

# THE BRIEF

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## Information for Texas Municipalities about Texas Municipal Courts (November 2017)

### **TML Annual Conference Recap The Effects of Ferguson and the Future of Fines and Court Costs in Texas**

On October 6, 2017, Ryan Kellus Turner, TMCEC General Counsel and Director of Education, addressed mayors, city council members, and other local officials from cities of all sizes at the Texas Municipal League Annual Conference. What follows is a synopsis of his presentation.

#### **Traffic Safety in Texas**

Mayors and city council members play an important role in preserving public safety. This is particularly true when it comes to traffic safety. In Texas one person is killed by a motor vehicle every 2 hours and 20 minutes. In rural and urban settings, in 2016, fatality rates increased for drivers, pedestrians, and bike riders. Texas now leads the nation in highway fatalities. While traffic fatalities are on the rise, the number of traffic offenses filed in Texas municipal courts continues to decline. It is a trend that began prior to the events in Ferguson. Since the events in Ferguson, a survey revealed that 72 percent of law enforcement is now reluctant to make traffic stops.

#### **Where is the Focus of Your Municipal Courts?**

The City of Ferguson, Missouri abused public trust by using its municipal court, not to promote public safety and preserve quality of life, but to generate revenue without concern of laws governing the imposition of fines. Writing for *Texas Town & City* in May 2017, Turner and co-author Benjamin Gibbs asked city officials to reflect on whether their cities had the right attitude about municipal courts. Is the municipal court in your city an independent arbiter of justice or is it operated primarily to generate revenue?

The integrity of municipal courts is now a national issue. In Texas, municipal courts that place revenue ahead of justice threaten the integrity of the judiciary and promote a lack of public confidence.

#### **A Different Kind of Ferguson Effect: The Call for Criminal Justice Reform**

The events in Ferguson, Missouri resulted in a nationwide call for reform to address perceived inequities in terms of how law enforcement impacts racial minorities and individuals with low incomes. Key recommendations include shifting from criminal enforcement to civil enforcement and eliminating the possibility of arrest for “low-level” violations. Criminal justice reform advocates claim that jailing individuals for their inability or refusal to pay is giving rise to “modern day debtors’ prisons.” In Missouri, some have called for municipal courts to be abolished. Some believe the way to end corruption in municipal courts is to require cities to send all fine money back to the state treasury.

## **Allegations of “Debtors’ Prisons” in Texas**

According to the American Civil Liberties Union (ACLU), Texas is not a “debtors’ prison” state. However, according to the Texas ACLU, there are many municipal courts in Texas that unfairly jail poor people who cannot pay fines and court costs without considering their ability to pay or other alternatives to immediate or full payment. These seemingly contradictory statements can be reconciled. Texas law is not deficient. Rather, the deficiencies are in particular municipal courts. Is your city hosting such a municipal court?

### **The Law**

Texas law contains procedural protections and checks and balances that are missing in other states (including, Missouri). In Texas, most offenses punishable by fine are criminal offenses, not civil matters. This means that the accused is presumed innocent until proven guilty (traffic tickets are not IOUs). Defendants in Texas municipal courts not only have the right to a trial, they have the right to jury trial where the State must prove its case beyond a reasonable doubt. If a defendant is found guilty, and does not have the resources to immediately pay, fines and court costs cannot be automatically converted to jail time. If a defendant is determined unable to pay, the court is required to consider alternatives to immediate full payment. However, if a defendant then *willfully* refuses to pay (or does not make a good faith effort to discharge what is owed through alternative means) then arrest and jail time is a possibility.

The laws governing the municipal courts in your city are different than in Ferguson and in other alleged “debtors’ prison” states. It is well-established law in Texas that city officials and employees can be either removed from office or fired for requiring quotas on the number of citations issued by law enforcement or for evaluating the performance of a judge based on the amount of fines collected. Additionally, state law provides caps on the amount of revenue generated by traffic enforcement.

As detailed in the September issue of *The Brief*, the Texas Legislature recently passed H.B. 351 and S.B. 1913 which expand the meaning of community service and bolster existing protections for low-income criminal defendants. Each bill seeks to improve the assessment and collection of fines and court costs in criminal courts.

### **At What Costs?**

It is important that revenue generated by a municipal court be viewed by public officials as an incidental benefit of the justice process and not the primary reason the court exists. In Texas, elected city officials have an important role in protecting the integrity of their local municipal court by respecting judicial independence and the intended purpose of courts. Across the country, the integrity of municipal courts is being called into question. Public perception is tied to public confidence. The future of municipal courts likely hinges on whether the public believes that these courts are truly about justice or simply revenue generation.

In September, the United States Commission on Civil Rights issued a report citing data which identified the top 100 cities in terms of fines and court costs as percentage of overall revenue. Nineteen cities are in Texas.

City officials are encouraged to know what percentage of their city’s revenue is derived from fines and costs. Whether a city is overly dependent on fines appears ripe for further debate. Anticipate scrutiny.

### **Moving Forward**

It is vital that city officials understand why municipal judges, in certain instances, allow defendants to discharge fines and court costs through alternative means. Alternative means may entail flexible payments or community service which was recently expanded to include getting job skills, education, and counseling.

Alternative means provide a “level playing field” for low-income defendants. It does not mean “crimes without consequences.” It is not a poverty defense (and it does not necessarily mean waiver).

## **Finding Balance**

In a polarized age, the public counts on municipal courts to balance different interests. Upholding the rule of law and commitment to procedural fairness is not a binary choice. Compassion can be balanced with compliance. Judicial independence can be balanced with judicial accountability. In Texas, mayors, city council members, and other local officials play an important role in helping municipal courts in achieving the balance.

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*The Brief* is a periodic briefing for Texas mayors, city council members, and other local officials highlighting issues and increasing awareness and understanding of municipal courts in the Lone Star State. For more information visit: [www.tmcec.com](http://www.tmcec.com).

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