With Texas Rules of Civil Procedure	CPRC 65.045
Grounds Generally	CPRC 65.011
Jurisdiction of Proceeding	CPRC 65.021
Place for Trial	CPRC 65.023
Temporary Restraining Orders	TRCP 680
Temporary Injunctions: Notice	TRCP 681
Sworn Petition	TRCP 682
Form & Scope of Injunction or Restraining Order	TRCP 683
Applicants Bond	TRCP 684
Filing & Docketing	TRCP 685
Citation	TRCP 686
Requisites of Writ	TRCP 687
Clerk to Issue Writ	TRCP 688
Service & Return	TRCP 689
The Answer	TRCP 690
Disobedience	TRCP 692

3.16.3 Learning Objective: The student will be able to identify examples that writ may be issued for.

- Martial disputes
- Neighborhood disputes over use of property
- Labor disputes
- Prohibit use of property for illegal activities
- Infringement on commercial goods rights

Student will understand that peace officers have no power to enforce the terms of the order – violation is handled as contempt by the issuing court.

Related Court Case(s)

State v. Morales, 869 S.W. 2d 941, 947 (1994)

Crestview Ltd. v. Foremont Ins. Co., 621 S.W. 2d 816, 827-28 (1981)

Davis v. Huey, 571 S.W. 2d 859, 862 (1978)

Boatman v. Lites, 888 S.W. 2d 90, 92 (1994)

Citizens State Bank v. Caney Inv., 746 S.W. 2d 477, 478 (1988)

McGlothin v. Kliebert, 672 S.W. 2d 231, 232 (1984)

InterFirst Bank San Felipe v. Paz Constr. Co., 715 S.W. 2d 640, 641 (1986)

Ex parte Leshner, 651 S.W. 2d 734, 736 (1983)

Long v. State, 423 S.W. 2d 604, 605 (1968)

Schliemann v. Garcia, 685 S.W. 2d 690, 693 (1984)

3.17 Protective Orders

3.17 Unit Goal: The student will gain a basic understanding of Protective Orders.

Note: The instructor may discuss safety issues and/or use role playing to emphasize officer safety.

3.17.1 Learning Objective: The student will be able to define family violence terms from the Family Code (FC).

Family	71.003
Family Violence	71.004
Household	71.005
Member of a Household	71.006

3.17.2 Learning Objective: The student will be able to identify special law enforcement responses to family violence.

Accused liberated	CCP 17.29
Further detention of certain persons	CCP 17.291

3.17.3 Learning Objective: The student will be able to identify general provisions of Protective Orders.

Protective Order From Another Jurisdiction	FC 71.008
Entitlement to Protective Order	FC 81.001
No Fee for Applicant	FC 81.002

3.17.4 Learning Objective: The student will be able to explain the application procedure for a Protective Order.

Application	FC 82.001
Who May File Application	FC 82.002
Venue	FC 82.003
Contents of Application	FC 82.004

3.17.5 Learning Objective: The student will be able to describe the Protective Order court hearing process.

Time Set for Hearing	FC 84.001
Required Findings and Orders	FC 85.001

3.17.6 Learning Objective: The student will be able to discuss what a Protective Order is, what it means, and consequences of violation.

Requirements of Order Applying to any Party	FC 85.021
Duration of Order	FC 85.025
Warning on Protective Order	FC 85.026
Delivery to Respondent	FC 85.041
Delivery of Order to Other Persons	FC 85.042

3.17.7 Learning Objective: The student will be able to identify law enforcement duties relating to protective orders

Adoption of Procedures by Law Enforcement Agency	FC 86.001
Duty to Provide Information to Firearms Dealers	FC 86.002
Court Order for Law Enforcement Assistance Under Temporary Order	FC 86.003
Court Order for Law Enforcement Assistance Under Final Order	FC 86.004
Protective Order From Another Jurisdiction	FC 86.005

3.17.8 Learning Objective: The student will be able to identify a Magistrate's Order for Emergency Protection.

Magistrate's order for emergency protection	CCP 17.292
Delivery of order for emergency protection to other persons	CCP 17.293
Violation of protective order or magistrate's order	PC 25.07

3.17.9 Learning Objective: The student will be able to identify Temporary ex parte Orders.

Requirements for Temporary ex parte Order	FC 83.001
Duration of Order; Extension	FC 83.002
Conflicting Orders	FC 83.005
Exclusion of Party From Residence	FC 83.006

3.17.10 Learning Objective: The student will be able to identify Final Orders.

Temporary Orders Before Final Order	FC 105.001
Contents of Final Order	FC 105.006

3.17.11 Learning Objective: The student will be able to identify the ability of family violence victims to receive compensation.

Crime Victim's Compensation Act	CCP, Chapter 56
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3.18 Mental Health Services

3.18 Unit Goal: The student will gain a working knowledge of the authority granted by the Health and Safety Code relating to cases dealing with chemical dependency and mental impairments.

3.18.1 Learning Objective: The student will be able to identify HSC sections governing cases dealing with chemical dependency

Limitation of Liability	462.007
Apprehension by Peace Officer Without Warrant	462.041
Judge's or Magistrate's Order for Emergency Detention	462.042
Issuance of Warrant	462.043
Detention Period	462.045
Rights of Person Apprehended or Detained	462.048
Order of Protective Custody	462.065
Order for Temporary Detention	462.071

3.18.2 Learning Objective: The student will be able to identify HSC sections governing cases dealing with mental impairments.

Limitation of Liability	462.007
Apprehension by Peace Officer Without Warrant	573.001
Peace Officer's Application for Detention	573.002
Application for Emergency Detention	573.011
Issuance of Warrant	573.012
Rights of Persons Apprehended or Detained	573.025
Application for Court-Ordered Mental Health Services	574.001
Form of Application	574.002
Motion for Order of Protective Custody	574.021
Issuance of Order	574.022
Apprehension Under Order	574.023
Transportation of Patient	574.045
Writ of Commitment	574.046
Acknowledgment of Patient Delivery	574.048
Order for Temporary Detention	574.063
Apprehension and Release Under Temporary Detention Order	574.064

Students interested in Mental Health Certification should be directed to Commission Course 4001 Mental Health Peace Officer Training Course or the distance education version 4002 at www.tcleose.state.tx.us.

3.19 Estray

3.19 Unit Goal: The student will gain a working knowledge of the responsibility for estray according to the Agriculture Code.

3.19.1 Learning Objective: The student will be able to identify sections of the Agriculture Code relating to the Sheriff's duty for Estray.

Discovery of Estray; Notice	142.003
Redemption	142.004
Collection Fee	142.005
Amount of Redemption Payment	142.006
Impoundment of Estray	142.009
Recovery of Impounded Estray by Owner	142.010
Use of Estray	142.011
Escape or Death of Impounded Estray	142.012
Disposition or Sale of Impounded Estrays	142.013
Recovery by Owner of Proceeds of Sale	142.014

Appendix A
Selected Legislative Changes

1999 Selected Legislative Changes

Criminal Procedure	17.292	(i)	Amends	SB	0023	Magistrate's order for emergency protection extended from up to 31 days to a period of at least 31 days to up to 61 days
Property	41	(a)	Amends	SB	0496	Homestead Exemption
Property	42	(a)	Amends	HB	1805	Changes Exemption Property
Criminal Procedure	17.292		Amends	HB	2124	Mandates a protective order in certain circumstances
Family	85.025 and 85.026		Amends	SB	0005	Protective Orders extends from 1 to 2 years; adds clause on weapons
Criminal Procedure	17.292	(i)	Amends	SB	0023	Duration of Protective Orders
Penal	22.01		Amends	SB	0024	Changes Offense from state felony to 3rd degree felony
Criminal Procedure	17.292		Amends	HB	2124	Requires magistrate to issue protective order in certain circumstances
Family	30.05		Amends	HB	2124	Adds to when a magistrate must file a protective order and suspending handgun license
Family	156.401		Amends	SB	0160	Child support issues
Family	101, 102, 105, 108, 110, 111, 151, 154, 155, 156, 157, 158, 160, 161, 201, 203,231,232, 234		Adds	SB	0368	Child support issues
Family	203.007		Amends	SB	0391	Domestic relations officer enforcement
Family	158.206	(b)	Amends	SB	0581	Withholding wages for child support
Family	231.006		Amends	HB	0620	Grants etc received by an obligator for child support payments
Family	204.001- 5		Adds	HB	0624	Contracting for child support
Family	157.315		Amends	SB	0686	Child support issues
Family	157.315		Amends	HB	1322	Child support lien
Family	154.002	(a)	Amends	SB	1670	Payment of child support
Family	158, 203, 231, 233		Amends	HB	1884	Collection and Enforcement Child Support
Family	154.132		Adds	HB	2059	Child support issues
Family	231.205, 234.006		Amends	HB	2354	State monetary liability for child support services
Family	157.265-6	(a)	Amends	HB	2421	Interest accrual delinquent child support
Family	154.012		Adds	HB	2594	Child support issues
Family	201.106-107, 234.006-007		Amends	HB	3272	Child support payments
Family	261.3125		Adds	HB	3778	Requires dedicated child abuse investigations coordinator
Family	155.204, 261.1-4, 262, 262.1, 262.2, 263, 263.1, 263.2		Adds, Amends and Repeals	HB	3838	Child abuse investigation, information sharing, taking child into custody