

**CHAPTER 8 SENTENCING, DEFERRED, AND INDIGENCE**

**3. Indigence**

The 78th Legislature defined “indigent” to mean “an individual who earns not more than 125 percent of the income standard established by applicable federal poverty guidelines” under [Sec. 133.002, L.G.C.](#) However, it is unclear which, if any, federal poverty guidelines municipal courts should apply. The TMCEC application form for time payment, extensions, or community service asks that the defendant note any federal programs that he or she is eligible for and is receiving assistance from. The court should consider this information in combination with the defendant’s ability to pay a fine and costs.

It is recommended that any defendant who is: (1) not required to pay costs by court order; or (2) unable to pay all fines and costs at the time of judgment, complete an admonishment as to financial changes (See *TMCEC Forms Book*).

Checklist 8-3	Script/Notes
<p><input type="checkbox"/> 1. Defendant raises indigence impacting paying fine/ costs, appeal, bond, or posting bail.</p>	<p>A person who is unable to pay a fine must be provided an alternative means of discharging the fine other than incarceration under the equal protection clause. The policy of “pay or lay” was found to violate the 14th Amendment of the U.S. Constitution. <a href="#">Tate v. Short, 401 U.S. 395 (1971).</a></p> <p>See Chapter 5, <i>TMCEC The Municipal Judges Book</i> for more information on Judgments, Indigence, and Enforcement.</p>
<p><input type="checkbox"/> 2. Give the defendant a financial information sheet (application for time-payment, extension, or community service).</p>	<p>See <i>TMCEC Forms Book: Application for Time Payment, Extension, or Community Service.</i></p> <p>“Please complete a financial information form.”</p>
<p><input type="checkbox"/> 3. Have the defendant swear to or affirm information on the sheet.</p>	<p>After defendant completes form, have defendant sign under oath.</p> <p>“Do you swear (affirm) that the information that you have provided in this document is true and correct?”</p>

- a. Place the defendant under oath to present testimony about financial condition.
  
- 4. Consider the defendant's income and resources:
  - a. Amount of income;
  - b. Source of income:
    - (1) Wages, investment income, checking/savings, child support, social security/disability/welfare income, selling assets/non-exempt property, etc.
    - (2) Loans and ability to borrow money.
    - (3) Whether defendant has posted bail (cash bond or surety).
  
- 5. Consider the defendant's expenses:
  - a. Number and ages of dependents;
  - b. Rent/mortgage payment;
  - c. Debts and obligations (car notes, credit cards, etc.);
  - d. Personal expenses; and
  - e. Illness/incapacity of defendant or spouse.
  
- 6. Consider other evidence:
  - a. Ability to work; and
  - b. Spouse's financial condition.

"I'm going to place you under oath before conducting this indigence hearing and reviewing your financial information sheet. Please raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth in this matter pending before the court?"

- 7. Factors not to be considered:
  - a. Financial resources of parents and other relatives;
  - b. Exempt property including homestead and vehicles (see Chapters 41 and 42, Texas Property Code); and
  - c. Attitude.
- 8. Review financial information sheet with the defendant, if necessary.
- 9. Review any federal assistance program(s) that the defendant is participating in.
- 10. Procedural issues:
  - a. Consider the truthfulness of indigent affidavit and defendant’s testimony;
  - b. Examine court records — payment history and/or prior indigence hearing;
  - c. Documentation:
    - (1) Note date and time of hearing or ruling; and
    - (2) Attach or secure all documentation with ruling and place in file.
- 11. Upon determination that defendant is unable to pay the fine, costs, or special expense fee:
  - a. Advise of right to appeal.
    - (1) Appeal:
      - (a) Grant personal bond for appeal bond; and
      - (b) Send case to the appellate court.

See Chapter 10 of this book.

(2) No Appeal:

(a) Time payment if defendant can obtain funds at a later time:

(i) All payable at a later date;

(ii) Payment in periodic installments;

(iii) Explain that if the defendant wants time payment or an extension, he or she will have to pay an additional \$25 for each charge where there is a conviction if any part of the fine or court costs is paid on or after the 31st day after judgment is entered.

b. Consider ordering community service:

(1) Each eight hours of service discharges not less than \$50 of the fine and costs.

(2) No more than 16 hours per week, unless the court finds that a greater period would not work a hardship.

(3) Court should specify the number of hours to be worked.

(4) Can be used in conjunction with partial payment.

[Art. 45.041\(b\), C.C.P.](#)

[Sec. 133.103, L.G.C](#)

[Art. 45.049, C.C.P.](#)

See TMCEC *Forms Book*:  
Community Service Order; and  
Community Service Time Sheet.

- (5) Defendants charged with a traffic offense or possession of alcohol by a minor who are residents of Texas and ordered to perform community service as a condition of deferred disposition may elect to perform the required community service in the county in which the court is located, or the county in which the defendant resides; but only if the entity or organization agrees to supervise the defendant in the performance of the defendant's community service work and report to the court on the defendant's community service work.

[Art. 45.051\(b\)\(10\), C.C.P.](#)

- c. Consider the waiver of costs and fine:

[Art. 45.0491, C.C.P.](#)

See TMCEC *Forms Book*: Waiver of Payment of Fine and Costs for Indigent Defendants.

- (1) Court must order immediate payment and the defendant subsequently defaults in payment.
- (2) Defendant must be indigent and unable to make installment payments.
- (3) Community service must impose an undue hardship on defendant.
- (4) Note these findings and waiver in court records.