

CHAPTER 8 SENTENCING, DEFERRED DISPOSITION, AND INDIGENCE

1. Sentencing

Municipal courts have jurisdiction over Class C misdemeanors. Under Sections 12.23 and 12.41(3) of the Penal Code, Class C misdemeanors are criminal offenses for which the sentence entails the imposition of a fine as punishment. After a finding of guilt, municipal judges impose the fine in the judgment as a sentence.

Checklist 8-1	Script/Notes
<p><input type="checkbox"/> 1. After entry of a guilty or nolo contendere plea or a determination of guilt at a bench trial or jury trial:</p> <p style="padding-left: 40px;"><input type="checkbox"/> a. Find defendant guilty.</p> <p><input type="checkbox"/> 2. The judge may take testimony or evidence, but is not required to do so:</p> <p style="padding-left: 40px;"><input type="checkbox"/> a. This proceeding may be ex parte. The State may be heard, but the presence of a prosecutor is not required after a plea of guilty.</p> <p style="padding-left: 40px;"><input type="checkbox"/> b. If the court accepts evidence or testimony, it should be under oath.</p> <p style="padding-left: 40px;"><input type="checkbox"/> c. The court should not deviate from its obligations to remain fair and impartial.</p> <p><input type="checkbox"/> 3. Judge should consult the controlling statute or ordinance to determine the range of punishment.</p> <p><input type="checkbox"/> 4. Judge should set a fine within the range of punishment. The judge is required to consider the entire range of punishment and is prohibited from imposing a pre-determined sentence. This is rendering sentence.</p>	<p>You may not accept a plea of guilty or nolo contendere in open court unless it appears that the defendant is mentally competent, and the plea is free and voluntary. Art. 45.0241 /45A.152, C.C.P.</p> <p>“You are found guilty of the offense of _____.”</p> <p>Canon 3, <i>Code of Judicial Conduct</i></p> <p>.</p> <p>Art. 45.041(a)/45A.251(a), C.C.P. “I am setting your fine in the amount of \$_____.”</p>

- | | |
|---|---|
| <p><input type="checkbox"/> a. If the defendant entered a plea in open court, the judge shall inquire either during or immediately after the imposition of the sentence whether the defendant has sufficient resources or income to immediately pay all or part of the fine and costs.</p> | <p>Art. 45.041(a-1)/45A.252, C.C.P.
This includes when a defendant enters a plea prior to the commencement of trial. See HB 80 amendment to 45.041.</p> |
| <p><input type="checkbox"/> 5. Make any determination necessary to court costs.</p> | <p>“Your court costs are a total of \$_____.”</p> |
| <p><input type="checkbox"/> 6. If the court believes deferred disposition is appropriate, go to Checklist 8-2 and skip the rest of this list.</p> | <p>Art. 45.051/Subchapter G, Chapter 45A, C.C.P.</p> |
| <p><input type="checkbox"/> 7. If the defendant is under the conservatorship of the Department of Family and Protective Services or in extended foster care, the judge may not require the defendant to pay any amount of fine and costs. In lieu of payment, the judge may require the defendant to perform community service under Arts. 45.049/45A.254 and 45.0492/45A.459-45A.460, C.C.P.</p> | <p>Art. 45.041(b-6)/45A.253(d), C.C.P.</p> |
| <p><input type="checkbox"/> 8. If the judge determines that the defendant does not have sufficient resources or income to immediately pay all or part of the fine and costs, determine whether the fine and costs should be:</p> | <p>Art. 45.041(a-1)/45A.252(b), C.C.P.
See Checklist 8-3 for determining sufficient resources or income to pay.</p> |
| <p><input type="checkbox"/> a. Paid at some later date or in a specified portion at designated intervals;</p> | |
| <p><input type="checkbox"/> b. Discharged by performing community service;</p> | |
| <p><input type="checkbox"/> c. Waived in full or in part; or</p> | |
| <p><input type="checkbox"/> d. Satisfied through any combination of a-c above.</p> | |
| <p><input type="checkbox"/> 9. The court may order the fine and costs paid in the following manners:</p> | <p>Art. 45.041(b)/45A.251, C.C.P.</p> |

- a. The entire fine and costs when sentence is pronounced;

If you determine that the defendant is unable to immediately pay the fine and costs, you must allow the defendant to pay in specified portions at designated intervals. Art. 45.041(b-2)/45A.253, C.C.P.

This does not preclude community service per Article 45.049/45A.254, C.C.P., or waiver of fines and costs per Article 45.0491/45A.257, C.C.P.

See *TMCEC 2024 Forms Book*: Installment Agreement; and Schedule of Payments for Installment Agreement.

- b. The entire fine and costs at some later date; or

“You will pay the total amount of \$(*fine and costs*) immediately.”

“You will pay the total amount of \$(*fine and costs*) on or before (*date*).”

- c. A specified portion of the fine and costs at designated intervals.

“You will pay the amount of \$(*payment*) on or before (*date*) and payments of \$(*installment*) each (*installment period*) until the total amount of \$(*fine and costs*) is paid.”

A time payment fee must be paid if the total fine and costs are not paid before the 31st day after judgment. Sec. 133.103, L.G.C.

For more information on payment plans, see Checklist 8-3.

- 10. The court should impose orders authorized or required by law.

Art. 45.041(b)(3)/45A.251(b)(3), C.C.P. For special sanctions allowed and required in juvenile cases, see Chapter 13.

- ❑ 11. The court, if applicable, may direct the defendant to pay restitution to any **victim** of the offense. In instances involving passing a bad check, restitution is limited to \$5,000.

- ❑ 12. If the defendant has been placed in jail on the charge, the court must calculate jail credit:
 - ❑ a. Court must determine the period of time that must be served to get credit. The period can be no less than eight hours nor more than 24 hours.
 - ❑ b. Each period earns not less than \$150 in credit against the fine and costs for each period served.
 - ❑ c. Credit must be given for all time in jail in said cause prior to sentence in each cause even when the effect is the defendant receives multiple jail credits.

- ❑ 13. In addition to jail credit above, the judge shall credit the defendant \$150 each day for any time the defendant was confined in jail or prison while serving a sentence for another offense if the confinement occurred after the commission of the misdemeanor for which the defendant is now being sentenced.

- ❑ 14. The court must enter a written judgment signed by the trial judge reflecting the sentence and terms rendered above.

- ❑ 15. A copy of the judgment should be provided to the defendant.

- ❑ 16. Advise of right to appeal.

Art. 45.041(b)(2) and (b-1) /45A.251(b)(2) and (c), C.C.P.
 A victim is any person who suffers loss as a direct result of the criminal offense. *Hanna v. State*, 426 S.W.3d 87 (Tex. Crim. App. 2014).

Arts. 42.03, Sec. 2; 45.041(c) /45A.251(d), and 45.048/45A.262 C.C.P.

Art. 45.048(b)/45A.262(b), C.C.P.

Art. 45.048(a)(2)/45A.262(a)(2), C.C.P. The credit amount of \$150 per period served applies to a defendant who is placed in jail for failure to pay.

Ex parte Hannington, 832 S.W.2d 355 (Tex. Crim. App. 1992).

Art. 45.041(c-1)/45A.251(e), C.C.P.

Note that this credit is required for time served as part of a sentence. Jail credit is not required for time spent in jail for a Class C misdemeanor, as a defendant can never be sentenced to jail as a result of a Class C misdemeanor.

Art. 42.01, Sec. 1, C.C.P.

CHAPTER 8 SENTENCING, DEFERRED DISPOSITION, AND INDIGENCE

2. Deferred Disposition, Art. 45.051/Subchapter G, Chapter 45A, C.C.P.

Deferred disposition is a form of probation used by municipal and justice courts that can last up to 180 days. Granting deferred disposition is within the court’s discretion. It is not mandatory. For more information about deferred disposition, see “Deferred Disposition is Not Deferred Adjudication,” *The Recorder*, (August 2002).

Checklist 8-2	Script/Notes
<p><input type="checkbox"/> 1. Determine that deferred disposition is available for the alleged offense. It is not available for:</p> <ul style="list-style-type: none"> <input type="checkbox"/> a. Traffic offenses committed in a work-construction zone while workers are present; <input type="checkbox"/> b. Violation of a state law or local ordinance relating to “motor vehicle control,” other than a parking violation committed by a person who holds a commercial driver’s license or held a commercial driver’s license at the time of the offense; or <input type="checkbox"/> c. A minor with two prior convictions for either Consumption of Alcohol by a Minor (Sec. 106.04, A.B.C.) or Driving or Operating Watercraft Under the Influence of Alcohol by a Minor (Sec. 106.041, A.B.C.). <p><input type="checkbox"/> 2. Deferred disposition may be granted:</p> <ul style="list-style-type: none"> <input type="checkbox"/> a. After defendant pleads guilty or no contest; or <input type="checkbox"/> b. After a finding of guilt by judge or jury. <p><input type="checkbox"/> 3. Set a fine.</p>	<p>Art. 45.051(f)(1)/45A.301(1), C.C.P.</p> <p>Art. 45.051(f)(2)/45A.301(2), C.C.P.</p> <p>If there are two prior convictions, the municipal court must waive jurisdiction of the third or subsequent offenses unless the court has a juvenile case manager. Sec. 51.08, F.C.</p> <p>See <i>TMCEC 2024 Forms Book: Deferred Disposition Order</i>.</p> <p>The plea may be oral or written.</p> <p>Deferred may be granted at the defendant’s request, the prosecutor’s suggestion, or the court’s own motion.</p> <p>The court must set a fine when granting deferred disposition, even though the case may be dismissed later.</p>

- 4. Defendant must pay court costs:
 - a. At the time the deferred disposition is granted or ordered; or,
 - b. Alternatively, notwithstanding any other provision of law;
 - (1) in installments during the probation period;
 - (2) by performing community service, if eligible, under Article 45.049/45A.254 C.C.P., if:
 - (A) Defendant failed to pay previously assessed fine or cost; or
 - (B) Defendant is determined by the court to have insufficient resources or income to pay fine or costs;
 - (i) by performing community service, if defendant is younger than 17 years, under Article 45.0492/45A.459, C.C.P.;
 - (ii) by performing tutoring, if defendant is younger than 17 years of age and the offense occurred in a building or on the grounds of the primary or secondary school at which the defendant was enrolled at the time of the offense, under Article 45.0492/45A.460, C.C.P.; or
 - (iii) through a combination of the alternatives described above.
- 5. Defer the proceedings for a period of time not to exceed 180 days.

Art. 45.051(a)/45A.302(a), C.C.P.;
Sec. 133.101, L.G.C.

Art. 45.051(a-1)/45A.303(a),
C.C.P.

Alternatives should be incorporated as conditions of the deferred disposition order. See Checkbox 6 below.

- 6. Set any or all of the following conditions to be performed by the defendant during the deferral period, which may include:
 - a. Post bond in amount of the fine to secure payment of the fine;
 - b. Require payment of restitution to victim;
 - c. Go to professional counseling;
 - d. Submit to alcohol or drug testing;
 - e. Submit to psychosocial assessment;
 - f. Successfully complete an alcohol awareness or substance misuse treatment or education program, such as:
 - (1) A substance misuse education program approved by the Department of State Health Services in accordance with Sec. 521.374(a)(1), T.C., that is regulated by the Texas Department of Licensing and Regulation under Chapter 171, G.C.; or
 - (2) An alcohol awareness program described by Sec. 106.115, A.B.C., that is regulated by the Texas Department of Licensing and Regulation under Chapter 171, G.C.
 - g. Pay as reimbursement fees the costs of any diagnostic testing, psychosocial assessment, or participation in a treatment or education program either directly or through the court;

Restitution under the deferred statute may not be more than the fine assessed.

h. Complete a driving safety course or other course;

If the offense is a “traffic offense classified as a moving violation” and the defendant is younger than age 25, the judge shall require as a condition of deferred disposition that the defendant complete a driving safety course. See Checkbox “m” below.

i. Present the court with proof of compliance with any required conditions;

j. Comply with any other reasonable conditions;

Community service and committing no further offenses are examples of “other reasonable conditions.”

k. If the offense is Purchase, Attempt to Purchase, Consumption, or Possession of Alcohol by a Minor; Misrepresentation of Age by a Minor; or Driving or Operating Watercraft Under the Influence of Alcohol by a Minor, the court must require as a condition of deferred disposition that the minor successfully complete an alcohol awareness program approved by the Texas Department of Licensing and Regulation, or a substance misuse education program under Section 521.374, T.C.

Sec. 106.115(a), A.B.C.

Two different bills amended Sec. 106.115, A.B.C. in 2021. Drug and Alcohol Driving Awareness Programs are still mentioned in one version of Sec. 106.115, A.B.C., but Sec. 1001.103, E.C., is to be repealed effective June 1, 2023.

l. If the offense is Purchase, Attempt to Purchase, Consumption, or Possession of Alcohol by a Minor; Misrepresentation of Age by a Minor; or Public Intoxication the court must require as a condition of deferred disposition that the minor performs eight to 12 hours of community service for a first offense and 20 to 40 hours of community service for a subsequent offense; and/or

Mandatory community service must be related to education about or prevention of misuse of alcohol or drugs, as applicable. If programs or services providing the education are not available, the court may order community service that it considers appropriate for rehabilitative purposes. Sec. 106.071(e), A.B.C.

- m. If the offense is a “traffic offense classified as a moving violation” and the defendant is younger than age 25:
 - (1) The judge shall require as a condition of deferred disposition that the defendant complete a driving safety course; and
 - (2) If the defendant holds a provisional license, during the deferral period, the judge shall require that the defendant be examined by the DPS.

 - 7. Inform the defendant:
 - a. When all the conditions are met, the case will be dismissed at the end of the deferral period. Otherwise the court will enter a judgment, and the fine will be due; and

 - b. Whether a fine is imposed.
 - (1) The judge may impose a fine on the defendant not to exceed the amount of the fine that could be imposed as punishment for the offense.
 - (2) The fine may be collected at any time before the end of the probation period.
 - (3) The judge may elect not to impose the fine for good cause shown.
- Art. 45.051(b-1)/45A.304(b), C.C.P.
- Sec. 521.161(b)(2), T.C.
Persons under age 18 hold provisional licenses under Sec. 521.123, T.C.
- Give the defendant a written copy of the order deferring disposition, listing all the conditions, and the consequences of both successful and unsuccessful compliance.
- Art. 45.051(a)/45A.302(b), C.C.P.
This is the fine formerly called a “special expense fee.” Although the passage of S.B. 346 (2019) changed the term “special expense fee” to “fine,” this administrative deferred disposition fine is separate from the punitive fine.

- (4) If the judge orders collection of a fine, it must be credited in the event of default by the defendant toward the payment of the amount of the fine imposed by the judge as punishment for offense on conviction.

- 8. At the end of the deferral period:
 - a. If the defendant presents satisfactory evidence of compliance with the requirements, then dismiss the case.

 - b. If the defendant fails to provide proof of compliance within the deferred period:
 - (1) The court must set the matter for a show cause hearing. Art. 45.051(c-1)/45A.306, C.C.P.

 - (2) The court must provide notice in writing of the defendant's opportunity to show cause. The notice shall be mailed to either the address on file with the court or the address that appeared on the citation.

 - (3) The court shall require the defendant to appear at the time and place stated in the notice and show cause why the deferral should not be revoked.

 - (4) At the show cause hearing on the defendant's showing of good cause for failure to present satisfactory evidence of compliance with the requirements of the deferred order, the court may allow an additional period during which the defendant may present evidence of the defendant's compliance with the order's requirements. Art. 45.051(c-2)/45A.307(a), C.C.P.

 - (5) After a show cause hearing the judge may either: Art. 45.051(d)-(d-1)/45A.307(b), C.C.P.

- (A) impose the fine originally suspended pending the deferral period; or
- (B) impose a lesser fine (except in instances involving defendants younger than 25 years of age involving traffic offenses classified as moving violations; court shall impose the original fine assessed.).

CHAPTER 8 SENTENCING, DEFERRED DISPOSITION, AND INDIGENCE

3. Indigence

In certain instances, judges are required to determine whether a defendant is able to pay the fine and costs assessed in a case. In Class C misdemeanor cases, this determination is required (1) at the time of judgment, (2) upon a default in the discharge of the judgment, and (3) before commitment to jail. The 85th Legislature made significant changes requiring judges to make an inquiry regarding the ability to pay fine and court costs for defendants who enter a plea in open court during or immediately after sentencing. This new inquiry is outlined in Checklist 8-1.

Whether or not a particular defendant is able to pay the fine and costs is a complex determination involving numerous factors that widely vary depending on where a defendant lives, especially in a state as large and diverse as Texas. The U.S. Supreme Court has made no attempt to define indigence, leaving that duty to state legislatures. Texas statutes like Articles 45.041/45A.252, 45.046/45A.261, and 45.049/45A.254-45A.255 of the Code of Criminal Procedure provide judicial discretion in determining whether a defendant is indigent without defining 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. 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 all relevant facts regarding the defendant’s ability to pay a fine and costs.

Checklist 8-3	Script/Notes
<p><input type="checkbox"/> 1. Defendant enters plea in open court or raises indigence or inability to pay.</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. <i>Tate v. Short</i>, 401 U.S. 395 (1971).</p> <p>See Chapter 5, <i>Municipal Courts and the Texas Judicial System</i> for more information on Judgments, Indigence, and Enforcement.</p>

- 2. Give the defendant a financial information sheet.

See *TMCEC 2024 Forms Book: Application for Time Payment, Extension, Community Service, or Waiver*.

“Please complete a financial information form.”

- 3. Have the defendant swear to or affirm information on the sheet:

After defendant completes form, have defendant sign under oath.

“Do you swear (affirm) that the information that you have provided in this document is true and correct?”

- a. Place the defendant under oath to present testimony about 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?”

- 4. Consider the defendant’s income and resources:

Except as otherwise specifically provided, in determining a defendant’s ability to pay for any purpose, the court shall consider only the defendant’s present ability to pay. Art. 1.053, C.C.P.

- 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.

- 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.
- 7. Factors not to be considered:
 - a. Future ability to pay;
 - b. Financial resources of parents and other relatives;
 - c. Exempt property including homestead and vehicles (see Chapters 41 and 42, Texas Property Code); and
 - d. 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:

Art. 1.053, C.C.P.

- (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 immediately pay the fine and costs:
- a. Consider ordering payment:
 - (1) All at a later date;
 - (2) In periodic installments;
 - b. Consider ordering community service:
 - (1) Each eight hours of service discharges not less than \$100 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 must specify the number of hours to be performed and the day by which the defendant must submit documentation to the court verifying completion.
 - (4) Can be used in conjunction with partial payment.

Art. 45.041(b)/45A.251, C.C.P.

Explain that upon conviction, the defendant must pay a \$15 time payment reimbursement fee if any part of the fine or court costs is paid on or after the 31st day after judgment is entered. Art. 102.030, C.C.P.

Art. 45.049/45A.254-45A.255, C.C.P.

See *TMCEC 2024 Forms Book*: Community Service Order; and Community Service Time Sheet.

- | | |
|---|---|
| <ul style="list-style-type: none"> <input type="checkbox"/> (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. | <p>Art. 45.049(h)/45A.255, C.C.P.</p> |
| <ul style="list-style-type: none"> <input type="checkbox"/> c. Consider the waiver of all or part of a fine imposed. You may waive if you determine: <ul style="list-style-type: none"> <input type="checkbox"/> (1) Defendant is indigent or does not have sufficient income to pay all or part of the fine, or was a child (under 17) at the time the offense was committed; and <input type="checkbox"/> (2) Discharging the fine through community service or tutoring (for a school offense) would impose an undue hardship on the defendant. | <p>Art. 45.0491/45A.257, C.C.P.</p> <p>See Step 12 below.</p> <p>See Step 13 below.</p> |
| <ul style="list-style-type: none"> <input type="checkbox"/> d. Consider the waiver of all part or part of the costs imposed. You may waive if you determine: <ul style="list-style-type: none"> <input type="checkbox"/> (1) Defendant is indigent or does not have sufficient income to pay all or part of the fine; or <input type="checkbox"/> (2) Defendant was a child (under 17) at the time of offense was committed; and | <p>Art. 45.0491(b) /45A.257(b),C.C.P.</p> <p>See Step 12 below.</p> |
| <ul style="list-style-type: none"> <input type="checkbox"/> 12. A defendant is presumed to be indigent or to not have sufficient resources to pay all or part of the fine or costs if the defendant: | <p>Art. 45.0491(b)/45A.257(c),C.C.P.</p> |

- (1) Is in the conservatorship of the Department of Family and Protective Services (or was at the time of the offense); or
 - (2) Is designated as a homeless child or youth, as defined by 42 U.S.C. 11434a (or was at the time of the offense).
13. A determination of undue hardship is in the court's discretion. In making that determination, the court may consider, as applicable, the defendant's:
- (1) significant physical or mental impairment or disability;
 - (2) pregnancy and childbirth;
 - (3) substantial family commitments or responsibilities, including child or dependent care;
 - (4) work responsibilities and hours;
 - (5) transportation limitations;
 - (6) homelessness or housing insecurity; and
 - (7) any other factors the court determines relevant.
14. If the defendant notifies the judge that the defendant has difficulty paying the fine and costs in compliance with judgment, the judge shall hold a reconsideration hearing to determine whether the judgment imposes an undue hardship on the defendant.
- a. A defendant may notify the judge by:

Art. 45.0491(c)/45A.257(d),C.C.P.

Art. 45.0445/45A.258, C.C.P.
This reconsideration hearing was created by the Legislature in 2019, and judges may allow a defendant to appear by telephone or videoconference if a personal appearance would impose an undue hardship. Art. 45.0201/45A.260, C.C.P.

- (1) voluntarily appearing and informing the judge or the clerk of the court in the manner established by the justice or judge for the purpose;
 - (2) filling a motion with the judge;
 - (3) mailing a letter to the judge; or
 - (4) any other method established by the judge for that purpose.
- b. If the judge determines at the hearing that the judgment imposes an undue hardship on the defendant, the judge shall consider whether to allow time payment, community service, full or partial waiver, or some combination of those methods.
- c. The judge may decline to hold a reconsideration hearing if the judge:
- (1) previously held a reconsideration hearing with respect to the case and is able to determine without holding a hearing that the judgment does not impose an undue hardship on the defendant; or
 - (2) is able to determine without holding a hearing that the judgment imposes an undue hardship on the defendant; and the fine and costs should be satisfied through time payment, community service, full or partial waiver, or some combination of those methods.
- d. The judge retains jurisdiction of the case for the purpose of making a determination at a reconsideration hearing.