



IMPOSING FINES, FEES, & COURT COSTS

- Consider the full fine range for the offense. Make meaningful use of the fine range because after a judgment is final, there is no statutory authorization or mechanism to change the fine amount.
- The judge may direct the defendant to pay (1) the entire fine and costs when sentence is pronounced, (2) the entire fine and costs at some later date, or (3) a specified portion of the fine and costs at designated intervals.¹
- The court may consider the financial resources and obligations of the defendant, the burden payment of a fine will impose, and ability of the defendant to pay.
- If the judge determines that the defendant is unable to immediately pay the fine and costs, the judge shall allow the defendant to pay the fine and costs in specified portions at designated intervals.²
- A judge may require a defendant who is determined by the court to have insufficient resources or income to pay a fine or costs to discharge all or part of the fine or costs by performing community service.³
- Applicable fees and other costs in criminal cases and credits shall be assessed upon conviction.⁴

ENFORCING FINES BY COMMITMENT TO JAIL

- An indigent defendant shall not be incarcerated solely for inability to pay a fine, court costs, or restitution.⁵
- A *capias pro fine* is not a commitment order.
- Commitment for nonpayment may only be ordered after the judge at a hearing makes the required written determination under Art. 45.046(a), C.C.P.
- A non-indigent defendant may be committed to jail when he or she defaults in the discharge of the judgment if the person has failed to make a good faith effort to discharge the fine and costs.⁶
- An indigent defendant may be committed to jail when he or she defaults in the discharge of the judgment if he or she has failed to make a good faith effort to discharge the fines and costs through community service and could have done so without experiencing any undue hardship.⁷
- In the event of commitment, the length of incarceration to satisfy the fine and costs is specified by the convicting court: not less than \$50 for each period (not less than eight or more than 24 hours) of time served.⁸
- A defendant who is jailed solely because of inability to pay or who has been in jail a sufficient length of time shall be released on habeas corpus.⁹

COURT ACTIONS ON NON PAYMENT

PERMISSIBLE ACTIONS

- Show Cause Hearing
- Payment Plan or Extension of Time to Pay
- Community Service¹⁰
- Waiver of Fines and Costs if Alternative Means Would Impose an Undue Hardship¹¹
- *Capias Pro Fine* and Commitment Hearing
- Suspension of Driver's License¹²
- Refusal to Register a Motor Vehicle¹³
- Collection Services¹⁴
- Execution Against Property in Same Manner as in a Civil Suit¹⁵

IMPERMISSIBLE ACTIONS

- Holding a Defendant in Jail Pursuant to a *Capias Pro Fine* Beyond the Business Day Following the Date of the Arrest Without the Commitment Requirements in Art. 45.046, C.C.P.
- Commitment to Jail Without Providing an Opportunity for Community Service or Without a Commitment Hearing and Written Determination under Art. 45.046, C.C.P.
- Requiring a Bond to See the Judge
- Refusal to Accept Filings
- Altering a Final Judgment (unless by a *nunc pro tunc* order for a clerical error)

DETERMINING INDIGENCE

- For fine-only offenses, there is no statutory means test for determining indigence. Judges have discretion in determining whether a defendant is indigent.¹⁶
- Judges may use the Federal Poverty Guidelines or the Living Wage Calculator as guidance for an indigence determination.¹⁷
- To determine indigence, a court may require a defendant under oath to provide income and asset information.¹⁸
- When a defendant does not pay all the fine and costs at the time of sentencing, it is important for courts to communicate and document its expectation to the defendant and what the defendant should do if he or she is unable to pay in the manner ordered by the judge.¹⁹

DEFERRED DISPOSITION (Art. 45.051, C.C.P.)

- An order of deferral provides a judge great discretion and flexibility, especially in indigence cases, far greater discretion than post-final judgment.
- In lieu of immediate payment of all court costs, a judge may allow the defendant to (among other things) pay the costs in installments during the deferral period, to complete community service, to do a combination of installments and community service, submit to counseling, psychological testing, or substance abuse treatment, and/or comply with any other reasonable condition.
- If the defendant fails to comply with the imposed requirements, the judge may lower the fine. Such an authorization does not exist after final judgment.
- The procedural safeguard of a show cause hearing is built into deferred disposition (and DSC²⁰).

BAIL

- As a general rule in Texas, bail may not be denied.²¹
- It is well established in Texas case law that ability or inability to make bail does not, alone, control in determining the amount; however, it is an element to be considered along with the others named in Art. 17.15, C.C.P.²²

- While bail should be sufficiently high to give reasonable assurance that the defendant will appear, the power to require bail is not to be used as an instrument of oppression.²³
- A defendant charged with a Class C misdemeanor who is in jail must be released on personal bond or reduction of bail amount if the State is not ready for trial within 5 days of commencement of detention.²⁴

RIGHT TO COUNSEL

- A defendant accused of a Class C misdemeanor has the right to be represented by counsel in an adversarial judicial proceeding.²⁵
- The right to be represented by counsel includes the right to consult with counsel in private sufficiently in advance of a proceeding to allow adequate preparation for the proceeding.²⁶
- Defendants do not have a right to appointed counsel in Class C misdemeanor cases because in such cases the sentence is payment of the fine and costs, not imprisonment.²⁷
- Municipal judges are not authorized under Art. 26.04, C.C.P. and have no duty to appoint counsel for indigent defendants.²⁸ Municipal judges are, however, authorized under Art. 1.051(c), C.C.P. to appoint counsel for an indigent defendant if the court concludes that the interests of justice require representation.

ENDNOTES

¹ Article 45.041(b), Code of Criminal Procedure.

² Article 45.041(b-2), Code of Criminal Procedure.

³ Article 45.049(a), Code of Criminal Procedure.

⁴ See, Court Costs Chart, <http://tmcec.com/resources/charts/>. If a cost is not expressly provided by law, it may not be imposed. Article 103.002, Code of Criminal Procedure. The judge shall give jail credit as provided by Article 42.03 of the Code of Criminal Procedure at the rate provided in Article 45.048. Article 45.041(c), Code of Criminal Procedure. A Time Payment Fee shall be assessed if any part of the fine, court costs, fees, or restitution is paid on or after the 31st day after the date on which the judgment was entered. Sec. 133.103, Local Government Code; See also, Article 42.037(g)(1), Code of Criminal Procedure for optional restitution fee.

⁵ *Tate v. Short*, 401 U.S. 395 (1971); *Gipson v. State*, 383 S.W.3d (Tex. Crim. App. 2012) (citing *Bearden v. Georgia*, 460 U.S. 660 (1983)).

⁶ Article 45.046(a), Code of Criminal Procedure.

⁷ *Id.* Independent of Texas law, *Bearden* prescribes a mandatory judicial directive to make inquiry into the reason for failure to pay and permits jail when alternative means are inadequate for punishment and deterrence. *Gipson v. State*, 428 S.W.3d 107, 110 (Tex. Crim. App. 2014).

⁸ Article 45.048, Code of Criminal Procedure.

⁹ *Id.*

¹⁰ Article 45.049, Code of Criminal Procedure.

¹¹ Article 45.0491, Code of Criminal Procedure.

¹² Section 706.002, Transportation Code.

¹³ Section 702.003, Transportation Code.

¹⁴ Article 103.0031, Code of Criminal Procedure.

¹⁵ Article 45.047, Code of Criminal Procedure.

¹⁶ See, e.g., Articles 45.041, 45.046, and 45.049, Code of Criminal Procedure.

¹⁷ Dr. Amy K. Glasmeier and the Massachusetts Institute of Technology, Living Wage Calculator, <http://livingwage.mit.edu/>.

¹⁸ See, example, *Application for Time Payment, Extension, or Community Service*, 2015 TMCEC Forms Book.

¹⁹ See, example, *Admonishment as to Financial Changes*, 2015 TMCEC Forms Book.

²⁰ Article 45.0511, Code of Criminal Procedure.

²¹ Article I, Section 11, Texas Constitution; *Ex parte Canada*, 754 S.W.2d 660, 666-67 (Tex. Crim. App. 1988).

²² *Ex parte Bufkin*, 553 S.W.2d 116, 118 (Tex. Crim. App. 1977).

²³ *Id.*; Article 17.15(1) and (2), Code of Criminal Procedure.

²⁴ Article 17.151, Code of Criminal Procedure.

²⁵ Article 1.051(a), Code of Criminal Procedure.

²⁶ *Id.*

²⁷ Article 45.041(a), Code of Criminal Procedure; Article 1.051(c), Code of Criminal Procedure; *Scott v. Illinois*, 440 U.S. 367 (1979); *Fortner v. State*, 764 S.W.2d 934 (Tex. App.—Fort Worth 1989, no pet.) (citing *Empy v. State*, 571 S.W.2d 526, 528 (Tex. Crim. App. 1978)); See also, *Bush v. State*, 80 S.W.3d 199 (Tex. App.—Waco 2002, no pet.).

²⁸ *Barcroft v. State*, 881 S.W.2d 838 (Tex. App.—Tyler 1994, no pet.).