

## Indigency

The number of people living in poverty in America in 2013 was 14.5 per cent, or an estimated 45.3 million people (U.S. Census Bureau, September 6, 2014). In Texas, 17.4 per cent, or an estimated 4.6 million, people were reported living in poverty in 2013.

Because of the number of people living in poverty, a municipal judge may hear claims of indigence at various times in the court process. The Code of Criminal Procedure (C.C.P.) refers to “indigency” and “indigence.” C.C.P. does not define indigence for all situations; nor does it have guidelines for a municipal judge who has to make a determination. Just because a defendant says, “I can’t pay,” does not mean that that person is indigent. A person’s financial situation may change: one who may be considered well-off when a citation was issued may be indigent when payment is due. This paper lists stages in the court process a judge may need to determine if a defendant is indigent with the statute for that situation. A chart of the Texas statutes relating to municipal courts and indigency is included in the Appendix. This paper also lists factors a judge may consider at a hearing to determine whether a person is indigent.

### Code of Criminal Procedure Sections

#### Magistrate Functions

A municipal judge may act as a magistrate performing functions under C.C.P. Art. 15.17(a). This article requires a magistrate to: 1) admonish an accused of the right to appointed counsel if the accused **cannot afford counsel**; 2) explain the procedure and ask an accused if he or she requests counsel be appointed; and 3) document whether an accused requests appointment of counsel. This applies to one in custody for a felony or a misdemeanor punishable by confinement. If a municipal judge, as a magistrate, is not authorized to appoint counsel for an indigent person, C.C.P. Art 26.04 lists the procedure to transmit the forms requesting appointment of counsel to a court or courts’ designee authorized to appoint counsel in that county. Indigency is defined in C.C.P. Art. 1.051(b) as it relates to Art. 15.17(a).

#### Out of County offense

A judge, as magistrate, may arraign a person arrested on a Class C misdemeanor from a different county. C.C.P. Art. 15.18 (a) (2) provides that for a person arrested on an out-of-county warrant for an offense punishable by fine only, a magistrate SHALL: take bail OR accept a written plea of guilty or nolo contendere, set a fine, determine costs, accept payment of the fine and costs, give credit for time served, **determine indigency**, or on satisfaction of the judgment, discharge the defendant. A magistrate shall before the 11<sup>th</sup> business day transmit to the court having jurisdiction the written plea, orders entered, or fine or costs collected in the case. Indigency is not defined in this article.

#### Case pending in Municipal Court

A judge, as magistrate, may arraign a person in custody charged with a Class C misdemeanor. Effective September 1, 2013, C.C.P. Art. 45.023(c) allows that AFTER giving the Article 15.17 warning AND advising of the right to a jury trial, a judge MAY, as appropriate: 1) accept a defendant’s plea; 2) assess a

fine, determine costs, and accept payment of the fine and costs; 3) give a defendant credit for time served; 4) determine whether a defendant is **indigent**; OR 5) discharge a defendant. This may be a defendant who is arrested for an on-view offense or on a capias warrant after receiving a citation and failing to appear in court. In this article, indigent is not defined.

Under C.C.P. Art. 45.023(d), if a motion for new trial is filed no later than 10 days after rendition of judgment, a judge SHALL grant a new trial. Art. 45.023(c) does not apply to the arraignment of a person in custody on a capias pro fine warrant (after a plea with a sentence and a fine that a defendant failed to pay).

#### Request for Appointed Counsel on a pending case – Indigency Defined

C.C.P. Art. 1.05 sets out the rights of an accused: “a defendant in a criminal matter is entitled to be represented by counsel in an adversarial judicial proceeding.” A defendant who appears in municipal court may request a court-appointed attorney. C. C. P. Art. 1.051(b) defines “indigent,” as “a person not financially able to employ counsel.” C.C.P. Art. 1.051(c) provides that: “an **indigent** defendant is entitled to have an attorney appointed to represent him”:

-“In any adversary judicial proceeding that may result in punishment by confinement,” AND

-“In any other criminal proceeding if the court concludes the interests of justice require representation.”

A defendant who requests counsel should be told what the statute allows. If a defendant insists on a court-appointed attorney, a defendant should be given an opportunity to be heard. After a judge makes a determination, a written finding should be signed. [This paper does not address a process for payment of a court-appointed attorney].

#### Payment after Judgment

The 14<sup>th</sup> Amendment requires that a defendant convicted of a fine-only offense must be provided an ‘alternative means’ (time payment or community service) to discharge a judgment to avoid incarceration. Tate v. Short, 401 U.S. 395 (1971). C.C. P. Art. 45.041(b-2) provides that after a plea or finding of guilt, if a judge determines that the ‘**defendant is unable to immediately pay the fine and costs,**’ a judge shall allow a defendant to pay in specified portions at designated intervals. A defendant who enters a plea or is found guilty may pay the court in the manner specified in the judgment:

- a. The entire fine and costs when sentenced is pronounced,
- b. The entire fine and costs at some later date, or
- a. A specified portion of the fine and costs at designated intervals

A judge must allow a defendant to pay the fine and costs in designated intervals and may not automatically convert a fine and costs into a jail term solely because a defendant cannot immediately pay.

If a defendant is unable to pay the full fine and costs at the plea and sentencing, a court may require a defendant to complete a sworn Application for Time Payment, Extension, or Community Service. An Application is included in the Appendix. A court clerk can verify the information given.

A decision that a defendant is unable to pay at sentencing is not a finding of indigency- but only that a defendant cannot pay now - maybe due to pay day being the next week or maybe a bonus, commission, or refund is to be paid soon. Allowing a defendant to pay later is more a convenience to a defendant than finding a defendant to be indigent. The granting of an extension of time to pay is a judicial function and may not be assigned to a clerk.

#### Community Service to Satisfy Fine or Costs

1. C.C.P Art. 45.049(a) allows that if a defendant “**fails to pay a previously assessed fine or costs,**” a judge MAY require a defendant to discharge all or part of the fine or costs by performing community service. A judge using this article does not make a finding of indigency – only that a defendant has not paid the assessed fine and costs. This determination should be documented within the order requiring community service to discharge a fine or costs. The case can be scheduled to a later date for a defendant to show the court proof that community service was completed.

2. C.C.P Art. 45.049(a) also allows that if a defendant is **determined by the judge to have ‘insufficient resources or income to pay fine or costs,’** a judge MAY require a defendant to discharge all or part of the fine or costs by performing community service. This determination should be documented within the order requiring community service to discharge the fine or costs. The word “indigent” is not used in this article, although the words “insufficient income or resources to pay” evoke thoughts of indigency.

In either situation, if proof of completion of community service is later provided, the case should be closed with the fine and costs satisfied due to community service performed. A Community Service Order is included in the Appendix. Other than these situations, community service cannot be performed in lieu of paying a fine; a defendant with an ability to pay must pay with money.

#### Community Service Waived

1. The legislature has recognized that requiring community service may create an undue hardship on a defendant. C.C.P. Art. 45.0491, *Waiver of Payment of Fines and Costs for Indigent Defendants and Children*, allows a judge in two circumstances to waive the payment of a fine or costs. A municipal judge MAY waive payment of a fine or costs for one who defaults in payment if a judge determines that: 1) the defendant is **indigent**, AND 2) discharging the fine and costs under Art 45.049 (performing community service), would impose an undue hardship on a defendant. Indigency is not defined in this article, although a judge makes a determination that the defendant is “**indigent.**” A judge must find both a defendant is indigent and that performing community service will impose an undue hardship on the defendant.

2. C.C.P. Art. 45.0591 also applies if a defendant was a child (at least 10 but less than 17 years of age) at the time of offense. If a child defaults in payment, C.C.P. Art. 45.0491 allows a judge MAY waive fine OR costs if a judge determines: 1) that a defendant was a child at the time an offense was committed, AND 2) to discharge the fine and costs under Art. 45.049 (performing community service) “or as otherwise authorized by this chapter” would impose an undue hardship on a defendant. The “otherwise authorized by this chapter” refers to C.C.P. 45.0492, (allowing a child charged with an offense occurring in a school

building or on school grounds a child attends to discharge all or part of a fine or costs by performing community service or attending a tutoring program). A judge does not determine that a child is indigent.

In either situation, the determination should be documented in a written order. The requirement to perform community service (or tutoring) is waived, the fine or costs are waived, and the case is closed with the fine and costs waived due to indigency or tutoring. A Waiver of Payment of Fine and Costs for Indigent Defendants and Children is included in the Appendix.

C.C.P. Art. 45.0491 does not define “hardship.” Webster’s dictionary defines hardship as: “something that causes or entails suffering or privation.” The statute requires that the hardship be ‘undue.’ A judge must find both that a defendant is indigent (OR was a child at the commission of the offense), AND that an undue hardship would be imposed upon a defendant ordered to perform community service (or tutoring).

#### Opportunity for Show Cause Hearing if fail to pay

C.C.P. Art 45.051(c-1), Deferred Disposition, and C.C.P. 45.0511(I), Driving Safety Course, require a municipal judge to set a case for a Show Cause hearing if a defendant fails to provide proof of compliance. A judge may set a policy that if a defendant fails to pay the assessed fine and costs, a court clerk will mail a Show Cause notice to the defendant to appear. This notice can inform a defendant that, if not paid in full, the fine and costs may be discharged by performing community service.

A defendant, upon receiving the notice, may immediately pay the full fine and costs. A defendant may appear at the Show Cause hearing, make partial payment, and request time to pay the balance; if so, a judge may order a defendant to pay later. A judge may determine that a defendant has insufficient resources or income to pay and may require community service to discharge the fine or costs.

After a Show Cause hearing, a judge may find that a defendant **is indigent** but wants to discharge the fine and costs by performing community service; if so a judge may require community service to discharge the fine or costs. A defendant may provide proof that he or she is **indigent** and that performing community service would impose an undue hardship. If a judge makes this determination, a written order waiving the fine or costs should be entered. If a defendant given a chance to appear at a Show Cause hearing fails to appear, a *capias pro fine* warrant may be issued for a defendant’s arrest. This defendant has at least been given an opportunity to pay in intervals or at a later date or discharge by community service before arrest.

#### Commitment after Fail to Pay Fine and Costs

If a defendant fails to pay in full, C.C.P. Art 45.046(a) applies if the person is placed in custody on a *capias pro fine* warrant. After conducting a hearing and making a written determination, a judge MAY order a defendant confined to jail until discharged by law if the judge determines that:

1. A defendant is **not indigent** and has failed to make a good faith effort to discharge the fine and costs, OR

2. A defendant **is indigent** AND:

- a. Has failed to make a good faith effort to discharge the fine and costs under Article 45.049 (perform community service), AND
- b. Could have discharged the fines and costs under Article 45.049 (perform community service) without experiencing any undue hardship.

Subsection Number 1 requires finding a defendant failed to ‘make a good faith effort to discharge the fine and costs,’ with no mention of community service. Subsection Number 2 refers to failing to make a “good faith effort to discharge a fine and costs under Article 45.049” (performing community service). A judge must find that a defendant could have discharged the fines and costs by performing community service without experiencing **any** undue hardship. This language is different than Article 45.0491 that allows a judge may waive a fine and costs if performing community service would “impose an undue hardship.”

A judge who commits a defendant to jail must document this determination in writing. An Order of Commitment is included in the Appendix. A certified copy of the judgment, sentence, and order are sufficient to authorize confinement of a defendant. A defendant may appear before a judge in person or by means of an electronic broadcast system with an image of the defendant presented to the court. A judge may find that a defendant is **indigent** and made a good faith effort to discharge by community service but was unable to perform community service without experiencing any undue hardship. If so, a judge should sign a written order fully discharging the fine and costs and notify a jailer in writing to immediately release the defendant. This information must be given to a court clerk who can close the case with the fine and costs waived due to indigency. Although a judge may find a defendant indigent, indigent is not defined in this article.

#### Habeas Corpus

A judge in a **municipal court of record** may issue a writ of habeas corpus in cases in which an offense charged is within the jurisdiction of the court. Government Code (G.C.) Sec 30.00006(e). If a defendant has been placed in jail for “failure to pay a fine and costs,” C.C.P. Art. 45.048 (a), requires that a defendant SHALL be discharged on habeas corpus by showing a defendant: 1) is **‘too poor to pay the fine and costs’**, OR 2) “has been in jail a sufficient length of time to satisfy the fine and costs at a rate of not less than \$50.00 for each period of time served.” C.C.P. Art. 45.048 (b) defines the period be not less than 8 hours or more than 24 hours to satisfy each \$50.00 of the fine and costs. The word “indigent’ is not used, but “too poor to pay the fine and costs” evokes images of indigency.

#### Appeal

1. Each defendant has a right to appeal from a judgment or conviction. G.C. 30.00014(a), C.C.P. Art. 44.02, 45.042. A claim of indigence may be made in a municipal court if a defendant appeals. An “eligible **indigent** defendant is entitled to have a trial court appoint an attorney” in appellate and post-conviction habeas corpus matters **‘if the court concludes that the interests of justice require representation.’** C.C.P. Art. 1.051 (d) (4). Indigent is defined in this article under subsection (b).

2. If a defendant appeals a case and “**is unable to pay for the appellate record,**” a defendant may “by motion and affidavit ask a trial court to have the appellate record furnished without charge.” Texas Rules Appellate Procedure 20.2. If after hearing the motion, a judge finds that a defendant **cannot pay or give security** for the appellate record, a judge must order a court reporter to transcribe the proceedings. The reporter must be paid from the county general funds in an amount set by the trial court. This article does not require indigency be proven. [This paper will not address this process].

In these circumstances in which a defendant requests counsel or asserts inability to pay for the record, a trial judge should consider the defendant’s claim. Once done a judge should document his or her decision in writing.

#### Local Government Code Defines “Indigent”

The Local Government Code (L.G.C.) lists fees that are assessed upon conviction in criminal cases. L.G.C. Sec. 133.002(2) defines indigent: “an individual who earns not more than 125 percent of the income standard established by applicable federal poverty guidelines.” The Department of Health and Human Services (HHS) updates and publishes federal poverty guidelines in the Federal Register. The 2015 poverty guidelines, published January 22, 2015, are found at <http://aspe/hhs.gov/poverty>, and are included in the Appendix.

#### Transportation Code - Driver Responsibility Act defines “Indigent”

Transportation Code (T.C.) Sec. 708.158 (b) defines indigent. A person is considered “indigent” who provides proof that:

1. Most recent federal income tax return shows a person’s (or household) income does not exceed 125 percent of the applicable income level established by the federal poverty guidelines,
2. Most recent wage statement shows a person’s (household) income does not exceed 125 percent of the applicable income level established by the federal poverty guidelines, or
3. Federal, state, or school district document indicates a person (or if a dependent, a taxpayer claiming the person as a dependent) receives assistance from:
  - a. Food stamp program or financial assistance program under Chapter 31, Texas Human Resources Code,
  - b. Federal special supplemental nutrition program for woman, infants, children (42 U.S.C. Section 1786)
  - c. Medical assistance program under Chapter 32, Texas Human Resources Code,
  - d. Child health plan program under Chapter 62, Texas Health & Safety Code, or
  - e. National free or reduced-price lunch program under 42 U.S.C. Sec. 1751

The statute uses the word “MAY” indicating the list is not exclusive or mandatory – suggesting a person may provide items other than those listed and that a judge may consider additional items.

Effective September 1, 2011, the Department of Public Safety (DPS) “shall waive all surcharges assessed under the Driver Responsibility Program for a person who is **indigent.**” T.C. Sec. 708.158 (b) requires that a person with a pending surcharge must provide information to the court in which a person

was convicted of the offense that is the basis for the surcharge. The statute does not state whether a judge makes a determination of indigency at sentencing or after a surcharge has been imposed.

If a person returns to the municipal court that convicted asking to be found indigent, the first person he or she will likely see is a court clerk. Only a judge can make this determination; the clerk should set the case when a judge can consider the request. A judge may establish a policy listing what items must be provided to allow a judge to make a determination. One who returns for a hearing should be aware that he or she has a burden to prove indigence to the judge.

After considering the documentation provided, a judge must determine if a person is indigent and sign a written order. An Order Waiving Surcharges for an Indigent Defendant is included in the Appendix. The statute does not state whether a judge, clerk, or defendant returns an order to the DPS. Only surcharges assessed after September 1, 2011, may be waived under this section. The most recent DPS information pamphlet on the Driver Safety Program is included in the Appendix.

#### Reports to the Office of Court Administration

Texas Government Code Sec. 71.035(b) and Texas Administrative Code, Sec. 171.1 and 171.2 require each municipal judge, clerk, or other court official to report information on criminal cases to the Texas Judicial Council no later than 20 days after the end of the month for which statistics are reported. The Official Municipal Court Monthly Report form is filed with the Office of Court Administration (OCA). The number of cases in which a person in custody requested counsel under C.C.P. Art. 15.17 from a judge, acting as a magistrate, is to be included on the Additional Activity Section, Line 1, Section A, B, and C.

The number of cases in which community service, or a tutoring program, was completed to discharge a fine and/or costs is to be included on the Additional Activity Section, Line 14. Subsections A and B require the number of cases in which community service partially or fully satisfied the fine or court costs. The number of cases in which a fine or costs were fully or partially waived for **indigency** (including waiver because a defendant was a child at the time of the offense) is reported on the Additional Activity Section, Line 16.

The number of cases and the amount of fines and costs waived for **indigency** (including waiver because a defendant was a child at the time of the offense) is to be included on lines 16 and 17. The Monthly Report does not distinguish whether or not a defendant whose fine and costs were waived was in custody. An OCA Additional Activity Section and the OCA Instructions for the Additional Court Activity are included in the Appendix.

#### Conducting a hearing to determine indigence

The statutes applicable to municipal courts refer to a finding, concluding, or “determining” indigency, although indigence is not always defined. Before a judge can make a determination, there must be a hearing with evidence presented to a judge.

The purpose of C.C.P. Art 45.001 is to establish procedures to process cases that come within the criminal jurisdiction of a municipal court. The chapter is intended and shall be construed: 1) “to provide a meaningful opportunity for a person appearing in a criminal proceeding before a judge to be heard,” and 3)

“to promote adherence to the rules with sufficient flexibility to serve the ends of justice.” Because there is no definition of indigence in the statutes for all situations, a judge who must conduct an indigency hearing can be guided by these objectives.

A judge may establish a policy that defines indigency using L.G.C. Sec. 133.002(2) or T.C. Sec. 708.158 (b). A judge may adopt a policy that defines indigency using the Federal Poverty Guidelines or the Indigent Defense Plan for the county in which the court is located. An Indigent Defense Plan contains “indigence determination standards” that define indigency and factors used to determine it. Indigent Defense Plans are at <http://tidc.tamu.edu/public.net/Reports/IDPlanNarrative.aspx>, the Texas Indigent Defense Commission website. A judge’s policy may define indigency using Webster’s Dictionary: “impoverished” or “a level of poverty in which real hardship and deprivation are suffered and comforts of life are wholly lacking.” A policy will enable a clerk to inform persons of documents to bring and provide every person a chance to be heard with sufficient flexibility to serve the ends of justice.

The 2013 TMCEC Bench Book, Chapter 8-3, Indigence, lists the procedure a judge can follow. It also lists several factors the judge can consider:

a. Defendant’s Amount of income

b. Defendant’s Source of income

Wages, investment, checking and savings, child support, social security, disability, welfare income, assets or non-exempt property to sell, loans and ability to borrow money, if defendant posted cash or surety bail, recent or long-term job loss

c. Defendant’s Expenses

Number and age of dependents, rent or mortgage payment, debts & obligations (car note, credit card), personal expense, illness or incapacity of defendant, spouse, or dependent child

d. Other evidence

Ability to work, spouse financial condition

Defendant long- term physical illness or disability (or spouse or dependent child)

Defendant past or present mental disability (or spouse or dependent child)

Defendant recently incarcerated (or spouse)

Factors that should not be considered are:

a. Financial resources of defendant’s parents or other relatives,

b. Exempt property of defendant including homestead and vehicle, and

c. Attitude of a defendant

If a defendant was unable to pay the full fine and costs at the time of plea and sentencing, a sworn Application for Time Payment, Extension, or Community Service may be in the court file. A judge may reconsider this Application, the amount paid, and frequency of payments made. A judge may have

previously required Community Service that reflects a judge's finding at the time community service was ordered. If not done, a judge may require a defendant to complete an Application for Time Payment, Extension, or Community Service. This Application may be sworn before a clerk.

A defendant who appears for a hearing should be sworn with testimony taken and documents received by a judge. After considering the evidence, a judge must make the best judicial decision in the interest of justice and with due process. A written order should be signed that documents whether or not a defendant is indigent.

If a judge finds a defendant indigent in a pending case, the fine and costs are waived. Once a judge documents a court's case file, the file should be given to a clerk to close the case(s) as fine and costs waived due to indigency. The number of case(s) and the amount of fine and costs waived are reported to the OCA. If a judge does not find a defendant indigent in a pending case, an order should be signed allowing the fine or costs to be discharged with an alternative means of a payment plan, community service or tutoring (if a child).

C.C.P. Art 45.201 requires that "all prosecutions in a municipal court shall be conducted by the city attorney of the municipality (or deputy city attorney)." The statute is silent as to the need for a prosecutor to be present at an indigency hearing.

Each judge and clerk who hears the words "I can't pay," must be mindful that due process requires a judge to consider if a defendant is indigent or if there is an alternative method to discharge a fine and costs. Every judge and clerk who sees a person returning to court with a surcharge due to DPS who claims indigency must remember that due process requires a judge to consider whether a defendant is now indigent.

Every person should leave a municipal court feeling that their documents were considered and they have been given a meaningful opportunity to be heard. Whether or not a judge determines indigence, an order should be signed documenting that a judge has considered a defendant's assertion, the evidence presented, and made a determination.

**The State of  
Municipal Courts:  
Current Issues and  
Recent Changes**

o

o1

---

---

---

---

---

---

---

---

Recent media attention  
regarding fines, fees and  
costs

o

o2

---

---

---

---

---

---

---

---

**Events in Ferguson**

- 08/09/14 – City of Ferguson, Missouri Officer Darren Wilson shot and killed Ferguson resident 18-year-old Michael Brown.
- That shooting was the catalyst for a national debate on social justice and economic inequality

o

o3

---

---

---

---

---

---

---

---

## DOJ Report

- 03/15 – the Department of Justice determined that the Ferguson Police Department discriminated against African Americans and applied racial stereotypes in a: “pattern or practice of unlawful conduct.”
- The report also found that the Ferguson Municipal Court maintained practices and policies that undermined the court and eroded community trust in the court, police and city government

o

o4

---

---

---

---

---

---

---

---

## DOJ Recommendations

- In March of 2016 the Department of Justice published recommendations for state and local courts
- Those recommendations are:
  - o Do not incarcerate a person for nonpayment of fines or fees without first conducting an indigency determination and establishing the failure to pay for willful;
  - o Consider alternatives to incarceration for defendants unable to pay fines or fees;

o

o5

---

---

---

---

---

---

---

---

## DOJ Recommendations

- o Do not condition access to a judicial hearing on the prepayment of fine or fees;
- o Provide meaningful notice and, in appropriate cases, counsel, when enforcing fines and fees;
- o Do not use arrest warrants or license suspensions as a means of coercing payment of court debt when individuals have not been afforded constitutionally adequate procedural protections;

o

o6

---

---

---

---

---

---

---

---

## DOJ Recommendations

- o Do not employ bail or bond practices that cause indigent defendants to remain incarcerated solely because they cannot afford to pay for their release; and
- o Safeguard against unconstitutional practices by court staff and private contractors.

o

o7

---

---

---

---

---

---

---

---

## Summits

- There were summits in February and May hosted by the William Wayne Justice Center for Public Interest Law
- The summits, or conversations, brought together judges, government officials, advocates and other stakeholders
- The conversations were about collecting Class C fines and costs
- Several Municipal Court Judges were present

o

o8

---

---

---

---

---

---

---

---

## Summits

- From the first conversation 5 areas of concern stood out:
  - o Court costs create pressure on courts. The legislature should not use municipal and justice courts to fund general revenue;
  - o The enforcement of Class C violations can be important to promoting public safety;
  - o Class C debts are criminal and courts must respect due process and defendant's rights;

o

o9

---

---

---

---

---

---

---

---

## Summits

- o There are significant negative consequences to taking away driver's licenses from people simply because they are too poor to pay their traffic tickets, and unpaid debts exacerbate harm to low-income Texans; and,
- o Some believe that OCA's collection improvement program constrains courts' ability to use reasonable payment plans or community service, while encouraging them to use jail commitments.

o

o10

---

---

---

---

---

---

---

---

## Summits

- At the 2<sup>nd</sup> conversation Municipal Judges that spoke included Judge Barbara Hartle (Houston), Judge Kathleen Person (Temple), Judge Ed Spillane (College Station), Judge Lester Rorick (Pasadena), Judge John Bull (San Antonio) and Judge Kevin Madison (Lakeway)
- Most judges spoke on what they are doing in their courts and communities to address the issue of citations and those unable to pay

o

o11

---

---

---

---

---

---

---

---

## Continuing efforts

- Create standards and policies for determining indigence
- Expand the meaning of "Alternative Means" for indigent defendants
- Expand access to community service
- Broaden the use of "Show Cause" hearings
- Review "time payment plan fee" law
- Stop state programs that hinder

o

o12

---

---

---

---

---

---

---

---

## Lawsuits

- Three lawsuits relating to cities jailing indigent defendants have been filed in Texas
- Numerous other suits have been filed around the country
- The lawsuits against the City of Amarillo and the City of Austin have been dismissed
- The lawsuit against the City of El Paso is still pending

o

o13

---

---

---

---

---

---

---

---

## Austin

- Dismissed on summary judgement motion
- City not responsible for discretionary acts of judges
- City did not dictate policy to judges
- Not an absolution of judges' conduct

o

o14

---

---

---

---

---

---

---

---

## Amarillo

- Dismissed on summary judgement motion
- City not responsible for discretionary acts of judges
- City did not dictate policy to judges
- Not an absolution of judges' conduct

o

o15

---

---

---

---

---

---

---

---

## El Paso

- Lawsuit still pending
- Policies at issue are questionable
- El Paso has made some changes

○

○16

---

---

---

---

---

---

---

---

## New CIP rules and processes

- Changes focus mainly on removing those considered indigent or unable to pay from a collection improvement program
- Changes are significant in volume and content
- The program is mandated for some courts from C.C.P. Art. 103.0033 but rules are found under Chapter 175 of the Texas Administrative Code

○

○17

---

---

---

---

---

---

---

---

## What do they mean

- The plan requirements do not apply to someone the court deems unable to pay (indigent)
- The plan requirements do not apply to cases in which the court has waived fines, fees and costs

○

○18

---

---

---

---

---

---

---

---

## OCA Reports and Data

- Mental Health numbers are going up
- Municipal Court cases are declining
- Cases filed are down across the state
- Traffic accidents are at high levels

o

o19

---

---

---

---

---

---

---

---

## Trends since Ferguson

- Citation numbers going down (already were going down)
- Courts reviewing their practices and policies for necessary changes to comply with DOJ guidelines
- Scrutiny of local courts continues

o

o20

---

---

---

---

---

---

---

---

## What do they mean to Texas municipal courts?

- Texas laws - better shape than many states
- Need for focused education and learning
- Need for Judges to do the right thing

o

o21

---

---

---

---

---

---

---

---

## Indigent Defense Requests

- Required before committing?
- How to handle?
- Who pays?

○

○22

---

---

---

---

---

---

---

---

## What's Next?

- Trends in general
- Changes in court policies
- Possible Legislation

○

○23

---

---

---

---

---

---

---

---

Stewart Milner, Chief Judge  
City of Arlington  
[Stewart.milner@arlingtontx.gov](mailto:Stewart.milner@arlingtontx.gov)

○

○24

---

---

---

---

---

---

---

---