|  |  |
| --- | --- |
| **TEXAS CTE LESSON PLAN**  [www.txcte.org](http://www.txcte.org) | |
| **Lesson Identification and TEKS Addressed** | |
| **Career Cluster** | Law, Public Safety, Corrections & Security |
| **Course Name** | Law Enforcement II |
| **Lesson/Unit Title** | Civil Procedure |
| **TEKS Student Expectations** | **130.337. (c) Knowledge and Skills**  (9) The student explores civil law enforcement procedures for serving writs, warrants, and summons.  (A) The student is expected to research civil law procedures such as attachment, garnishment, claim, and delivery.  (B) The student is expected to identify limits on use of force and entry to private property during civil process service.  (C) The student is expected to differentiate domestic violence protective orders, no-contact orders, and orders to pick up children. |
| **Basic Direct Teach Lesson**  (Includes Special Education Modifications/Accommodations and  one English Language Proficiency Standards (ELPS) Strategy) | |
| **Instructional Objectives** | The student will be able to:   1. Identify key terms in the civil process. 2. Examine the role of law enforcement in civil law. 3. Research civil law procedures, such as attachment, garnishment, claim and delivery. 4. Identify the limits on the use of force and entry to private property during civil process service. 5. Differentiate between domestic violence, protective orders, order of no contact, and order to pick up children. 6. Explore criminally enforceable laws related to child custody. |
| **Rationale** | Law Enforcement officers primarily handle criminal law activities. However, a law enforcement officer may become involved in the civil process in some circumstances. Officers must understand the different types of civil service, the limits on the use of force and entry and the civil process that has criminal penalties. |
| **Duration of Lesson** | 4 hours |
| **Word Wall/Key Vocabulary**  *(ELPS c1a,c,f; c2b; c3a,b,d; c4c; c5b) PDAS II(5)* | |  | | --- | | **Alternative Service −** a method of delivering to an uncooperative | | defendant | | **Answer −** a defendant’s written reply to a plaintiff’s petition | | **Applicant −** a party making application to the court or petitioning for | | some action | | **Attachment −** a procedure or writ which may be used to bring a person | | or property into the custody of the court | | **Citation −** an official notice from a court of competent jurisdiction, issued | | to a defendant after a plaintiff’s petition is filed; the citation commands | | the defendant to answer and appear in court at a specific time | | **Civil Law −** portion of the law which defines the personal and property | | rights of individuals, the rights of an individual to seek redress or to | | prevent a wrong, and any action other than criminal proceedings | | **Civil subpoena −** a command to appear at a certain time and place to | | give testimony upon a certain matter |   **Contempt −** proceedings held to determine whether a person has violated a lawful court order and to set punishment if a violation is found  **Default judgment −** can result when there is a failure to perform some action required by law within the specified time. May be rendered against a party who has failed to answer or appear as directed  **Diligent effort −** persistent activity, prudence or care; what is properly expected from a reasonable and prudent person under the particular circumstances  **Ex Parte −** any proceedings which are held for the benefit of, or on application of only one party; in the absence of one party  **Execution of judgment −** most common writ, issued to seize property to satisfy a judgment  **Garnishment −** a writ and process directed to one who has money or property in his possession belonging to the defendant, ordering the third person not to deliver or pay it to the defendant but to deliver or hold it for the plaintiff or as directed by the court  **Habeas Corpus −** a writ which orders that a person be brought before the court in order to test the legality of his detention by the person to whom the writ is directed  **Injunction −** a writ issued by a court that demands or prohibits specified actions  **Instanter −** immediate; now or instantly  **Judgment −** The final order of a court in a civil suit which settles all disputed issues and determines the rights of the parties with regard to the subject matter of the suit, and which is subject to being enforced by a writ  **Jurisdiction −** the power of a court to lawfully act with regard to persons and property  **Orders −** the directions of a court or judge; a mandate or command  **Petition −** A document filed by the plaintiff with the clerk of the court which outlines the basis of the complaint against the defendant and the relief being sought from the court  **Plaintiff −** a party in a civil suit; mainly the one who initiates the suit by filing a petition  **Possession −** a writ employed to enforce a judgment to recover possession of real or personal property (used in eviction process)  **Process −** all writs and official documents issued by courts in connection with pending suits  **Respondent −** defendant in a civil suit  **Restraining Order −** an order to the defendant prohibiting him or her from performing an act prohibited in the order until a formal hearing can be conducted  **Return −** the endorsement made by a constable or sheriff upon process; writ or notice stating what has been accomplished, and the time and mode of service  **Service −** the delivery of a writ, notice or injunction, etc. by an authorized 2 person, to a person who is thereby officially notified of some proceeding concerning him or her  **Sequestration −** an order directing the sheriff or constable to take into his or her possession certain property of which another person has possession until the suit can be decided or as the court directs  **Show cause −** a notice to the defendant to either appear in court or prepare a written answer to show cause for failing to respond to a previous order of the court (a.k.a. notice)  **Style or format −** the prescribed structure for the clerks of the court to use in developing the process  **Subpoena Duces Tecum −** process by which a court, at the direction of a party, commands a witness who has in his possession or control some document or paper that is pertinent to the issues of a pending controversy, to produce it at the trial  **Tort −** any one of various legally recognized private injuries or wrongs; a civil action  **Writ −** a legal order issued by the court, in the name of the state to compel a person to do something specifically ordered |
| **Materials/Specialized Equipment Needed** | * Civil Procedure Key Terms handout * Paper and pencils * Computers with Internet access or other resources for research * Computers with desktop-publishing software or paper and colored pencils |
| **Anticipatory Set**  (May include pre-assessment for prior knowledge) |  |
| **Direct Instruction \*** | II. The Role of Law Enforcement in Civil Law  A. Sheriff and Constables  1. Constitutionally created and elected officials  2. Usually execute and demonstrate the civil process  3. Must take an oath of office and provide a surety bond as required under law  B. Police  1. Any peace officer may serve the civil process if authorized by law or directed to by the court  2. Most city departments require an order from a court and approval from the administration for the officers to serve the civil process  C. Eviction Process (Property Code (PC) § 24.005)  1. Eviction − the complete process used by a landlord to regain possession of rented property  2. Requirements before the filing of the eviction process  a) 72-hours (three days) written notice to the defendant if the suit is for past due money (nonpayment of rent)  b) 30 day notice for all other reasons  c) The suit must be filed in the justice precinct in which the property is located  3. Procedures for filing and service of the eviction process  a) After notice is given, the plaintiff may file suit in the appropriate justice or probate court  b) The suit is called Forcible Entry and Detainer (Citation) – this proceeding requests of the court the right to regain possession for a plaintiff or landlord  c) The procedure for a forcible entry and detainer suit is the same for other civil suits with the following exceptions:  (1) If stated, anyone 16 years or older may be served with the process  (2) A hearing must be held no less than six days and no more than 10 days from the date of issuance  (3) Alternate service is available  (4) The appeal time after the rendering of judgment is five days, as opposed to 30 days  4. Enforcement of the eviction process (PC § 24.0061)  a) Upon expiration of the appeal time the plaintiff may obtain a Writ of Possession to regain possession of the property  b) The Writ commands the sheriff or constable to regain the possession of the property by using reasonable force, if necessary  c) The sheriff or constable is responsible for restoring possession of the property to the plaintiff  d) Property that is removed by the landlord or plaintiff may be stored or placed outside the premises. No property shall be placed outside by the landlord, sheriff, or constable while it is raining, sleeting, or snowing  (1) Procedures for the sheriff/constable to assist the tenant in gaining entry to his or her property  (a) A tenant who has been unlawfully denied access to a leased premise by a landlord may obtain a Writ of Reentry from a Justice of the Peace. The sheriff/constable would serve the Writ  (b) A Writ of Reentry allows the tenant back into the premises  (c) A Writ of Possession supersedes a Writ of Reentry  III. Civil Law Procedures (Texas Rules of Civil Procedure (RCP))  A. Civil suit process  1. An incident occurs resulting in a civil wrong  2. The style or format is developed. The plaintiff and the defendant are identified. There can be multiple plaintiffs and/or multiple defendants. Either side may be individuals, partnerships, or corporations  3. Some type of demand is made to the defendant, and if the parties are unable to resolve the dispute, a suit may commence  4. Plaintiffs must be within the statute of limitations to file a suit. The statute is  a) Two years  b) Unless a written agreement of the parties extends it to four years  5. The petition is prepared. The petition explains what the suit is about  6. It is determined what court the suit should be filed in. Remember that some courts have concurrent jurisdiction and sometimes specific suits have to be filed in specific courts  7. The petition is then filed in the proper court  8. The complaining party may also file certain additional documents with the original petition (for example, temporary restraining orders, show cause orders, etc.)  9. Upon filing the petition, court clerk issues a citation or cover document for service. The citation must be  a) Styled in the name of “The State of Texas”  b) Signed by the clerk under seal  c) Directed by the defendant  d) In plain language (“You have been sued”)  10.The citation must include  a) Name and location of the court  b) Date of filing  c) Date of issuance  d) The names of the parties  e) The file number  f) Name and address of the attorney or otherwise the plaintiff  g) Notice of filing of a written answer in a specified time  h) Address of the clerk  i) Notification to the defendant that failure to file a written answer can result in a judgment of default  B. Process of Service  1. The citation may be served by the constable, sheriff, or other authorized person approved by the court  2. It may be served by one of the following methods:  a) In person face-to-face (this is the preferred method)  b) By registered or certified mail  c) By publication  d) Alternative service − a method of delivering to an uncooperative defendant  3. A citation may not be served on a Sunday; however, most other civil documents can be served or executed at any time  4. Every officer or authorized person receiving the process shall endorse the date and time of receipt, and without delay and upon service by any method shall state when and by what manner served and endorsed by signature (RCP 105)  5. Person serving the process can be held in contempt of court for failure to execute or return the process (Code of Criminal Procedure ((CCP)) Art. 2.16) and RCP 107)  6. It is the duty of the sheriff and the constable to execute and make a return to the court of civil process documents. (CCP Art. 24.04)  7. After service has been effected and the defendant does not make a written answer, a default judgment may be rendered by the court against the defendant  8. Upon completion of the trial, the court will render a decision based upon preponderance of the evidence, either in favor of the plaintiff or defendant, or somewhere in between  9. Following the rendering of a decision by the court, both parties have 30 days to appeal that decision to the next highest court  C. Enforcement documents of lawsuits  1. Civil Subpoena  2. Subpoena Duces Tecum (CCP Art. 24.02)  3. Writs  a) Requirements  (1) Styled “The State of Texas”  (2) Directed to the person or persons enjoined  (3) State the name of the parties to the proceedings, the request of the plaintiff, and the action taken by the judge  (4) Commands the person or person to whom it is directed to desist and refrain from the commission or continuance of the act enjoined, or to obey and execute such an order as the judge has seen proper to make  (5) If it is a temporary restraining order, it shall state the day and time set for hearing, which shall not exceed fourteen days from the date the temporary injunction was issued after notice; it shall be made returnable at or before 10 a.m. of the Monday next after the expiration of twenty days from the date of the service thereof, as in the course of ordinary citations  (6) It shall be dated and signed by the clerk with his or her seal and the date of issuance  b) Types of Writs  (1) Sequestration (Civil Practice and Remedies Code (CPRC)) Ch. 62) − an order directing the sheriff or constable to take into his possession certain property of which another person has possession until the suit can be decided or as the court directs  (2) Garnishment (CPRC Ch. 63) − a writ and process directed to one who has money or property in his possession belonging to the defendant, ordering the third person not  to deliver or pay it to the defendant, but to deliver or hold it for the plaintiff or as directed by the court  (3) Attachment (CPRC Ch. 61) − a procedure or writ which may be used to bring a person or property into the custody of the court  (a) Such property is seized and maintained in the custody of a designated official, under order and supervision of the court  (b) Commonly use the plaintiff to secure a contingent lien on a defendant’s property in event that the plaintiff obtains a judgment against the defendant  (4) Possession (PC § 24.0061) – (claim and delivery) a writ employed to enforce a judgment to recover possession of real or personal property (used in the eviction process). Procedures are used  (a) To obtain possession of tangible property that is security for a debt in default  (b) To reclaim chattels that have been loaned or leased to another and not returned  (c) To obtain property whose ownership is in dispute  (5) Habeas Corpus (CCP Ch. 11) − a writ which orders that a person be brought before the court in order to test the legality of his detention by the person to whom the writ is directed  4. Other Documents  a) Distress Warrant (PC § 54.006) − a writ issued by a Justice of the Peace court directing the seizure of a tenant’s property for failure to pay rent as due; can only be issued for commercial tenant/landlord relationships  b) Notices  c) Show cause − a notice to the defendant to either appear in court or prepare a written answer to show cause for failing to respond to a previous order of the court; also known as a notice  d) Restraining Order (CPRC § 65.002) − an order to the defendant prohibiting him from performing an act prohibited in the order until a formal hearing can be conducted  IV. Use of Force and Entry (PC § 24.0061)  A. After a Writ of Possession has been issued, the sheriff is directed to remove the property of the tenant out of the home to the closest public property, normally the street curb  B. In nearly all states, process servers are restricted from trespassing on property as a means of serving process  C. Under any circumstance, an officer may not use more force than is reasonably necessary  V. Civil Orders  A. Protective Order – the court may order any member of the family or household who is alleged to have committed family violence to do or refrain from doing specified acts (Family Code (FC) Ch. 85)  1. Valid for two years  2. Civilly and criminally enforceable  3. After one year, the subject of the protection can file for a rehearing and ask that the order to be lifted  4. If the subject is imprisoned, the protective order can be extended for one year from the date of his or her release  5. Protective orders protect against  a) Committing further acts of violence  b) Harassing or threatening a victim, either directly or indirectly, by communicating the threat through another person  c) Going to or near a school or daycare center that a child protected under the order attends  6. Who can file a Protective order  a) An adult member of the family or household  b) Any adult for the protection of a child  c) A prosecuting attorney  d) The Department of Human and Regulatory services  7. The alleged victim of family violence is the applicant  8. Violation of an order is a Class A misdemeanor  9. Violation of Protective Order (Penal Code § 25.07)  a) Authorizes arrest without warrant based on probable cause. Probable cause can be based on witness statements, physical evidence such as bruises, or from your own admissions  b) The violator will be held without bail until the judge determines the immediate threat to the victim is gone  B. Emergency Protective Order − allows any magistrate to issue a protective order against someone arrested for assault or family violence (CCP Art. 17.292)  1. Good for 31 to 61 days after issuance  2. May be requested by several people, including a peace officer  3. Must be issued if the arrest for family violence or stalking involves the use of exhibition of a deadly weapon or serious bodily injury  4. Victim does not have to be present for order to be issued  5. Violation is a class A misdemeanor  6. Who can file for an Emergency Protective Order?  a) The victim  b) The guardian of the victim  c) The attorney representing the state  C. Order of No Contact − An emergency injunction that prohibits the suspect from contacting the victim through physical contact, telephone, email, text messages, letters, or messages delivered by third party (CCP Art. 17.292)  1. Used when a party fears for personal safety of themselves or others  2. Fears can be actual or threatened domestic violence, or actual or threatened violence in any other situation  3. Length of the order is decided by the judge  VI. Criminally Enforceable Laws (Penal Code Ch. 25)  A. Child Custody in Texas  1. Unless there is a court order granting custody, both parents have equal rights to their child(ren)  2. Either parent may take a child anywhere they choose, and the other parent does not have to be notified about the child’s whereabouts  3. Law enforcement involvement in child custody is very limited and they can only intervene if someone’s safety is threatened  4. Law enforcement mostly documents instances of violations of court orders of custody  5. Law enforcement cannot search out a child who has not been returned, unless the child is in danger  B. Interference with Child Custody (Penal Code § 25.03)  1. A person commits an offense by retaining custody of a child under 18:  a) Knows taking or retaining violates the terms of a judgment or order, including a temporary order OR  b) Has not been awarded custody, knows that divorce, civil suit, or application for habeas corpus to dispose of the child’s custody has been filed  c) Takes the child out of a geographic area of counties composing the judicial district without permission of the court and with intent to deprive the court of authority over the child  d) A noncustodial parent commits, with intent to interfere with lawful custody of a child under 18, a non-custodial parent knowingly entices or persuades a child to leave the custody of a custodial parent or guardian  e) Defense to prosecution that actor returned the child to geographic area of jurisdiction within 3 days after the date of offense  f) Offense is a State Jail Felony  C. Agreement to Abduct from Custody (Penal Code § 25.031)  1. A person commits an offense if he or she agrees, for payment or promise of payment, to  a) Abduct a child under 18 by  (1) Force  (2) Threat of force  (3) Misrepresentation  (4) Stealth  (5) Unlawful entry  b) Knowing the child is under the care and control of a person having custody or physical possession of the child under court order, OR under the care and control with consent of a person having custody or physical possession under court order  c) Offense is Class B misdemeanor  D. Enticing a Child (Penal Code § 25.04)  1. A person commits an offense if  a) With intent to interfere with the lawful custody of a child under 18  b) Knowingly entices, persuades, or takes the child from the custody of a parent or guardian  c) Class B misdemeanor  *Individualized Education Plan (IEP) for all special education students must be followed. Examples of accommodations may include, but are not limited to:*  NONE |
| **Guided Practice \*** | Vocabulary Bingo. Have students create bingo cards by drawing a grid that is five columns by six rows. Instruct students to label the columns: B, I, N, G, and O. Then have them write a key term in each of the squares (Note: key terms should be placed into the boxes randomly). Next have students tear small pieces of paper to use to cover the squares during the game. When you are ready to begin, call out a definition from the Civil Procedure Key Terms handout. Instruct students to cover the square of the appropriate key term on their cards. The first student to fill in a line of squares (vertical, horizontal or diagonal) and to shout, “bingo!” wins. You may choose to offer bonus points or treats as awards for winning. Play several times until all of the vocabulary words have been used. Check the winning students’ cards against the definitions you read to determine if student covered the correct words. Use the Individual Work Rubric for assessment.  *Individualized Education Plan (IEP) for all special education students must be followed. Examples of accommodations may include, but are not limited to:*  NONE |
| **Independent Practice/Laboratory Experience/Differentiated Activities \*** | Civil Research. Assign each student one of the following terms:   * Attachment * Garnishment * Claim * Delivery   Have the students research the civil law procedure for each and prepare a short presentation to share their research with the class. Use the Research Rubric and the Presentation Rubric for assessment.  *Individualized Education Plan (IEP) for all special education students must be followed. Examples of accommodations may include, but are not limited to:*  NONE |
| **Lesson Closure** |  |
| **Summative/End of Lesson Assessment \*** | * Civil Procedure Exam and Key * Civil Procedure Key Term Quiz and Key * Discussion Rubric * Individual Work Rubric * Presentation Rubric * Research Rubric * Writing Rubric   *Individualized Education Plan (IEP) for all special education students must be followed. Examples of accommodations may include, but are not limited to:*  NONE |
| **References/Resources/**  **Teacher Preparation** | Texas Constitution and Statutes <http://www.statutes.legis.state.tx.us/>   * Civil Practice and Remedies Code (CPRC) * Code of Criminal Procedure (CCP) * Family Code * Penal Code * Property Code (PC) * Texas Rules of Civil Procedure (RCP)   <www.txcourts.gov/media/1435952/trcp-all-updated-with-amendments-effective-912016.pdf>   * Victim Rights   [www.texasattorneygeneral.gov/cvs/victim-rights](https://www.texasattorneygeneral.gov/cvs/victim-rights)   * U.S. Marshals Service   [www.usmarshals.gov/process/attachment.htm](http://www.usmarshals.gov/process/attachment.htm)   * Do an Internet search for the following: * Answers topic garnishments |
| **Additional Required Components** | |
| **English Language Proficiency Standards (ELPS) Strategies** |  |
| **College and Career Readiness Connection[[1]](#footnote-1)** |  |
| **Recommended Strategies** | |
| **Reading Strategies** |  |
| **Quotes** |  |
| **Multimedia/Visual Strategy**  **Presentation Slides + One Additional Technology Connection** |  |
| **Graphic Organizers/Handout** |  |
| **Writing Strategies**  **Journal Entries + 1 Additional Writing Strategy** |  |
| **Communication**  **90 Second Speech Topics** |  |
| **Other Essential Lesson Components** | |
| **Enrichment Activity**  (e.g., homework assignment) |  |
| **Family/Community Connection** |  |
| **CTSO connection(s)** | SkillsUSA |
| **Service Learning Projects** |  |
| **Lesson Notes** |  |

1. Visit the Texas College and Career Readiness Standards at <http://www.thecb.state.tx.us/collegereadiness/CRS.pdf>, Texas Higher Education Coordinating Board (THECB), 2009. [↑](#footnote-ref-1)