THE RECORDER
THE JOURNAL OF TEXAS MUNICIPAL COURTS
March 2025

SPECIAL EDITION

Fines, Fees, Costs, and Indigence REVISITED

A Message from the Executive Director
Page 4

Inside this Special Edition
Page 3

TMCEC AY 26 Fee Adjustments: Key Updates
Page 18

TEXAS MUNICIPAL COURTS EDUCATION CENTER

2210 Hancock Drive
Austin, TX 78756
Phone: 512.320.8274 or 800.252.3718
Fax: 512.435.6118
www.tmcec.com

STAFF

Tayler Adams, Meeting Planner and Program Coordinator
Elizabeth De La Garza, TxDOT Grant Administrator
Crystal Ferguson, Executive Assistant
Mark Goodner, General Counsel & Director of Education
Antaris Jackson, TxDOT Administrative Assistant
Matthew Kelling, Multimedia Specialist & Logistics Coordinator
Regan Metteauer, Deputy Director
Ned Minevitz, Program Attorney & Senior TxDOT Grant Administrator
Dina Powell, Financial & Administrative Specialist
Leandra Quick, Program Director
Elaine Riot, Publications Coordinator
Adrianne Schroeder, Program Coordinator
Deadra Stark, Administrative Director/Controller
Ryan Kellus Turner, Executive Director
Brandi Valentine, Registration Coordinator

Managing Editor: Regan Metteauer

Contributors to this Special Edition: Mark Goodner, Regan Metteauer, Ned Minevitz, Leandra Quick, Elaine Riot, and Ryan Kellus Turner

FY25 TMCEC OFFICERS

President, Hon. Bonnie Townsend, City of Luling
President Elect, Hon. Teresa Weaver Evans, City of Arlington
First Vice President, Hon. Michael Acuña, City of Irving
Second Vice President, Hon. Kathleen Person, City of Temple
Secretary, Hon. Hilda P. Cuthbertson, City of Snook
Treasurer, Ms. Landra Solansky, City of Seguin
Immediate Past President, Hon. Brian Holman, City of Lewisville

DIRECTORS

Region I Director, Hon. Janet Blacklock Matthews, City of Wilson
Region II Director, Hon. Melanie Houston, City of Fort Worth
Region III Director, Hon. Hyattye Simmons, City of Combine
Region IV Director, Ms. Donna Mathis, City of Log Cabin
Region V Director, Hon. Wayne Frost, City of Midland
Region VI Director, Hon. Robert Garcia, City of Waco
Region VII Director, Hon. Edward Spillane, City of College Station
Region VIII Director, Ms. Tammy Odom, City of Texas City
Region IX Director, Hon. Robert Barfield, City of El Lago
Region X Director, Hon. Jacqueline Del Llano Chapa, City of Corpus Christi

The Texas Municipal Courts Education Center is funded by a grant from the Texas Court of Criminal Appeals.

Inside this Special Edition

1. **From the Executive Director** 4

2. **Beyond the Myths: Procedural Safeguards and the Evolution of Municipal Court Justice**
   Recent legislative reforms strengthened procedural safeguards in municipal courts and addressed public misconceptions 5

3. **Procedural Safeguards Related to Fines, Fees, Costs, and Indigence (2017-2025)** 8

4. **Judges Who Do Not Comply with Safeguards in Texas Laws Protecting Indigent Defendants Are Committing Judicial Misconduct**
   Legislation cannot solve the problem. The responsibility belongs to local judges. The solution is public awareness. 12

5. **Misunderstanding "Fine-Only" Misdemeanors**
   Despite being mischaracterized and minimized as "minor offenses," Class C misdemeanors play a critical role in maintaining public order and quality of life in Texas. 15

6. **Making Meaningful Use of the Fine Range**
   Texas judges have the tools to do individual justice in individual cases. 19

7. **Distinguishing "Fines" from "Court Costs"**
   Legally, they are not the same. It is important that the public and state and local officials understand the difference. 21

8. **Defining Indigence**
   The challenge is not just formulation, it is application. While judges need more "tools," the Legislature has wisely avoided a "one-size-fits-all" approach. 24

9. **In the Shadow of *Bearden*, Guidance from Case Law, and the Texas Code of Criminal Procedure**
   Show cause hearings in municipal and justice courts help uphold the fundamental fairness required by *Bearden*. 28

10. **The Merits of Passive Enforcement and the Failure to Appear/Failure to Pay Program** 35

11. **In Light of *Tate*: What "Alternative Means" Means**
    Alternative means are alternative punishments 39

12. **Setting the Record Straight: Class C Misdemeanors, the Right to Counsel, and Commitment to Jail**
    Neither federal case law nor the DOJ "Dear Colleague" Letter supports the argument that the U.S. Constitution forbids commitment of indigent persons in the absence of appointed counsel 43

13. **Safe Harbor and Second Chances: Innovative Court Practices to Encourage Defendants to Appear**
    To address some of the main reasons defendants do not come to court to take care of their cases, some courts have implemented "safe harbor" policies, walk-in dockets, and hardship dockets aimed at increasing appearances in court 46

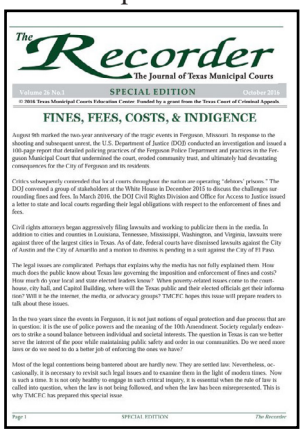
14. **Understanding the Gaps in State Data on Indigence in Criminal Courts**
    Sharing accurate, court-collected data strengthens public confidence in the justice system and demonstrates a commitment to fairness and continuous improvement 49

From the Executive Director

Ryan Kellus Turner

When TMCEC first published this Special Edition of *The Recorder* in October 2016, it posed five critical questions:

- How much does the public know about Texas laws on fines and costs?
- How much do local and state leaders know?
- Where will Texans and their elected officials turn for information on poverty-related issues—the internet, media, or advocacy groups?
- Do we need more laws, or should we focus on enforcing the ones we have?


The Recorder
The Journal of Texas Municipal Courts
SPECIAL EDITION
FINES, FEES, COSTS, & INDIGENCE

These questions remain just as relevant today. However, finding clear answers has become increasingly difficult in an era where emotion and personal belief often outweigh objective facts. Social media amplifies misinformation (false information) and disinformation (deliberately misleading content meant to cause harm), fueling political polarization. This, in turn, erodes public trust in judicial independence—a cornerstone of the rule of law.

August 9, 2024 marked ten years since the tragic events in Ferguson, Missouri. Officer Darren Wilson's fatal shooting of 18-year-old Michael Brown ignited nationwide protests and placed a community of 20,000 people at the center of a heated debate over policing, racial disparities, and the militarization of law enforcement. In response, the U.S. Department of Justice (DOJ) launched an investigation, culminating in a 100-page report detailing systemic issues within the Ferguson Police Department and Municipal Court. The report found that court practices had undermined the judiciary, eroded community trust, and ultimately had devastating consequences for Ferguson and its residents.

Critics accused courts across the nation of operating "debtors' prisons." In March 2016, the DOJ Civil Rights Division and Office for Access to Justice issued a letter reminding state and local courts of their legal obligations regarding the enforcement of fines and fees. Civil rights attorneys aggressively pursued litigation, challenging municipal court practices in Louisiana, Tennessee, Mississippi, Washington, and Virginia. Texas was not immune—lawsuits were filed against three of its largest cities. Federal courts dismissed the cases against Austin and Amarillo, while a lawsuit against El Paso was partially dismissed and later settled.

Like their counterparts in other states, Texas municipal courts faced a barrage of negative press. Many media reports failed to distinguish between Texas municipal courts and those in Ferguson, Missouri, leading to misleading generalizations. Overlooked in such reporting was the fact that state laws governing municipal courts vary significantly and that, compared to other states, Texas had some of the strongest legal protections against the types of abuses exposed in Ferguson.

Society continually seeks to balance individual rights with public safety and community well-being. In the wake of Ferguson, criminal justice reform became a legislative priority in all 50 states. However, in Missouri, sweeping judicial reforms went too far—new laws eliminated consequences for defendants who failed to appear in court, effectively stripping municipalities of their ability to enforce the law.

Efforts to enact similar legislation in Texas were unsuccessful. Instead, in 2017, with bipartisan support and collaboration between the judiciary and advocacy groups, the Texas Legislature passed reforms that struck a balance—expanding procedural protections for low-income defendants while preserving judicial discretion and distinguishing between fines and mandatory court costs. In 2019, lawmakers refined these reforms, further strengthening due process protections while ensuring courts retained the authority to uphold the law.

In this Special Edition of *The Recorder,* TMCEC returns to its roots. Critical inquiry is essential when the rule of law is questioned, ignored, or misrepresented. Today, as in 2016, most legal debates about fines and fees are not new; they are settled law. However, it is sometimes necessary to revisit these issues and reaffirm the law—particularly when statutes evolve and questions about proper administration remain. This edition not only revisits and updates most of the articles from the 2016 issue but also introduces new content to reflect the evolving landscape of legal debates surrounding fines, fees, and their administration.

Beyond the Myths: Procedural Safeguards and the Evolution of Municipal Court Justice

Recent legislative reforms strengthened procedural safeguards in municipal courts and addressed public misconceptions.

In his 1906 speech to the American Bar Association, distinguished American legal scholar Roscoe Pound said, "Dissatisfaction with the administration of law is as old as the law."[1] In his speech, he enumerated multiple reasons for criticism, several of which still apply over a century later. Recently, criticism of the incarceration of defendants, especially those found to be indigent, for Class C misdemeanors has become a controversial topic, with some publicly questioning its legality. This dissatisfaction with the administration of justice is, in part, caused by what Pound called the "inevitable difference in the rate of progress between law and public opinion."

Previously, this criticism was often misdirected solely at local courts and judges who were required to follow laws that did not allow judicial discretion. However, in recent years, legislative changes such as S.B. 1913 and H.B. 351 (2017), as well as S.B. 6 (2021), have significantly increased procedural safeguards for indigent defendants, such as required ability-to-pay determinations, expanded alternatives to payment, and procedural safeguards against automatic incarceration. Additionally, the creation of Chapter 45A of the Texas Code of Criminal Procedure (effective 2025) was a non-substantive restructuring of Chapter 45 (now, largely repealed) meant to improve organization and clarity. While underlying protections already existed in Chapter 45, their reorganization under Chapter 45A makes the law more transparent and accessible without creating new substantive rights or obligations.[2] Courts now have clearer mandates regarding assessment of indigence, alternative sentencing, and waivers. These changes make it easier for judges and clerks to ensure punishments are meaningful, yet possible. In other words, new laws make giving individual justice in individual cases more possible than ever.

Despite these legal improvements, public perception is often shaped by repeated narratives in the media that continue to perpetuate misconceptions about municipal courts. Misinformation and broad-brush narratives have led to public distrust, even as courts work to balance accountability with fairness. While some criticisms of the past may have been warranted, today's courts operate under a framework that prioritizes individual consideration, alternatives to payment, and protections against undue hardship. Understanding these changes is essential for anyone engaging in conversations about fines, fees, and criminal justice reform.

Examining Key Issues in the Debate Over Criminal Penalties

The "Debtors' Prison" Narrative and the Reality of Criminal Fines

The term "debtors' prison" is frequently used by advocacy groups and media outlets to criticize fines and fees in municipal courts. However, this characterization often oversimplifies the reality of the legal system. Referring to criminal fines as "ticket debt" is misleading. While it is true that individuals may face enforcement actions for failing to pay fines after judgment, this does not constitute imprisonment for debt. Instead, such actions involve criminal penalties imposed for legal violations. Texas law explicitly prohibits incarcerating defendants solely for failure to pay fines. However, under Article 45A.261 of the Code of Criminal Procedure, if a defendant has the ability to pay but willfully refuses, the court may employ enforcement, including confinement. This requirement

of willful nonpayment prior to possible confinement tracks the constitutional protections described in *Bearden v. Georgia*, ensuring that indigent defendants are not unfairly penalized for financial hardship.[3]

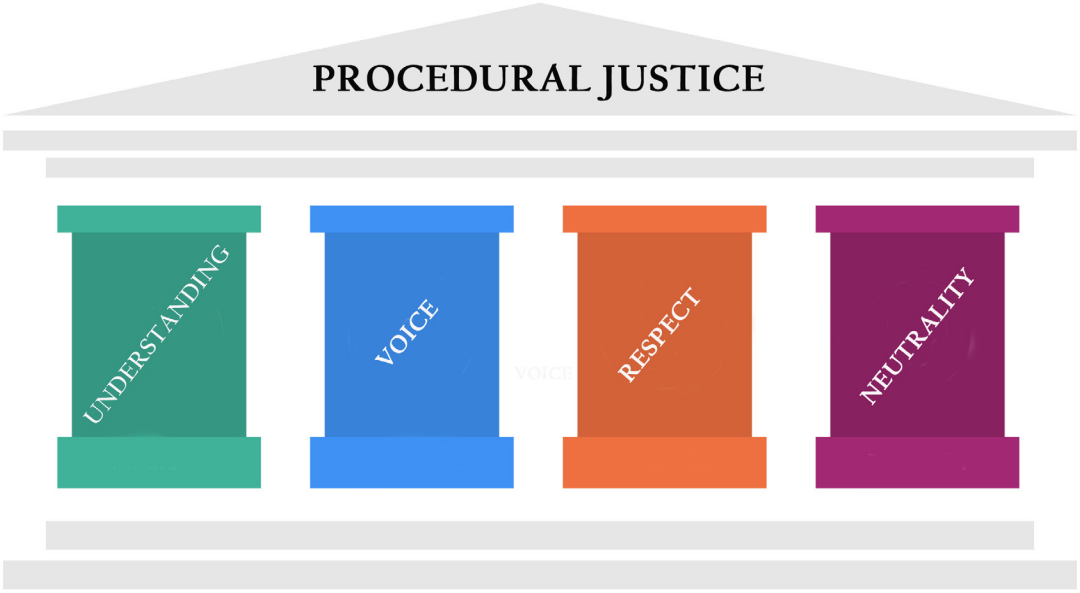
Additionally, courts are required to assess whether a defendant is indigent and, if so, must offer alternative means of satisfying the judgment, such as community service or payment plans.[4] (See Page 39 for more information.) The law ensures that a defendant who cannot pay is not subjected to the same consequences as one who chooses not to pay.[5]

The reality is that courts are bound by laws that require compliance while also mandating safeguards for indigent individuals. Yet, many news stories and public narratives fail to distinguish between judicial discretion and statutory mandates, creating an inaccurate picture of how municipal courts function. This widespread misunderstanding has contributed to an erosion of trust in the system, even as reforms have strengthened procedural fairness. Courts should actively engage in public education to dispel these misconceptions and ensure that procedural protections are properly understood.

The Role of Fear in Court Compliance

For many indigent defendants, the fear of interacting with the court system extends beyond financial concerns. The fear of arrest, the fear of additional costs, and even the fear of job loss or child custody implications often deter individuals from appearing in court. Misconceptions and lack of clear communication about legal options exacerbate these fears, leading to avoidance behaviors that result in greater legal consequences.

Research shows that people who perceive the legal system as unfair are less likely to comply with court orders or engage with the justice system in the future. Courts can mitigate these fears by emphasizing procedural justice, clear explanations of rights, and safe harbor provisions that allow individuals to voluntarily address their legal issues without immediate punitive consequences. (See Page 46 for more information on safe harbor and related policies.)



Procedural Justice: A Key to Court Legitimacy

Procedural justice is not just about outcomes—it's about the process. Defendants are more likely to accept court rulings and comply with orders when they believe that courts have treated them fairly. The four pillars of procedural justice are:

- **Understanding**: Defendants need to understand how courts make decisions and what their legal options are.
- **Voice:** People need to feel heard and acknowledged in court proceedings.
- **Respect**: Courts must treat defendants with dignity and respect, regardless of their circumstances.
- **Neutrality**: The judicial process must appear fair and unbiased to maintain legitimacy.

When courts prioritize these elements, they reduce non-compliance, build trust, and encourage voluntary engagement with the system. Municipal courts that incorporate these principles into daily operations create environments where defendants feel empowered rather than trapped.

Safe Harbor

A particularly important protection in Texas law is the safe harbor concept, which is reflected in two separate provisions in Chapter 45A.[6] These provisions require courts to recall both arrest warrants and capiases pro fine when a defendant voluntarily appears and makes a good faith effort to resolve their case. Even if a defendant has missed a court date or defaulted in the discharge of their judgment—leading to an outstanding warrant or capias pro fine—courts must recall these orders before execution if the defendant demonstrates willingness to comply.

This provision exemplifies procedural justice in action—when defendants understand their legal options and see the system as fair, they are more likely to engage with the courts rather than avoid them out of fear. Courts should proactively educate defendants about these protections, ensuring that individuals are aware they can engage with the legal system without the immediate threat of arrest, thereby encouraging voluntary resolution of cases.

A Continued Commitment to Fairness

Public misconceptions about municipal court fines, fees, and enforcement practices persist, but recent legislative changes have clarified and strengthened procedural protections for indigent defendants. With the restructuring under Chapter 45A, municipal courts now have a more accessible legal framework that enhances compliance and ensures fairer outcomes.

Judges and court personnel must recognize that while judicial discretion now plays a larger role than before, it was historically constrained by statutory mandates that did not allow for flexibility in cases of indigence. The evolution of legal protections means that judges today must actively apply these changes, ensuring that defendants are treated equitably under the law. Past criticisms of judges and courts would have been more fairly aimed at the legislature. Recent bolstering in the law regarding protections for the indigent should ensure fairer treatment. When these protections are not applied, however, criticism can now more fairly and squarely be aimed at the judiciary. Ensuring fairness in municipal courts requires ongoing education and awareness. Judicial officers and court personnel must remain vigilant in keeping up with legislative changes, as required by the Texas Code of Judicial Conduct.[7] Only through continued commitment to legal competency and educating the public can courts bridge the gap between public perception and the reality of the law.

---

[1] Roscoe Pound, Dean of Harvard Law School, Address to the American Bar Association: *The Causes of Popular Dissatisfaction with the Administration of Justice* (August 22,1906).
[2] Tex. Code Crim. Proc. Ann. Ch. 45A (2025).
[3] *Bearden v. Georgia*, 461 U.S. 660 (1983).
[4] Tex. Code Crim. Proc. Ann. § 45A.252.
[5] Tex. Code Crim. Proc. Ann. § 45A.252.
[6] Tex. Code Crim. Proc. Ann. §§ 45A.104 and 45A.259.
[7] Tex. Code Jud. Conduct, Canon 3.

Procedural Safeguards Related to Fines, Fees, Costs, and Indigence (2017-2025)

I. ABILITY TO PAY (Arts. 45A.252, 45A.258, 45.041(b-3))

A. Open Court Inquiry

- When imposing a fine and costs on a defendant who enters a plea in open court, the judge is required to inquire whether the defendant has sufficient resources or income to immediately pay all or part of the fine and costs.
- The judge may not require a defendant who is under the conservatorship of the Department of Family and Protective Services or in extended foster care, to pay any amount of the fine and costs, but may require community service in lieu of payment.
- If the judge determines a defendant does not have sufficient resources or income, the judge is required to determine whether the fine and costs should be:
  - paid at some later date or in a specified portion at designated intervals;
  - discharged through the performance of community service;
  - waived in full or part; or
  - satisfied through any combination of these methods.

B. Mandatory Election for Children

- At the time of conviction, if no diversion is required, the judge shall allow a child defendant to elect how to discharge the fine and costs: community service, tutoring, or paying fines and costs at sentencing, later, or in installments.

C. Reconsideration of Satisfaction of Fines and Costs (Defendant's Show Cause)

- The judge is required to hold a hearing to determine whether the judgment imposes an undue hardship if the defendant gives notice that they have difficulty paying the fine and costs. Notice may be given through appearance in court, filing a motion, mailing a letter, or any other method established by the court.

II. WAIVER OF PAYMENT OPTION; PRESUMPTION OF INDIGENCE FOR CERTAIN DEFENDANTS (Art. 45A.257)

A. Courts may waive all or part of a fine if:

- the court determines the defendant is indigent or does not have sufficient resources or income to pay all or part of the fine or was a child at the time of the offense; and
- discharging the fine through community service (or extension/installments) would impose an undue hardship.

B. A defendant is presumed to be indigent or not have sufficient resources or income to pay all or part of the fine or costs if:

- in the conservatorship of the Department of Family and Protective Services or was at the time of the offense; or
- designated as a homeless child or youth or an unaccompanied youth or was so designated at the time of the offense.

C. A determination of undue hardship made under Article 45A.257(a)(2) is in the court's discretion. In making that determination, the court may consider, as applicable, the defendant's:

- significant physical or mental impairment or disability; pregnancy and childbirth; substantial family commitments or responsibilities, including child or dependent care; work responsibilities and hours; transportation limitations; homelessness or housing insecurity; and any other factors the court determines relevant.

D. A municipal court, regardless of whether the court is a court of record, or a justice court may waive payment of all or part of the costs imposed on a defendant if the court determines that the defendant:

- is indigent or does not have sufficient resources or income to pay all or part of the costs; or
- was, at the time the offense was committed, a child as defined by Article 45A.453(a).

III. JAIL CREDIT RATE (Art. 45A.262)

A. At judgment, the defendant shall receive a credit of at least $150 per confinement period (8-24 hours, as determined by the judge) for each Class C charge, including pre-judgment confinement and any confinement served for another offense after the Class C misdemeanor was committed. The court shall also apply a minimum $150 credit for each confinement period post-judgment following a capias pro fine and order of commitment.

IV. CAPIAS PRO FINE (Art. 45A.259)

A. The court may not issue a capias pro fine unless the court first holds a hearing to determine whether the judgment imposes an undue hardship on the defendant. If the judge finds undue hardship, then the judge should consider alternative means (pay at a later date, payment plan, community service, etc.). If the judge finds there is no undue hardship, the judge must order the defendant to comply within 30 days of the determination. Issuance of a capias pro fine can only occur if the defendant fails to:

- appear at the hearing; or
- comply as ordered as a result of the hearing.

V. REQUIREMENTS AND OPTIONS FOR COMMUNITY SERVICE (Arts. 45A.254, 45A.459, 45A.460)

A. Any order requiring a defendant's performance of community service must:

- specify the number of hours to be performed; and
- include the date by which a defendant must submit proof of completion of the community service hours to the court.

B. Community service options expanded to include (besides service provided to a governmental entity or certain nonprofits):

- attending a work and job skills training program, preparatory class for the GED, alcohol or drug abuse program, rehabilitation program, counseling program, mentoring

program, or any similar activity;
- attending a tutoring program (for certain juvenile defendants only); and
- performing community service for an educational institution or any organization that provides services to the general public that enhances social welfare and the well-being of the community.

C. There is a 16-hour limit on community service performed each week unless additional hours will not impose undue hardship.

D. Credit for each eight hours of community service performed is $100 per day.

VI. PROVISIONS RELATING TO BAIL, BONDS, AND PRETRIAL RELEASE IN A MUNICIPAL COURT (Arts. 17.42, 45A.107)

A. Post-charging, the judge may require the defendant to give a personal bond (without assessment of a personal bond fee); however, the judge may not, either instead of or in addition to the personal bond, require a defendant to post the bail bond (cash or surety) unless:
- the defendant fails to appear; and
- the judge determines that: (1) the defendant has sufficient resources or income to give a bail bond; and (2) a bail bond is necessary to secure the defendant's appearance in court.

B. If the defendant does not post a required bail bond within 48 hours of the court's order, the judge must reconsider the bail bond and presume the defendant does not have sufficient resources or income to give the bond; the judge may then require a personal bond.

VII. SAFE HARBOR: REQUIREMENT TO RECALL AN ARREST WARRANT FOR FTA AND A CAPIAS PRO FINE (Arts. 45A.104, 45A.259)

A. A judge shall recall an arrest warrant for the defendant's failure to appear if the defendant voluntarily appears and makes a good faith effort to resolve the arrest warrant before the warrant is executed.

B. The court shall recall a capias pro fine if, before the capias pro fine is executed, the defendant:
- provides notice to the judge under Article 45A.258 and a hearing is set under that article; or
- voluntarily appears and makes a good faith effort to resolve the capias pro fine.

VIII. REQUIREMENTS FOR PROVIDING NOTICE TO DEFENDANTS

A. Citations must include information on alternatives to full payment of any fine or costs assessed if unable to pay (Art. 14.06(b)).

B. No arrest warrant may issue for failure to appear at the initial court setting, unless notice is provided by phone/mail that includes: (Art. 45A.104)
- date and time, within a 30-day period following the date of notice, when the defendant must appear (defendant may request alternative date/time);
- name and address of the court with jurisdiction in the case;

- information regarding alternatives to the full payment of any fine or costs owed by the defendant;
- statement that the defendant may be entitled to jail credit if the defendant was confined after the commission of the offense for which notice is given; and
- an explanation of the consequences of the defendant's failure to appear as required.

C. Upon receiving a plea of "guilty" or "nolo contendere" and waiver of jury trial, the court must provide notice of: (Art. 27.14(b))

- the amount of any fine or costs assessed in the case;
- if requested by the defendant, the amount of any appeal bond that the court will approve; and
- information regarding the alternatives to the full payment of any fine or costs assessed if the defendant is unable to pay.

D. Communication to a defendant from a public or private collection vendor must include: (Art. 103.0031(j))

- notice of the person's right to enter a plea or to demand trial on any offense; and
- a statement that if the person is unable to pay the full amount that is acceptable to the court to resolve the case, the person should contact the court regarding alternatives to full payment.

IX. APPEARANCE BY TELEPHONE OR VIDEOCONFERENCE (Art. 45A.260)

A. The judge may allow a defendant to appear by telephone or videoconference, if a personal appearance imposes an undue hardship. This applies to capias pro fine show cause hearings as well as reconsideration (defendant's show cause) hearings.

Judges Who Do Not Comply with Safeguards in Texas Laws Protecting Indigent Defendants Are Committing Judicial Misconduct

Legislation cannot solve the problem. The responsibility belongs to local judges. The solution is public awareness.

The judiciary has been entrusted by the public to see that justice is done. Incarceration of indigent defendants solely for inability to pay is discrimination against poor defendants.[1] A former member of the State Commission on Judicial Conduct (SCJC), Judge Edward Spillane is the Presiding Judge of the College Station Municipal Court. According to Judge Spillane, "[n]either judges nor members of the public should tolerate this kind of judicial misconduct. Regardless if it is because of ignorance or indifference, people who do not comply with safeguards in Texas law aimed at protecting indigent defendants should not be allowed to serve in the Texas judiciary."[2]

Failure to Comply with Statutory Safeguards Is a Violation of the Code of Judicial Conduct

The Code of Judicial Conduct is clear: ignorance or indifference is no defense. Failure to observe statutory safeguards is a violation of the Code. As of September 1, 2024, the code explicitly states:

> "A judge shall comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary."[3]

Canon 3 of the Code of Judicial Conduct requires judges to perform duties impartially. Regarding adjudicative responsibilities, Canon 3(B)(2) now strengthens judicial competence requirements:

> "A judge should be faithful to the law and shall maintain professional competence in it, including by meeting all judicial-education requirements set forth in governing statutes or rules."

Judges shall not be swayed by partisan interests, public clamor, or fear of criticism.[4] Judges must perform judicial duties without bias or prejudice, and they must not knowingly permit staff, court officials, and others subject to the judge's direction and control to manifest bias or prejudice either. Furthermore, Canon 3(B)(6) explicitly prohibits bias based on socioeconomic status, reinforcing the responsibility of judges to ensure fair treatment of indigent defendants.

Similarly, judges are required to give any person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law.[5]

In municipal courts with more than one judge, presiding judges with supervisory and performance oversight over other judges should be mindful that Canon 3(C)(3) states:

> "A judge with supervisory authority for the judicial performance of other judges should take reasonable measures to assure the prompt disposition of matters before them and the proper performance of their other judicial responsibilities."

Judicial Accountability

Ultimately, it is the responsibility of judges in Texas to monitor and enforce the Code of Judicial Conduct. Judges who know of misconduct have disciplinary responsibilities. Canon 3(D)(1) mandates:

> "A judge who receives information clearly establishing that another judge has committed a violation of this Code should take appropriate action. A judge having knowledge that another judge has committed a violation of the Code that raises a substantial question as to the other judge's fitness for office shall inform the State Commission on Judicial Conduct or take other appropriate action."

The SCJC has issued private admonitions and private reprimands coupled with orders of judicial education to judges who ignored Texas procedural safeguards pertaining to the imposition of fines, capiases pro fine, indigency issues, and commitment to jail.[6]

Can the Canons of Judicial Conduct be used to help rid the judiciary of people who cast discredit on courts and do not comply with safeguards in the law aimed at protecting indigent defendants? It has happened in other states.[7] It has happened in Texas.[8]

Education Is Key

Public education of voters as to what the law requires is the best way to ensure that bad judges are neither elected nor appointed to the office. This education will provide increased awareness about the proper and improper use of courts. A court is allowed to incidentally generate revenue through the imposition of fines. In fact, there is a strong argument to be made for the expanded use of fines and other monetary sanctions in the American criminal justice system.[9] There is nothing wrong with local governments retaining fines, but such revenue must be viewed as an incidental byproduct of justice. Courts should not be viewed by local or state governments as profit centers.

Education is equally important. Canon 4(B) permits judges to engage in educational activities to improve the legal system. Public awareness efforts are underway in Texas, but more work remains. Legislation is not necessary for judges to share best practices, such as the use of "safe harbor" and other practices aimed at reducing the number of people arrested. Judicial education is the key to teaching judges how information, such as the living wage calculator,[10] can assist judges in determining whether a defendant is indigent.

By aligning judicial practices with the Code of Judicial Conduct, the judiciary can reinforce fairness, enhance the perception of fairness, uphold legal safeguards for indigent defendants, and ensure public confidence in Texas courts.

---

[1] *Williams v. Illinois*, 399 U.S. 235, 240-41 (1970).
[2] Quote obtained by authors. June 19, 2016. Communication on file.
[3] Tex. Code Jud. Conduct, Canon 2(A).
[4] Tex. Code Jud. Conduct, Canon 3(B)(2).
[5] Tex. Code Jud. Conduct, Canon 3(B)(8).
[6] Examples: A judge: (1) refused to provide the defendant with an opportunity to plead "not guilty" and request a jury trial; (2) adjudicated the defendant guilty and assessed a fine in the defendant's absence without notice and without setting a court date; (3) threatened the defendant with arrest if he did not pay the fine when the defendant appeared in court. State Commission on Judicial Conduct, *Private Reprimand and Order of Judicial Education* (December 10, 2010). A judge failed to comply with the law in issuing a capias pro fine and committing a defendant to jail where previously: (1) there was no written deferred disposition order; (2) no final judgment was entered; (3) there was no show cause hearing; and (4) there was no indigency hearing to determine whether the defendant had the financial ability to pay the fine and court costs. State Commission on Judicial Conduct, *Private Admonition and Order of Additional Education* (November 22, 2011).
[7] In a letter to officials requesting that his own salary be raised from $40,000 to $60,000 per year, Grady County State Court Judge William Bass, Sr. stated that he worked hard "to maximize" the county revenue through his extra efforts, raising $350,000 in fines per year, according to court documents. Judge Bass received a 60-day unpaid suspension, a formal reprimand from Georgia's Judicial Qualifications Commission, and agreed not to seek reelection. In March 2015, as terms of a proposed settlement agreement for the class-action lawsuit against Grady County and

Judge Bass, certain defendants were eligible to receive $100 in damages and a refund of court costs, up to $700. Ga. Commission on Judicial Qualifications, Docket No. 2012-31, *In re: Inquiry Concerning Judge J. William Bass, Sr. (2012)*; R. Robin McDonald, *Grady County is Asked to Repay Thousands in Illegal Court Fees*, Southern Center for Human Rights (August 9, 2013); Karen Murphy, *Former State Court Judge Speaks Out on Settlement*, Thomasville Times-Enterprise (April 6, 2015).

[8] Judge Jack Byno of Haltom City was accused of committing people to jail if, at the time of their conviction, they could not pay all fines and costs. "Pay or Lay" is the name given for the practice prohibited by *Tate v. Short*. "The Commission and a private citizen initiated complaints against the judge, based on several newspaper articles and television news reports containing various allegations, including that the judge exhibited a poor judicial demeanor and failed to follow the law in proceedings in his court. Although the judge denied the allegations of misconduct, he opted to resign from office rather than spending time and money on further disciplinary proceedings. No Findings of Fact or Conclusions of Law were made in connection with the complaints, but the parties agreed that the allegations of judicial misconduct, if found to be true, could result in further disciplinary action. The parties agreed that the judge's resignation was not an admission of guilt, fault or liability. The Commission agreed that it would not pursue further disciplinary proceedings against the judge in connection with said complaints, and the judge agreed to be disqualified from future judicial service; sitting or serving as a judge in the State of Texas in the future; standing for election or appointment to judicial office in the State of Texas; or performing or exercising any judicial duties or functions of a judicial officer in the state." State Commission on Judicial Conduct, *2004 Annual Report* 29-30 (Voluntary Agreement of Jack Byno, Former Municipal Judge, to Resign from Judicial Office in Lieu of Disciplinary Action (12/5/03).

[9] Martin H. Pritikin, *Fine-Labor: The Symbiosis Between Monetary and Work Sanctions*, 81 U. Colo. L. Rev. 343, 350 (2010). Fines are cheaper to administer than jail and prisons. Fines have the potential to achieve optimal deterrence compared to incarceration. Fines offset criminal justice costs. Offenders are potentially spared the longer term criminalizing effects of sentences entailing incarceration. Offenders experience faster adaptation when fined versus jailed, and do not experience the long-term stigmatization that reduces income earning potential.

[10] Bourree Lam, The Living Wage Gap: State by State, The Atlantic (Sept. 15, 2015); Mass. Inst. Of Tech., *Living Wage Calculator*, http://livingwage.mit.edu/ (accessed February 12, 2025).

Misunderstanding "Fine-Only" Misdemeanors

Despite being mischaracterized and minimized as "minor offenses," Class C misdemeanors play a critical role in maintaining public order and quality of life in Texas.

Class C misdemeanors are criminal offenses where the sentence consists of the imposition of a fine as punishment.[1] Texas law has recognized fine-only offenses since the enactment of its first Penal Code in 1856.[2] As a form of retributive justice, fines serve as a punishment that reflects the principle of proportionality—the idea that penalties should correspond to the severity of the offense. While proportionality ensures that more severe offenses receive harsher penalties, it also provides the rationale for Class C misdemeanors where the sentence consists of the imposition of a fine as punishment.

Class C misdemeanors make up most criminal offenses in Texas, shaping the state's judicial structure in significant ways. No single type of trial court has jurisdiction over these cases, and their appeals follow distinct rules. Their prevalence also explains why Chapter 45A of the Code of Criminal Procedure establishes specialized procedures for their adjudication in municipal and justice courts.

Texas Laws Governing Class C Misdemeanors Are Distinct

Despite being the most common type of crime in Texas, Class C misdemeanors are widely misunderstood. This misunderstanding may stem from their sheer volume and variety. As of 2024, state law recognized 1,331 Class C misdemeanors, with countless thousands more created by city ordinances and county regulations.

Because of their volume and variety, generalizing about Class C misdemeanors is understandable but often misleading. For example, media coverage in 2016 suggested that Texas municipal courts operated similarly to the infamous municipal court in Ferguson, Missouri. Despite both courts adjudicating similar types of cases, these reports often failed to acknowledge key differences in state laws. Unlike Missouri, Texas provides distinct procedural safeguards in municipal courts for Class C misdemeanors, making direct comparisons misleading.[3] Class C misdemeanors are distinct (even when compared with other types of Texas misdemeanors).

Class C Misdemeanors Are Crimes

Class C misdemeanors are not civil infractions or administrative violations; they are criminal offenses. The decision whether to criminalize conduct is generally a matter left to states under the Tenth Amendment.[4] While some states have made traffic violations civil infractions or administrative violations, many states, including Texas, have made them criminal. The rights guaranteed to the states under the Tenth Amendment also explain why possession of marijuana can be legal in one but illegal in another and why an offense in one state is a misdemeanor but a felony in another.

A state's decision to criminalize conduct guarantees defendants certain rights. As in all criminal cases, a defendant charged with a Class C misdemeanor is presumed innocent until proven guilty. Just because a defendant is issued a citation or fails to appear in court, this does not change the presumption of

innocence. Unlike in civil cases, there is no such thing as a default judgment in favor of the State because of the defendant's failure to appear in court or enter a plea. The defendant's guilt must be proven beyond a reasonable doubt. In addition to a wide array of constitutional protections guaranteed to all criminal defendants, those accused of Class C misdemeanors have specialized statutory protections provided by state law that are different than in other state criminal cases. (See Procedural Safeguards Related to Fines, Fee, Costs, and Indigence (2017-2025) on Page 8.)

A state's decision to criminalize conduct also means that defendants potentially face significant consequences. Despite being punishable only by a fine, Class C misdemeanors can still lead to an arrest. In *Atwater v. City of Lago Vista* (2000),[5] the U.S. Supreme Court held that the Fourth Amendment does not prohibit warrantless arrests for Class C misdemeanors. Conviction of certain Class C misdemeanors result in collateral consequences. Even though Class C assault (offensive contact) is not jailable, if a judge makes an affirmative finding that it involved family violence, the conviction can enhance future charges and restrict firearm possession under federal law.[6] Minors who are convicted of Class C misdemeanors, such as Public Intoxication, Minor in Possession of Alcohol, or DUI can lead to driver's license suspensions.[7] A Class C theft conviction (under $100) can create a criminal record that may affect employment, housing, or professional licenses.[8]

The Important Role of Class C Misdemeanors

Criticisms of Class C misdemeanors often focus on the consequences they have on the lives of defendants. They typically contain cherrypicked cases and anecdotal storytelling where the defendants are presented sympathetically as victims of the law, not violators.

Such critiques do not typically address personal responsibility, or the importance of people being held accountable for their decisions. They do not acknowledge that neither courts nor law enforcement officers make the laws they are charged with carrying out. Similarly, they do not acknowledge that criminal laws legitimately reflect the will of the people. Class C misdemeanors are not created by cops or courts. Rather, like all crimes, Class C misdemeanors are created through a democratic, legislative process where the people, through their elected representatives, determine what constitutes a criminal offense and the consequences for violating the law.

Just as there is nothing magnificent about grand larceny, there is nothing trivial or unimportant about petty offenses. In some states, and in federal law, a petty offense is a classification in addition to misdemeanor and felony. In Texas law, there are no petty offenses. Despite this fact, Class C misdemeanors are frequently treated as trivial and unimportant.

Although most are unaware of it, the subject matter regulated with Class C misdemeanors permeates nearly every aspect of our daily lives. Class C misdemeanors are deeply embedded in the state's legal framework. They play a crucial yet often understated role in maintaining social order and ensuring compliance with fundamental societal norms. Yet, without grasping the full scope of what is punishable by the imposition of a fine in Texas (building code, fire safety regulation, sanitation issues, traffic offenses, and environmental regulations), academics and some members of the media have taken a dim view of "small-fry" and "minor offenses."[9]

A significant omission in such media accounts is the failure to recognize the potential harms and dangers of crimes labeled as "minor offenses." Which of the following is truly a "minor offense?"

- A teenager driving under the influence of alcohol;[10]
- Failing to restrain a child while operating a motor vehicle;[11]

- Speeding through a school zone;[12]
- Selling cigarettes to children;[13]
- Distributing abusable synthetic substances;[14]
- Public intoxication;[15]
- Assault;[16]
- Disorderly conduct;[17] or
- Theft of under $100[18]

Each of these offenses carries real consequences, affecting both individual lives and public safety. Dismissing these offenses as insignificant ignores the tangible risks they pose to individuals and the community.

Class C Misdemeanors and Traffic Safety

Littering is a Class C misdemeanor in Texas.[19] Is littering a "victimless" crime? (What if the money spent picking up litter were used on early child education, mental health services, dropout prevention, or child protective services?) Texas spends roughly $50 million a year picking up litter from Texas roadways.[20] On those highways and streets, on average, a person is killed about every two hours and injured every two minutes.[21] The driving behaviors most likely to result in injury or death are Class C misdemeanors. Texas hasn't had a day without a traffic fatality in more than 24 years, during which time more than 87,000 people have been killed.[22] In Texas, 24 percent of fatal traffic car crash fatalities involve a person who was not authorized to operate an automobile.[23] Statistically, a person is more likely to be killed by a driver running a red light and crashing into the side of a vehicle than by aggravated murder.[24]

It is estimated that in 2023, traffic crashes resulted in $56.2 billion economic losses in Texas.[25] Yet, no dollar amount or statistic can adequately convey the grief, the personal loss, or the tragedy inflicted on victims and their families because of so-called "minor offenses." "Traffic safety is a public health issue. Given the inequity in access to safe streets and the disparities in fatalities and injuries among minorities, traffic safety is also a social justice issue."[26]

---

[1] Tex. Penal Code Ann. §§ 12.23, 12.41.
[2] ARTICLE 60. "The punishments incurred for offences under this Code are: 1. Death. 2. Imprisonment in the Penitentiary for life or for a period of time. 3. Imprisonment in the County jail. 4. Forfeiture of civil or political rights, or suspension from such rights for a limited time. 5. Pecuniary fines."
[3] "Comparing Courts: Texas is Not Ferguson, Missouri," *The Recorder* (October 2016) at 6.
[4] Under the Tenth Amendment, powers not delegated to the federal government by the Constitution are reserved to the states. This includes the authority to define and criminalize conduct, which is a fundamental aspect of state police powers. However, the federal government can criminalize conduct under its enumerated powers, such as regulating interstate commerce or enforcing constitutional rights.
[5] *Atwater v. City of Lago Vista*, 532 U.S. 318 (2000).
[6] *See* Tex. Penal Code Ann. § 71.004 and 18 U.S.C. § 922(g)(9)).
[7] *See* Tex. Penal Code Ann. § 49.02 (Public Intoxication); Tex. Alco. Bev. Code Ann. §§ 106.05 (Minor in Possession), 106.041 (DUI by a Minor), and 106.071 (Punishment for Alcohol-Related Offense by a Minor).
[8] Tex. Penal Code Ann. § 31.03.
[9] Kendall Taggart and Alex Campbell, *In Texas It's a Crime to be Poor*, *Buzzfeed* (October 7, 2015, 4:21 PM)., https://www.buzzfeednews.com/article/kendalltaggart/in-texas-its-a-crime-to-be-poor.
[10] Tex. Alco. Bev. Code Ann. § 106.041.
[11] Tex. Transp. Code Ann. § 545.412.
[12] Tex. Transp. Code Ann. § 545.351.
[13] Tex. Health & Safety Code Ann. § 161.082.
[14] Tex. Health & Safety Code Ann. § 484.002.
[15] Tex. Penal Code Ann. § 49.02.
[16] Tex. Penal Code Ann. § 22.01 (a)(3).
[17] Tex. Penal Code Ann. § 42.01 (a).
[18] Tex. Penal Code Ann. § 31.03 (e)(1).

[19] Tex. Health & Safety Code Ann. Ch. 365.
[20] In 2021, litter cleanup efforts cost more than $50 million. Tex. Dept. of Transp. *Don't mess with Texas*, https://www.txdot.gov/about/campaigns-outreach/dont-mess-with-texas.html (accessed February 13, 2025).
[21] Tex. Dept. of Transp., *Texas Motor Vehicle Traffic Crash Highlights Calendar Year* (2023) https://www.txdot.gov/content/dam/docs/trf/crash-reports-records/2023/01.pdf.
[22] Rhyma Castillo, *How many years it's been since Texas had a day without any road deaths*, *San Antonio Express News* (November 9, 2024) https://www.expressnews.com/news/texas/article/texas-day-with-no-road-deaths-anniversary-txdot-19902694.php.
[23] Tiffani Jackson, *In Texas, how many deadly crashes involve unlicensed drivers? What one study finds*, *Fort Worth Star Telegram* (March 12, 2024) https://www.star-telegram.com/news/state/texas/article286574190.html.
[24] Leonard Evan, *A New Traffic Safety Vision for the United States* 93 Am. J. Pub. Health 1384, at 1384-1386 (September 2003); National Coalition for Safer Roads, Key Issues, http://ncsrsafety.org/key-issues/ (last visited February 13, 2025); FBI.gov, Expanded Homicide Data Table 8, https://ucr.fbi.gov/crime-in-the-u.s/2014/crime-in-the-u.s.-2014/tables/expanded-homicide-data/expanded_homicide_data_table_8_murder_victims_by_weapon_2010-2014.xls (accessed February 13, 2025).
[25] Tex. Dept. of Transp., *Comparison of Motor Vehicle Traffic Deaths, Vehicle Miles, Death Rates, and Economic Loss 2003-2023*, https://www.txdot.gov/content/dam/docs/trf/crash-reports-records/2023/a.pdf (accessed February 13, 2025).
[26] Amanda Merck, *Traffic Safety is a Public Health Issue*, Salud America (March 30, 2016) http://www.communitycommons.org/groups/salud-america/changes/traffic-safety-is-a-public-health-issue/.

Take Note as Budget Season Approaches!

TMCEC Fee Adjustments to Address Budget Challenges Starting September 1, 2025

On September 27, 2024, the TMCEC Board of Directors approved a plan to address budget challenges while meeting the needs of our constituents. Starting September 1, 2025, the housing and overhead fees will increase.

Here is what you need to know:

- The housing fee for subsidized events will rise from $50 to $100 per night per participant, applicable only to regional seminars, new judges and clerks seminars, the Municipal Traffic Safety Initiatives Conference, and the Level III assessment clinic. For events without subsidized housing, participants can book rooms at a discounted rate through TMCEC's negotiated room blocks.
- The overhead fee will increase from $75 to $100 for all events.

Making Meaningful Use of the Fine Range

Texas judges have the tools to do individual justice in individual cases.

Courts are encouraged to make meaningful use of the fine range. Fine schedules have utility but also have inherent limitations. Similar to writing prospective fine amounts on arrest warrants prior to a judgment, fine schedules can be misconstrued to mean that there is no fine range or that judges are not willing to consider the full range of punishment.[1] Due process requires trial judges to be neutral and detached in assessing punishment.[2] A trial court denies a defendant due process when it arbitrarily refuses to consider the entire range of punishment or imposes a predetermined punishment.[3] What factors the judge uses in considering the entire fine range and the weight given to such factors is purely a matter of judicial discretion, guided by the Canons of Judicial Conduct.

When sentencing a defendant who entered a plea in open court, judges must inquire whether the defendant has sufficient resources or income to immediately pay all or part of the fine and costs.[4] If the judge determines the defendant's income and resources are insufficient, he or she must determine whether various forms of discharge (e.g., community service, installment payments, etc.), waiver, or a combination are appropriate.[5] Judges have the tools to do individual justice in individual cases. However, that is not the same as *custom-tailored* fines. Does the Constitution require that fines be custom tailored to avoid disproportionate burdens on low-income defendants? No. While there are positive aspects of custom-tailored fines, the Constitution does not require a fine to be custom tailored to avoid disproportionate burdens on low-income defendants. In *San Antonio Independent School District v. Rodriguez* (1973), the U.S. Supreme Court, citing *Tate v. Short*, stated that it had "not held that fines must be structured to reflect each person's ability to pay in order to avoid disproportionate burdens. Sentencing judges may, and often do, consider the defendant's ability to pay, but in such circumstances, they are guided by sound judicial discretion rather than by constitutional mandate."[6]

The Eighth Amendment's prohibition against cruel and unusual punishment focuses on what method or kind of punishment a government may impose after a criminal conviction, not on whether a government may criminalize specific conduct (e.g., public-camping laws) or how it may go about securing a conviction for an offense.[7] Other than in cases involving capital punishment, the Eighth Amendment does not mandate individualized sentencing. The Eighth Amendment, as distinguished from the Due Process Clause, imposes no apparent limitation on the discretion of the sentencing entity, be it judge or jury, including any requirement that punishment be informed by the particular circumstances of the offense and/or the offender.[8] Some judges assess the amount of the fine based on circumstances of the case such as the type of crime, frequency, and flagrancy, reserving consideration of ability to pay until deciding the method of discharging the fine. Some judges consider ability to pay before determining the amount of the fine. Both are permitted by the Constitution and Texas law[9] and within the bounds of judicial discretion.

Though the Constitution does not mandate custom-tailored fines, judicial discretion allows judges to account

for the circumstances surrounding each case, ensuring that sentencing aligns with both the offense and the offender's ability to satisfy the punishment. Ultimately, the goal is to achieve fair and individualized justice within the bounds of the law.

---

[1] Courts can clarify this by providing information on the court's website and/or through notices that explain the purpose of the fine schedule, as well as outlining alternative options available to defendants.

[2] *Brumit v. State*, 206 S.W.3d 639, 645 (Tex. Crim. App. 2006). *See also Jefferson v. State*, 803 S.W.2d 470, 471-72 (Tex. App.—Dallas 1991, pet. ref'd) (reversal of trial court where the trial court told the defendant upon deferring his sentence that, if he violated his probation, the maximum sentence would be imposed, the court finding it denial of due process of law because the trial court's action effectively excluded evidence relevant to punishment, it precluded consideration of the full range of punishment prescribed by law, and it deprived Jefferson of a fair and impartial tribunal at the punishment hearing).

[3] *Id*.; *See McClenan v. State*, 661 S.W.2d 108, 110 (Tex. Crim. App. 1983) (Overruled in part on other grounds by *De Leon v. Aguilar*, 127 S.W.3d 1, 6 (Tex. Crim. App. 2004)).

[4] Tex. Code Crim. Proc. Ann. § 45A.252(a).

[5] Tex. Code Crim. Proc. Ann. § 45A.252(b).

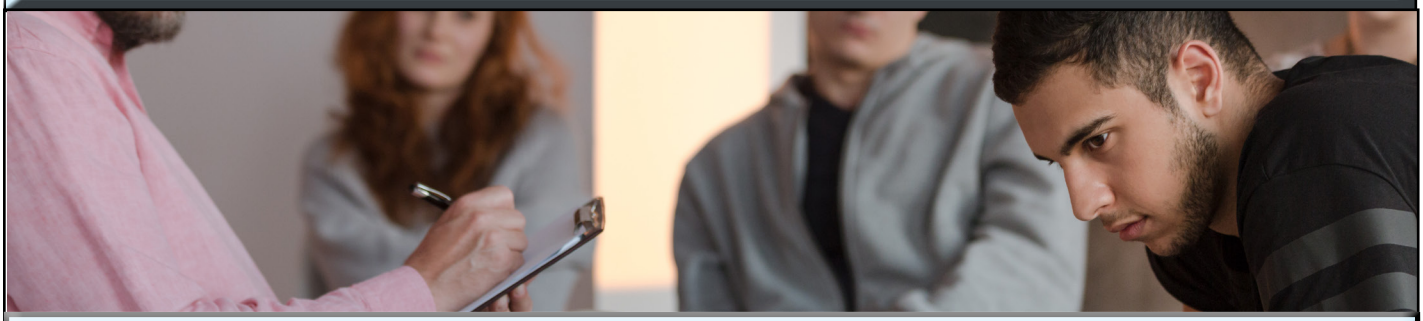
[6] *San Antonio Indep. Sch. Dist. v. Rodriguez,* 411 U.S. 1, 21-22 (1973). Neither *Williams v. Illinois*, 399 U.S. 235 (1970), nor *Tate v. Short*, 401 U.S. 395, 400 (1971), touch on the question whether equal protection is denied to persons with relatively less money on whom designated fines impose heavier burdens. "In *San Antonio School District v. Rodriguez*, the Supreme Court expressly held that poverty is not a suspect classification and that discrimination against the poor should only receive rational basis review." Erwin Chemerinsky, Constitutional Law: Principles and Policies (3d ed. 2006) at 786.

[7] *City of Grants Pass, Oregon v. Johnson*, 603 U.S. 520, 543 (2024).

[8] The Court of Criminal Appeals has stated "aside from a few specific instances where the range of punishment depends upon the determination of discrete facts, '[d]eciding what punishment to assess is a normative process, not intrinsically factbound.' Indeed, we have described the sentencer's discretion to impose any punishment within the prescribed range to be essentially 'unfettered.' Subject only to a very limited, 'exceedingly rare,' and somewhat amorphous Eighth Amendment gross-disproportionality review, a punishment that falls within the legislatively prescribed range, and that is based upon the sentencer's informed normative judgment, is unassailable on appeal." *Ex parte Chavez*, 213 S.W.3d 320, 323-324 n.20 (Tex. Crim. App. 2006) citing *Harmelin v. Michigan*, 501 U.S. 957, 995 (1991).

[9] Tex. Code Crim. Proc. Ann. § 45A.252(a).

Join the TMCEC Juvenile Case Managers Listserv: Connect, Share, and Stay Informed!



TMCEC sponsors a listserv for juvenile case managers. The purposes of this listserv are to (1) provide participants with up-to-date information on laws and procedures that affect the operations of Texas municipal courts; (2) allow participants to network, problem solve, share with others what problems arise in your court; and (3) distribute information relevant to municipal courts, such as information on publications and seminars.

All who participate must agree to the Terms of Use. There is no charge to subscribe. To join the listserv, send your name, title, court name, telephone number, and email address to info@tmcec.com. To remove your name from the listserv, just send a message to unsubscribe. For more information, visit the TMCEC listserv webpage.

Not a JCM? Help us spread the word! Tell your juvenile case manager about this resource!

Distinguishing "Fines" from "Court Costs"

Legally, they are not the same. It is important that the public and state and local officials understand the difference.

Regardless of the label applied, both fines and court costs entail money to be paid by a defendant. However, there are important differences between them. In the context of a criminal case, fines are amounts assessed to punish an individual or organization for violating a law following conviction by a judge.[1] Court costs are amounts prescribed by the legislature, determined on a case-by-case basis, and varying in relation to the activities involved in the course of the case (and may include fees, miscellaneous charges, and surcharges).[2]

A. Fines (Are Not Court Costs)

Fines make sense (not just money). Throughout history, dating back to the Roman Empire, societies around the world have supported the imposition of fines for common criminal offenses. Fines have historically been considered among the least severe of criminal consequences. There are several arguments for the extensive use of fines and other monetary sanctions in the American criminal justice system:

- Fines are cheaper to administer than jails and prisons;
- Fines have the potential to achieve optimal deterrence compared to incarceration;
- Fines offset criminal justice costs; and
- Offenders are potentially spared the longer-term criminalizing effects of sentences entailing incarceration.[3]

B. Fines in Texas

Fines, incarceration, and the death penalty are the three types of punishment in the Texas criminal justice system. Fines are the most common form of punishment for violations of criminal laws. Ironically, despite the frequency of their use and their application throughout history, the underpinnings of fines are rarely independently examined outside the context of other legal issues.

Class C misdemeanors ("fine-only" offenses) are typically thought of as being punishable by a fine of up to $500. However, this "fine-only" misnomer is only true of misdemeanors defined in the Penal Code.[4] It inaccurately reflects the range of fines for municipal ordinance violations for which the fine range can potentially be as high as $4,000.[5] Furthermore, it inaccurately reflects the potential maximum fine for offenses defined elsewhere in state law.

The Penal Code provides that all state law violations defined outside of the Penal Code are to be prosecuted as a Class C misdemeanor as long as they are punishable by a fine only.[6] Thus, for such non-Penal Code criminal offenses, the maximum fine amount is determined by the legislature.[7]

C. Court Costs (Are Not Fines)

While society has long supported the imposition of "fines" as punishment for common criminal offenses, what is unclear is whether the public supports (or is even aware) that "court costs" are being used to pay for governmental expenditures.

In the United States, terminology and definitions used to describe court-related revenues vary from state to state. Nationally, however, a general characteristic of such revenues is that they are created by legislative bodies (not courts) and their imposition by courts is mandatory and not subject to the discretion of judges.[8]

Furthermore, according to Texas attorney general opinions, a court may not order a defendant to pay a fine (which is retained by local governments) before court costs (which are remitted to the state treasury).[9] Despite the tendency of the public to conflate fines, court costs, and fees, each is legally distinct. With noted exceptions, the media has done little to delve into such distinctions or to increase public awareness of how court costs and fees are actually utilized in Texas.[10] These distinctions, however, are increasingly of public importance, particularly when criminal court costs have dramatically increased 1,060 percent since 1965.[11] By 2017, a number of court costs were ripe for challenge by criminal appellate lawyers who contended that certain costs were essentially taxes and that requiring courts to collect them constituted a separation of powers violation. (See Court Costs Case Law Chronology on Page 23.)

D. Reimbursements and Relabeling

S.B. 346 (2019) was the largest reorganization of court costs in modern Texas history.[12] While previous legislation in 1997 and 2003 consolidated a litany of criminal court costs imposed on defendants in criminal cases, it also created controverted court costs. One example is the Time Payment Fee. However, it failed to address the underlying issues regarding the use of these consolidated court costs, some of which found themselves in the crosshairs of appellate litigators challenging their constitutionality.

S.B. 346 was preemptive. It sought to address the criticism that certain state court costs were not being used for dedicated criminal justice purposes but instead were used by the state in a manner resembling a fine.[13] To address the criticism and to avoid additional constitutional challenges to these fees and costs, S.B. 346 simply reclassified them as fines. S.B. 346 also renamed a plethora of former costs and fees as either "reimbursement fees" or "fines." Reimbursement fees include costs which recover trial expenses, such as the cost of a peace officer for issuing a written notice to appear or the cost of impaneling a jury. The newly renamed fines, on the other hand, address the problem of local retained fees and costs that might not have passed constitutional muster if challenged because they were treated as general revenue and were not retained for a dedicated criminal justice purpose.

While S.B. 346 may have achieved its immediate goal, it blurred the historic distinction in Texas law that fines are not court costs and court costs are not fines. There are likely to be unintended consequences for renaming costs and fees as fines. When substantial legislative changes are made, subsequent legislation is almost always necessary. Barring such legislation, changes made by S.B. 346 may be the basis for future constitutional and other legal challenges.

Conclusion

It is crucial to understand the difference between fines and court costs, as they serve distinct functions in the criminal justice system. Fines punish violations of the law, while court costs cover the administrative expenses of legal proceedings. Despite their differences, the public often conflates the two, leading to confusion about how each are assessed and used. The recent changes under S.B. 346, which reclassified certain court costs as fines, have blurred these distinctions, highlighting the importance of clarity in the law. Understanding these differences is essential not only for legal professionals but also for the public.

---

[1] Carl Reynolds and Jerry Hall, Courts are Not Revenue Centers, Conference of State Court Administrators (2011) at 2.
[2] *Id*. *See also* Tex. Code Crim. Proc. Ann. § 45A.002(2).
[3] Martin H. Pritikin, *Fine-Labor: The Symbiosis Between Monetary and Work Sanctions*, 81 U. Colo. L. Rev. 343, 350 (2010).
[4] Tex. Penal Code Ann.§ 12.23.
[5] Tex. Code Crim. Proc. Ann. § 4.14(a)(2); Tex. Gov't Code Ann. § 29.003(a)(1).
[6] Tex. Penal Code Ann. § 12.41(3).
[7] The Legislature in 1997 clarified that "fine only" means that courts may impose sanctions not consisting of confinement in jail or imprisonment and that imposition of a sanction or denial, suspension, or revocation of a privilege does not affect the original jurisdiction of the local trial courts in Texas. Tex. Code Crim. Proc. Ann. §§ 4.11 and 4.14; Tex. Gov't Code Ann. § 29.003. To be clear, prohibition of confinement in jail or imprisonment is distinct from commitment to jail when the defendant defaults on the judgment, which is authorized by Article 45A.261 of the Code of Criminal Procedure.

[8] While judges typically have discretion in imposing fines within a statutory range of punishment, it is not guaranteed. Legislative bodies can prescribe a fixed fine amount and create mandatory minimum fines (even when the offense has a fine range). Examples in Texas include unauthorized use of disabled parking violations (minimum fine of $500) (Tex. Transp. Code Ann. § 681.011) and operating a motor vehicle without financial responsibility (minimum fine of $175 unless a court determines that a defendant has not previously been convicted of the offense and is economically unable to pay $175) (Tex. Transp. Code Ann. § 601.191). City councils can also prescribe a fixed fine amount or create mandatory minimum fines through ordinances.

[9] Article 45A.251(b)(1) of the Code of Criminal Procedure allows a justice of the peace or municipal judge to order payment structured as a lump sum or in installments. However, the statute does not allow the judge to require the fine be paid before the costs are satisfied. This allocation rule stems from Attorney General Opinion Nos. O-755 (1939) and O-469 (1939). According to these opinions, where only a part of a fine and costs are collected, the money should go first pro-rata to the state court costs until the full amount is satisfied, and the balance, if any, to the fine. *Tex. Att'y Gen. Op. No. GA-147* (2004).

[10] Eric Dexheimer, "Hard-up defendants pay as state siphons court fees for unrelated uses," Austin American Statesman (March 3, 2012); Eric Dexheimer, "Even court officials find fees hard to untangle," Austin American Statesman (March 3, 2012).

[11] The percent increase is represented in Dan Feldstein's "Loser fees" taking place of new taxes, Houston Chronicle, March 5, 2006.

[12] Robby Chapman, "The Consolidation of Court Costs and Reimagining of Fines in Texas: Five Important Considerations," *The Recorder* (April 2020).

[13] *Id*. For example, the formerly named Local Traffic Fee was designated as a "cost," but had no prohibition on its use and was authorized to go into the municipal treasury. The formerly named Child Safety Fund was also designated as a "cost" but funded school crossing guard programs, with any excess expended for programs designed to enhance public safety and security; large cities deposited it into a Child Safety Trust Fund.

[14] H.B. 287 (2015) amended Article 103.001 of the Code of Criminal Procedure to require that a bill of costs be physically provided to a criminal defendant in either a county or district court but makes no such requirement for municipal and justice courts.

Court Costs Case Law Chronology

***Mayer v. City of Chicago*, 404 U.S. 189 (1971) -** An indigent defendant accused of fine-only disorderly conduct is entitled to a free transcript or comparable alternative regardless of ability to pay applicable court costs. Limiting free transcripts to felonies was an unreasoned distinction prohibited by the Fourteenth Amendment. The fact that the offenses were fine-only didn't lessen the invidious discrimination against an indigent defendant.

***Weir v State*, 278 S.W.3d 364 (Tex. Crim. App. 2009)** - The statutory assessment of court costs against a convicted defendant is not an additional penalty for the crime committed, but a non-punitive recoupment of the costs of judicial resources expended in connection with the trial of the case.

***Mayer v. State*, 309 S.W.3d 552 (Tex. Crim. App. 2010)** - No trial objection is required to preserve an appellate claim of legally insufficient evidence as it pertains to the imposition of a particular court cost.

***Armstrong v. State*, 340 S.W.3d 759 (Tex. Crim. App. 2011)** - The amount and assessment of criminal court costs is a matter of criminal law (not civil law) and is subject matter that may be raised on direct appeal.

***Johnson v. State*, 423 S.W.3d 385 (Tex. Crim. App 2014)** - Defendants are legally entitled to an itemized bill of costs. A bill of costs does not need to be presented to the trial court before costs can be imposed upon conviction.[14]

***Peraza v. State*, 467 S.W.3d 508 (Tex. Crim. App. 2015)** - A court cost need not arise out of the defendant's particular prosecution in order to be legitimate. Furthermore, if the statutory assessment is reasonably related to the costs of administering the criminal justice system, it is not a tax in violation of separation of powers.

***Salinas v. State*, 523 S.W.3d 103 (Tex. Crim. App. 2017)** - Portions of the consolidated fee statute that were allocated to "comprehensive rehabilitation" and "abused children's counseling" were unconstitutional in violation of the Separation of Powers provision of the Texas Constitution.

***Timbs v. Indiana*, 586 U.S. 146 (2019)** - The Excess Fines Clause of the Eighth Amendment is an incorporated protection applicable to the states pursuant to the Due Process Clause of the Fourteenth Amendment.

***Allen v. State*, 614 S.W.3d 736 (Tex. Crim App. 2019)** - Regardless of how funds are allocated, reimbursement-based court costs do not violate separation of powers. Even in the absence of specific allocation instructions, the summoning witness/mileage fee directly reimburses expenses incurred in prosecuting a case and is therefore constitutional.

Defining Indigence

The challenge is not just formulation, it is application. While judges need more "tools,"the Legislature has wisely avoided a "one-size-fits-all" approach.

Judges face a critical task: determining whether a defendant can afford to pay the fines and costs in a case. In Class C misdemeanor cases, this decision matters not only at the time of judgment and sentence[1] but also if a defendant defaults on discharge of the judgment[2] or faces commitment to jail.[3] So, how can a judge accurately assess if a defendant is truly indigent?

Though the Code of Criminal Procedure defines "indigent" for purposes of appointment of counsel (a person who is not financially able to employ counsel),[4] there is no definition for purposes of determining indigence under Chapter 45A in municipal courts. At the outset, note that Chapter 45A uses several words and phrases related to an individual's ability to pay, none of which are defined within the chapter. For example, Articles 45A.154 (Plea of Guilty or Nolo Contendere by Defendant in Jail), 45A.257 (Waiver of Payment of Fines and Costs), 45A.261 (Commitment), 45A.262 (Discharged from Jail), and 45A.303 (Deferred Disposition Requirements) use the term "indigent." Article 45A.254 (Community Service to Satisfy Fines or Costs) describes defendants having "insufficient resources or income to pay a fine or cost." Similarly, several statutes refer to defendants who have or do not have "sufficient resources or income," such as 45A.107 (Bail), 45A.252 (Sufficiency of Resources to Pay Fines or Costs), 45A.254 (Community Service to Satisfy Fines or Costs), and 45A.257 (Waiver of Payment of Fines and Costs). These terms are not necessarily intended to be synonymous or used interchangeably because some articles use more than one term. Article 45A.257, for example, delineates between a defendant who is "indigent" or "does not have sufficient resources or income to pay." However, practically, no matter how the defendant is statutorily described, the determination hinges on ability to pay. The inquiry is not whether the defendant meets a definition, but rather whether the defendant can immediately pay at the time of the determination.

Article 26.04 (Procedures for Appointing Counsel) provides guidance to county courts, statutory county courts, and district courts for making a determination of whether a defendant is indigent for purposes of appointing counsel. Though not applicable to our courts or the procedures in Chapter 45A, such guidance is instructive. Article 26.04 requires the applicable courts to adopt and publish written **procedures.** Such procedures must include financial standards for determining whether a defendant is indigent. Subsection (m) says the court may consider the defendant's income, source of income, assets, property owned, outstanding obligations, necessary expenses, the number and ages of dependents, and spousal income that is available to the defendant. Subsection (n) requires the defendant to complete under oath a questionnaire concerning his or her financial resources and respond under oath to a corresponding examination about such financial resources by the judge or magistrate responsible for determining indigence. The defendant is also required to sign under oath a prescribed statement.[5] Though not required, such procedures may be helpful for municipal courts determining indigence under Chapter 45A. Note that even though the Legislature provided some guidance for determining indigence when appointing counsel, it stopped short of prescribing a particular test or requiring specific financial standards applicable to all courts.

Similarly, in terms of fine-only offenses, there is no statutorily prescribed means test. Perhaps there are good reasons for that. 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 45A.252, 45A.261, and 45.254 provide judicial discretion in determining whether a defendant is indigent without defining indigence (but see below regarding a presumption of indigence for waiver). This allows a judge to consider all relevant facts when applying the law in each specific case, whereas a statutory definition of indigence, especially one with a formulaic approach, may prove unrealistic and either too exclusive (burdening defendants who do not meet the definition, but are unable to pay) or too inclusive (burdening courts of varying volume with consumption of time and resources). It would be an attempt to standardize what is arguably not subject to precise measurement—an exact point on an economic scale where all defendants in Texas are unable to pay their fine and costs.

Presumption of Indigence

The closest thing to a definition of indigence in Chapter 45A is a presumption of indigence in Article 45A.257, added by S.B. 1913 in 2017. It provides that, for purposes of waiver, a defendant is presumed to be indigent or to not have sufficient resources or income to pay all or part of the fines or costs if the defendant: (1) is in the conservatorship of the Department of Family and Protective Services, or was in the conservatorship of that department at the time of the offense; or (2) is designated, or was designated at the time of the offense, as a homeless child or youth or an unaccompanied youth, as those terms are defined by 42 U.S.C. Section 11434a.

Tools for Determining Ability to Pay

A. Federal Poverty Guidelines

Judges need tools to apply the law within their own communities, be it Houston or Sour Lake. The Federal Poverty Guidelines, published each year in the Federal Register by the Department of Health and Human Services, are an inadequate tool for several reasons. The poverty thresholds were developed in 1963-64 by Mollie Orshansky, an economist working for the Social Security Administration.[6] As Orshansky later indicated, her purpose was not to introduce a new general measure of poverty, but instead to develop a measure to assess the relative risks of low economic status among different demographic groups of families with children.[7] They were based solely on the cost of food in plans prepared by the Department of Agriculture.[8] This is because no generally accepted standards existed of the minimum need for all that is essential for a family to live "at a designated level of well-being" (such as housing, medical care, clothing, child care, and transportation).[9] Updated only for inflation each year, the guidelines assume that one-third of household income is spent on food,[10] not taking into

2025 Federal Poverty Guidelines*

Persons in Family/ Household	Poverty Guidelines
For families/households with more than 8 persons, add $5,500 for each additional person.	
1	$15,650
2	$21,150
3	$26,650
4	$32,150
5	$37,650
6	$43,150
7	$48,650
8	$54,150

*48 Contiguous States and District of Columbia

The Census Bureau cautions that the guidelines are not a complete accounting of how much income people need to live.

account changes in household budgets over the last fifty years.[11] The guidelines do not vary geographically within the United States to incorporate cost of living.[12] Conversely, the guidelines can under-estimate resources because they fail to take into account tax credits, housing subsidies, or other forms of assistance.[13] The Census Bureau cautions that the guidelines are not a complete accounting of how much income people need to live.[14]

B. Self-Sufficiency Standard

Other tools exist that account for a wider range of household budget items and geographic location. The Self-Sufficiency Standard, created by the Center for Women's Welfare, is a budget-based measure of the cost of living and a self-proclaimed alternative to the federal poverty measure.[15] It takes into account family composition, ages of children, and geographic differences in costs to define the amount of income necessary to meet basic needs at a minimally adequate level. However, data is not available for every state. While some states have data for multiple years and data as recent as 2015, Texas only has data for the year 1996.[16]

C. Living Wage Calculator

The Living Wage Calculator, developed by Dr. Amy K. Glasmeier at the Massachusetts Institute of Technology in 2004, estimates the living wage needed to support families (12 different compositions) based on geographically specific expenditure data related to a family's likely minimum costs for food, child care, health insurance, housing, transportation, and other basic necessities.[17] Data for Texas is available by county.

Living Wage Calculation for Henderson County, Texas

The living wage shown is the hourly rate that an **individual** in a household must earn to support themselves and/or their family, working full-time, or 2080 hours per year. The tables below provide living wage estimates for individuals and households with one or two working adults and zero to three children. In households with two working adults, all hourly values reflect what one working adult requires to earn to meet their families' basic needs, assuming the other adult also earns the same.

The poverty wage and state minimum wage are for reference purposes. Poverty wage estimates come from the Department of Health and Human Services' Poverty Guidelines for 2025 and have been converted from an annual value to an hourly wage for ease of comparison. The state minimum wage data is sourced from the Labor Law Center and includes the minimum wage in a given state as of January of that year.

For further detail, please reference the Methodology page. The data on this page was last updated on February 10, 2025.

	1 ADULT				2 ADULTS (1 WORKING)				2 ADULTS (BOTH WORKI		
	0 Children	1 Child	2 Children	3 Children	0 Children	1 Child	2 Children	3 Children	0 Children	1 Child	2 Children
Living Wage	$18.76	$31.82	$38.22	$47.62	$27.28	$32.93	$36.28	$41.20	$13.64	$18.26	$21.68
Poverty Wage	$7.52	$10.17	$12.81	$15.46	$10.17	$12.81	$15.46	$18.10	$5.08	$6.41	$7.73
Minimum Wage	$7.25	$7.25	$7.25	$7.25	$7.25	$7.25	$7.25	$7.25	$7.25	$7.25	$7.25

To use the calculator, a judge would need the composition of the family (number of adults and number of children) and income information for all working adults in the family.

Similar calculators are available, including the Economic Polity Institute's Family Budget Calculator and numerous others based on MIT's calculator.

> It is up to the judge to decide what to consider in determining whether a defendant is able to pay the fine and costs and how to weigh each fact.

Judicial Discretion

Judicial discretion means choosing the right tool in each case. It is up to the judge to decide what to consider in determining whether a defendant is able to pay the fine and costs and how to weigh each fact. The chosen level of complexity of that process directly affects the burden on the defendant to show that he or she is indigent and the burden on the court to efficiently dispose of cases. As mentioned, if using the Living Wage Calculator, defendants would have to provide their income and the size of their family or household. Compare this to requiring a defendant to list all assets, credit rating, retirement, and government assistance. How big a financial picture does the judge need to see? Should a judge delve into personal financial choices or take on the role of financial advisor? How strictly does a judge construe the word "unable" regarding the ability to pay? These questions are answered using the discretion of the judge.

---

[1] Tex. Crim. Proc. Code Ann. §§ 45A.252, 45A.253, 45A.254, 45A.257.
[2] Tex. Crim. Proc. Code Ann. §§ 45A.254, 45A.257.
[3] Tex. Crim. Proc. Code Ann. § 45A.261.
[4] Tex. Crim. Proc. Code Ann. § 1.051. The definition of indigent in Article 1.051 is applicable to Articles 1.051 (Right to Representation by Counsel), 26.04 (Procedures of Appointing Counsel), and 26.05 (Compensation of Counsel Appointed to Defend).
[5] The statement must be substantially in the following form: "On this _____ day of _____, 20 ___, I have been advised by the (name of the court) Court of my right to representation by counsel in connection with the charge pending against me. I am without means to employ counsel of my own choosing and I hereby request the court to appoint counsel for me. (signature of the defendant)[.]" Tex. Crim. Proc. Ann. § 26.04(o).
[6] Gordon M. Fisher, *The Development and History of the Poverty Thresholds*, Social Security Bulletin, Vol. 5, No. 4 (1992).
[7] *Id*.
[8] *Id*. at 4.
[9] *Id*.
[10] *Id*. at 5.
[11] John P. Gross, *Too Poor to Hire a Lawyer but Not Indigent: How States Use the Federal Poverty Guidelines to Deprive Defendants of their Sixth Amendment Right to Counsel,* 70 Wash. & Lee L. Rev.
1173, 1205 (2013).
[12] *Id*.; Institute for Research on Poverty, University of Wisconsin-Madison, How Is Poverty Measured?, https://www.irp.wisc.edu/resources/how-is-poverty-measured/ (accessed January 11, 2025).
[13] Peter G. Peterson Foundation, How do we measure poverty? Is there a better way to do it?, https://www.pgpf.org/article/how-do-we-measure-poverty-and-is-there-a-better-way-to-do-it/ (September 16, 2019).
[14] *Id.*
[15] Center for Women's Welfare, University of Washington, The Self-Sufficiency Standard, http://www.selfsufficiencystandard.org/ (accessed August 10, 2016)
[16] *Id.*
[17] Living Wage Calculator, http://livingwage.mit.edu/pages/about (accessed February 14, 2025).

In the Shadow of *Bearden*, Guidance from Case Law, and the Texas Code of Criminal Procedure

Show cause hearings in municipal and justice courts help uphold the fundamental fairness required by *Bearden*.

"Debtors' prisons" and "the criminalization of poverty:" hyperbole and dysphemism surrounding indigence issues in America are hardly new. More than a quarter of a century before the advent of hashtag social media campaigns, the U.S. Supreme Court in *Bearden v. Georgia* warned that analysis of such legal issues "cannot be resolved by resort to easy slogans or pigeonhole analysis."[1] This remains true today. Nevertheless, it is ironic that if you search X, formerly Twitter, for #debtorprison, *Bearden* is often the crux of accusations.

Part One of this article focuses on *Bearden* and related case law.

Part Two addresses what Texas has done to comply with *Bearden* and why show-cause hearings in municipal and justice courts are an important step to ensuring the kind of fundamental fairness required by *Bearden*.

Part One: The Trilogy

What role does *Bearden* play in consideration of indigence-related matters?

Bearden is best understood as part of a trilogy of U.S. Supreme Court decisions having to do with fines, costs, indigence, and incarceration. The holding in *Bearden* is predicated upon two prior decisions.

> *Williams v. Illinois* (1970) is about whether a defendant sentenced to a term of incarceration and a fine had to spend additional time behind bars to discharge fines and costs. The Court held it violates the Equal Protection Clause of the Fourteenth Amendment.
>
> *Tate v. Short* (1971) examined whether an indigent defendant convicted and sentenced to pay a fine and costs can have the fine and cost automatically converted to jail time simply because the defendant cannot immediately pay the fine in full. The Court, relying on *Williams*, held it similarly violates the Equal Protection Clause. Notably, *Tate* effectively mandated states to devise, and courts to allow such defendants, "alternative means" to discharge fines and costs. (See Page 39.)
>
> *Bearden v. Georgia* (1983) determined whether a sentencing court can revoke a defendant's probation for failure to pay a fine and make restitution, absent evidence and findings that the defendant was responsible for the failure or that alternative forms of punishment were inadequate to meet the State's interest in punishment and deterrence. The Court, relying on *Williams* and *Tate*, held it violates the fundamental fairness required by the Fourteenth Amendment.

...the Court in *San Antonio Independent School District v. Rodriguez* (1973) held that the poor are not a suspect class for purposes of equal protection analysis.

Despite being inextricably linked to *Williams* and *Tate* by the Fourteenth Amendment, it is important to note that *Bearden* was not decided on equal protection grounds. The Court's pivot to "fundamental fairness" is significant and should not be overlooked. Shortly after *Tate*, but prior to *Bearden*, the Court in *San Antonio Independent School District v. Rodriguez* (1973) held that the poor are not a suspect class[2] for purposes of equal protection analysis.[3]

While all three decisions advanced the rights of indigent defendants, none of the decisions promoted inverse discrimination or precluded "imprisonment as an enforcement method when alternative means are unsuccessful despite the defendant's reasonable efforts to satisfy the fines by those means."[4] Reiterating the holdings of *Williams* and *Tate*, the Court in *Bearden* "recognized limits on the principle of protecting indigents in the criminal justice system."[5]

Reiterating the holdings of *Williams* and *Tate*, the Court in *Bearden* "recognized limits on the principle of protecting indigents in the criminal justice system."

A. Despite *Bearden*, Indigent Status Does Not Categorically Preclude the Possibility of Jail

Citing *Williams* and *Tate*, *Bearden* held that when the state determines that a fine or restitution are an adequate penalty for a crime, it may not imprison a defendant solely because the defendant lacked the resources to pay it. If, however, the probationer (1) has willfully refused to pay the fine or restitution when he has the ability to pay or (2) has failed to make sufficient bona fide efforts to seek employment or borrow money, the state is justified in using imprisonment as a sanction to enforce collection.[6]

B. What Does "Willfully" Mean?

Bearden does not define "willfully." Black's Law Dictionary defines "willful" as meaning voluntary and intentional. In *Bearden*, "the Supreme Court didn't tell courts how to determine what it means to 'willfully' not pay. So it's left to judges to make the sometimes difficult calculations."[7]

C. What Does "Bona Fide" Mean?

Neither does *Bearden* define "bona fide." However, according to Black's Law Dictionary, it means made in good faith; without fraud or deceit. Sincere; genuine. The opposite of bona fide is fake. Thus, when a person makes a bona fide effort, they are making a true, sincere, good faith effort to do something.

D. State Implementation and Uncertainty Surrounding *Bearden*

The essence of the modern debate surrounding *Bearden* is that, for better or worse, the Supreme Court did not superimpose procedural steps that all state trial courts must follow. Because the laws of each state vary, there is no uniformity in how *Bearden* has been implemented. While some states have amended their laws to reflect the holding in *Bearden*, other states have not.

Regardless whether a state has attempted to codify *Bearden*, each state and its judges are bound to comply with its holding.

The problem is that in absence of *Bearden* procedures in state law, the Supreme Court decision provides minimal guidance. This, in turn, increases the potential probability of debates surrounding whether a court is meeting its legal obligation under the U.S. Constitution considering *Bearden*. Since it was decided in 1983,

state courts throughout the United States have had to deal with the uncertainties surrounding *Bearden*.[8] It has been a source of conflict in state courts.[9]

> The essence of the modern debate surrounding *Bearden* is that, for better or worse, the Supreme Court did not superimpose procedural steps that all state trial courts must follow. Because the laws of each state vary, there is no uniformity in how *Bearden* has been implemented.

Part Two: *Bearden* in Texas

While *Bearden* involved fines and fees, its holding is less straightforward than the holding in *Tate*. Implementing and complying with the U.S. Supreme Court decision in *Tate v. Short* (1971)[10] was relatively easy for Texas. *Tate* began in the Houston Municipal Court and was about the Texas Code of Criminal Procedure and its requirement that if the defendant could not pay the fine and costs in full, the fine and costs were automatically converted to a period of incarceration.[11] *Bearden* involved Georgia's First Offender Program, a felony offense, probation revocation, and a sentence of two years in prison.[12] *Bearden* did not involve a sentence consisting solely of a fine and costs, a capias pro fine, or statutes similar to Texas law.

There may be limitations in extrapolating the holding in *Bearden*.[13] Nuanced and specific issues in Chapter 45A of the Code of Criminal Procedure governing municipal and justice court proceedings have not been considered by the Texas Court of Criminal Appeals or the U.S. Supreme Court. Nevertheless, opinions from the U.S. 5th Circuit Court of Appeals and the Texarkana Court of Appeals make it evident that municipal judges and justices of the peace are bound by the holding in *Bearden*.[14] Instructively, the Court of Criminal Appeals has stated that separate and distinct from the Code of Criminal Procedure, when properly asserted, "*Bearden* prescribes a mandatory judicial directive."[15]

A. The Code of Criminal Procedure

While state legislatures are not obligated to codify case law, the Texas Legislature has amended the Code of Criminal Procedure to ensure indigent criminal defendants the protections required by *Tate* and *Bearden*.

1. Ability to Pay

Bearden is a narrow decision and does not require a sentencing court to determine a defendant's ability to pay at sentencing.[16] However, since 2019, Texas law has required such an inquiry in certain instances in municipal and justice courts.

When a defendant enters a plea in open court, the judge must inquire whether they have the financial resources to immediately pay all or part of the fine and court costs.[17] If it is determined that the defendant lacks sufficient resources, the judge must consider alternative methods of satisfaction, including deferred payment, installment plans, community service, partial or full waiver, or a combination of these options.[18]

If the defendant is under the conservatorship of the Department of Family and Protective Services or in extended foster care, the judge cannot require payment but may impose community service instead.[19]

For child defendants, if diversion is not required at the time of conviction, the judge must allow them to choose how to discharge their fines and costs. The available options include performing community service, participating in tutoring, or making payments immediately, later, or in installments.[20]

2. Show Cause Hearings

A show cause hearing is a court proceeding in which a person must appear before a judge to explain why they failed to comply with a court order or legal obligation. The purpose of the hearing is to determine whether the person had a valid reason for their noncompliance or if further legal action is warranted.

The purpose of the [show cause] hearing is to determine whether the person had a valid reason for their noncompliance or if further legal action is warranted.

Probation Revocation: As *Bearden* is a probation revocation case, its influence is evident in probationary statutes contained in the Code of Criminal Procedure. In municipal and justice courts, when a defendant fails to submit proof of completion of a driving safety course,[21] or fails to submit proof of compliance with the terms of deferred disposition,[22] judges are required to give defendants a show cause hearing before imposing the sentence or enforcing its judgment.

Reconsideration Hearing ("Defendant's Show Cause Hearing"): Typically, a show cause hearing is ordered by a court, not requested by the defendant. A reconsideration hearing is like a show cause hearing but is scheduled at the request of the defendant. Per Article 45A.258, if a defendant has trouble complying with the judgment due to financial hardship, they may request a hearing to reconsider the satisfaction of fines and costs. This request can be made by appearing in court, filing a motion, mailing a letter, or using any other method permitted by the court. The judge must then determine whether the judgment imposes an undue hardship and adjust the payment obligations accordingly. Such a hearing may be conducted by telephone or videoconference.[23]

Show Cause Hearing Prior to Issuing a Capias Pro Fine: A capias pro fine (Latin for "that you take for the fine") is a post-judgment writ issued by the convicting trial court after judgment and sentence for unpaid fines and costs. It orders any peace officer of Texas to arrest the convicted person and bring them before the court immediately or place the defendant in jail until the next business day if the defendant cannot be immediately brought before the court.[24] A court must recall a capias pro fine if, before its execution, the defendant requests a reconsideration hearing (and one is set) or voluntarily appears and makes a good faith effort to resolve the matter.[25] Special rules apply for capiases pro fine issued for adults who were children at the time of the offense.[26]

A capias pro fine (Latin for "that you take for the fine") is a post-judgment writ issued by the convicting trial court after judgment and sentence for unpaid fines and costs.

Requiring show cause hearings before issuance of a capias pro fine is an additional safeguard that prevents defendants from being arrested over matters of money—matters that are beyond their control. Because it was widely believed that such a hearing is essential to complying with *Bearden*, it became a mandatory part of the Code of Criminal Procedure in 2017. Under Article 45A.259, a court cannot issue a capias pro fine for nonpayment without first holding a hearing to determine whether the judgment creates an undue hardship. If

the defendant fails to appear at the hearing or does not comply with a resulting order, the capias pro fine may be issued. If the judge finds undue hardship, they must consider alternative methods of satisfying the fine and costs under Article 45A.252. If no hardship is found, the defendant must comply with the judgment within 30 days.

There are obvious benefits to mandating show cause hearings prior to issuing a capias pro fine. In terms of *Bearden*, ordering a show cause hearing allows consideration of a defendant's ability to pay and allows judges an opportunity to consider the circumstances surrounding failure to discharge the judgment through alternative means. (This, of course, assumes the defendant appears. See Safe Harbor and Second Chances: Innovative Court Practices to Encourage Defendants on Page 46.) When used this way, show cause hearings also have the potential to help courts, law enforcement, and jails save time and money.

4. Commitment Hearing after Capias Pro Fine

Although *Bearden* does not require a sentencing court to determine a defendant's ability to pay at sentencing, under *Tate*, such a determination must be made prior to committing a defendant to jail for failure to pay fines and costs.

When a judgment and sentence have been entered against a defendant and the defendant defaults in the discharge of the judgment, Texas law does not authorize a judge to order arrest via capias pro fine and commitment to jail for non-payment absent a prompt hearing and written determinations. Article 45A.259(b) requires that individuals arrested on a capias pro fine be brought immediately before the issuing court or placed in jail until the business day following the arrest. Article 45A.261(c) allows commitment hearings to be conducted by means of an electronic broadcast system (e.g., Internet videoconferencing).[27]

A capias pro fine is *not* a commitment order. Preference is given to the defendant being brought immediately before the court. Anecdotal evidence suggests that this rarely happens. For practical and security reasons, judges often go to where the defendant is jailed (assuming, of course, that they have been notified that the defendant is in custody). Because judges commonly associate trips to jail as part of their magistrate duties, it is important for judges to understand that a commitment order is not a magistrate function, but rather a duty of a judge. It is similarly imperative that law enforcement, court, and jail staff understand: Effective communication is required. Time is of the essence. When a court issues a capias pro fine, and the defendant is arrested, what happens next determines whether a judge is following Texas law and what the Court of Criminal Appeals described as the "mandatory judicial directive" of *Bearden*.

Article 45A.261(a) authorizes a court to order a defendant to be confined when a judgment and sentence have been entered against a defendant and the defendant defaults in the discharge of the judgment, if the court makes a written determination at a hearing that the defendant is either:

(1) not indigent and has failed to make a good faith effort to discharge the fines and costs; or

(2) indigent and has failed to make a good faith effort to discharge the fines and costs by performing community service and could have performed such community service without experiencing any undue hardship.

Prior to commitment, the judge must affirmatively find that the defendant failed to make a good faith effort to discharge the judgment. Article 45A.261 encapsulates the *Bearden* line of cases which "endeavors to shield criminal justice debtors making a good faith effort while leaving nonpayment unprotected."[28]

---

[1] *Bearden v. Georgia*, 461 U.S. 660, 666-67 (1983).
[2] A "suspect class" is a group identified or defined in a suspect classification, a statutory classification based on race, national origin, or alienage. If a state law impinges on a fundamental right or operates to the disadvantage of a suspect class, the law passes constitutional muster only if it survives strict scrutiny under equal-protection analysis. *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 4 (1973). *See also* Black's Law Dictionary (10th ed. 2014).
[3] "[T]his Court has never heretofore held that wealth discrimination alone provides an adequate basis for invoking strict scrutiny." *San Antonio Indep. Sch. Dist.*, 411 U.S. at 28-29.
[4] *Tate v. Short*, 401 U.S. 395, 400-01 (1971).
[5] *Bearden*, 461 U.S. at 664-65 (1983).
[6] *Id.* at 661. Emphasis added.
[7] Critics claim this omission undercuts the holding in *Bearden*. Joseph Shapiro, *Supreme Court Ruling Not Enough To Prevent Debtors Prisons*, NPR (May 21, 2014, 5:01 AM) http://www.npr.org/2014/05/21/313118629/supreme-court-ruling-not-enough-to-prevent-debtors-prisons.
[8] "[T]he Court creates a good deal of uncertainty for trial courts attempting to implement the decision. First, although the decision generally prohibits imprisonment of probationers who are unable, despite good faith efforts, to pay their monetary conditions, it provides trial courts with no guidance in determining what evidence and circumstances are sufficient to establish an inability to pay. Furthermore, although the decision contemplates situations where imprisonment of some probationers who are unable to pay will be necessary to protect the state's interests, it provides trial courts with no guidance concerning the nature and quantity of evidence necessary to establish that no alternatives will adequately protect the state's interests. Trial courts will have to address these uncertainties as they implement the decision." Fred Lautz, Note, *Equal Protection and Revocation of an Indigent's Probation for Failure to Meet Monetary Conditions*: *Bearden v. Georgia*, 1985 Wis. L. Rev. 121, 152 (1985).
[9] *See generally* Ann K. Wagner, Comment, *The Conflict over Bearden v Georgia in State Courts: Plea- Bargaining Probation Terms and the Specter of Debtors' Prison*, 2010 U. Chi. Legal F. 383 (2010).
[10] The Equal Protection Clause of the Fourteenth Amendment prohibits states from imposing a fine as a sentence and automatically converting it to a jail term solely because the defendant is indigent and cannot pay the fine in full.
[11] In 1969, Preston Tate was committed to the prison farm of the City of Houston by virtue of a capias pro fine from six traffic convictions with aggregate fines totaling $425. The Court of Criminal Appeals, in overruling Tate's contention, held that Tate's status as an indigent did not render him immune from criminal prosecution and that imprisonment was not unconstitutional merely because Tate was too poor to pay his traffic fines. *Ex parte Tate*, 445 S.W.2d 210 (Tex. Crim. App. 1969). The Supreme Court, however, disagreed. In reversing the Court of Criminal Appeals, it held that the Equal Protection Clause of the Fourteenth Amendment prohibits states from imposing a fine as a sentence and automatically converting it to a jail term solely because the defendant is indigent and cannot pay the fine in full. *Tate*, 401 U.S. at 399 (1971).
[12] In 1981, Danny Bearden pled guilty to burglary and theft. The trial court, rather than entering a judgment of guilt, sentenced Bearden to probation on the condition that he pay a fine and restitution per an installment payment plan. Bearden subsequently lost his job and despite repeated efforts was unable to find other work. Shortly before the balance became due, he notified the probation office that his payment was going to be late. In response, the prosecution filed a motion to revoke Bearden's probation. The trial court, despite a trial record clearly indicating that Bearden had been unable to find employment and had no assets or income, entered a conviction and sentenced Bearden to two years in prison.
[13] "The limits of *Bearden* are unclear. Although the broad language of Justice O'Connor's opinion suggests otherwise, *Bearden* may apply solely to situations in which probation is revoked for failure to pay a fine." David S. Mackey, *Rationality Versus Proportionality: Reconsidering the Constitutional Limits on Criminal Sanctions*, 51 Tenn. L. Rev. 623, 651 (1984).
[14] *Garcia v. City of Abilene,* 890 F.2d 773 (5th Cir. 1989); *Ex parte Burks*, No. 06–13–00217–CR, 2014 WL 12740144 (Tex. App.—Texarkana April 25, 2014, no pet.) (mem. op., not designated for publication).
[15] *Gipson v. State*, 383 S.W.3d 152, 157 (Tex. Crim. App. 2012).
[16] Wagner, *supra* note 9, at 385.
[17] Tex. Code Crim. Proc. Ann. § 45A.252(a).
[18] *Id*.
[19] Tex. Code Crim. Proc. Ann. § 45A.253(a).
[20] Tex. Code Crim. Proc. Ann. § 45.041(b-3).
[21] Tex. Code Crim. Proc. Ann. § 45A.356(e)-(f).
[22] Tex. Code Crim. Proc. Ann. § 45A.306.
[23] Tex. Code Crim. Proc. Ann. § 45A.260.
[24] Tex. Code Crim. Proc. Ann. § 43.015(2).
[25] Tex. Code Crim. Proc. Ann. § 45A.259(g).
[26] Per Article 45A.259(h) of the Code of Criminal Procedure, a capias pro fine cannot be issued for an offense committed before the defendant's 17th birthday unless the individual is now at least 17, the court determines issuance is justified based on the defendant's maturity, criminal history, and available alternatives, and the court has already attempted to compel compliance under Article 45A.461 (Failure to Pay Fine or Appear).
[27] Bill Summary S.B. 414, *The Recorder* (August 2009) at 7.
[28] Note, *State Bans on Debtors' Prisons and Criminal Justice Debt*, 129 Harvard L. Rev. 1024 (2016).

Capiases Pro Fine: Do's and Don'ts
Article 45A.259

DO

1. Consider All Enforcement Options (Know All of the "Tools" in Your "Tool Box")
2. Know the Applicable Law
   - Key Statutes (Code of Criminal Procedure)
   - Controlling Case Law
   - Canons of Judicial Conduct
3. Begin with the End in Mind

   Know the Steps (Follow the Steps) Leading Up to Commitment on a Capias Pro Fine
   - Logistics
     - » How is this going to work?
     - » Who is going to do what?
     - » When are they going to do it?
   - Communication
     - » Whose job is it?
     - » How will you know what's happening?
     - » What if you don't know?
   - Document Everything
     - » Judgments
     - » Correspondence
     - » The Capias Pro Fine (hearing is required)
     - » The Commitment (hearing and written determination are required)
4. Consider the Facts and Circumstances
   - Prior to Issuing the Capias Pro Fine (Required)
   - When Conducting a Commitment Hearing (Required)
5. Show Cause Hearings
   - "Failed" DSC and Deferred (Required)
   - Prior to Issuing the Capias Pro Fine (Required)
6. Recall the Capias Pro Fine if the Defendant:
   - Requests a Reconsideration Hearing and One is Set, OR
   - Voluntarily Appears and Makes a Good Faith Effort to Resolve the Capias Pro Fine

DO NOT

1. Do Not Attempt to Enforce the Law by Ignoring the Law
   - Issuing a Capias Pro Fine Commits the Court to Conduct a Timely Commitment Hearing
   - Failure to Follow Procedure Is a Violation of the Law and the Canons of Judicial Conduct
2. Do Not Confuse "Sentencing" with "Commitment"
   - The "sentence" in a Class C misdemeanor is the payment of fines and costs.
   - A defendant convicted of a Class C misdemeanor may not be sentenced to jail.
   - When enforcing a judgment via a capias pro fine, the court is still not sentencing the defendant to jail. Rather, confinement is a result of a commitment hearing and order per Article 45A.261, CCP.
3. Do Not Confuse a "Capias Pro Fine" with "Contempt"
4. Do Not Presume a Defendant Is Not Indigent. An Indigence Determination is Part of the Commitment Hearing
5. Do Not Believe the Capias Pro Fine Is Mandatory
   - It is discretionary.
   - It is not automatic.
   - It may not be the "right fit" for all courts.

TEXAS MUNICIPAL COURTS EDUCATION CENTER

The Merits of Passive Enforcement and the Failure to Appear/Failure to Pay Program

Just a few decades ago, the primary statutory mechanisms for municipal courts to achieve compliance with unfulfilled court obligations was by issuing an arrest warrant,[1] capias,[2] or capias pro fine.[3] All three writs require law enforcement to seize the defendant and entail the defendant being brought into custody (i.e., active criminal enforcement). Today, there are numerous less intrusive "passive enforcement" alternatives available to municipal courts.[4] Passive enforcement is a method of achieving compliance with the law without active intervention or immediate action by law enforcement. It entails "measures authorized by law excluding criminal or civil enforcement that [involve] the denial of a privilege to compel the defendant to appear in court or comply with the judgment of the court."[5]

Passive enforcement serves a compelling public policy interest: encouraging criminal defendants to address the charges against them without being arrested, which avoids the government's physical intrusion into people's lives. Furthermore, arrest and detention are expensive, require the use of valuable resources, and may not result in final disposition. Like active criminal enforcement, passive enforcement promotes public safety by preventing people from downplaying the consequences of crimes, which makes committing them less likely in the first place. Despite these merits, passive enforcement options have been the subject of criticism. Legislative proposals to water down or repeal them have repeatedly been introduced but have not become law. One of the most popular passive enforcement options for fine-only crimes in Texas is the Failure to Appear/Failure to Pay (FTA/FTP) Program.[6]

The FTA/FTP Program

Recognizing that many defendants who receive citations disregard notices to appear in court, the Texas Legislature passed S.B. 1504 in 1995. This legislation created the "FTA Program" in Chapter 706 of the Transportation Code. At first, the program only applied to traffic offenses and situations where a defendant failed to appear. In 1999, the legislature passed H.B. 2802, which expanded the program to all Class C misdemeanors. In 2001, S.B. 1371 expanded the program to instances where a defendant failed to satisfy a judgment.[7] Today, Chapter 706 permits cities and counties to contract with the Department of Public Safety (DPS) to deny the driver's license renewal for defendants that fail to appear or fail to pay. When a court that has contracted with DPS orders a "hold" on a non-compliant defendant's driver's license, the defendant will be unable to renew their license when it is time to renew. The program is administered by OmniBase Services of Texas (OmniBase). It is an example of passive enforcement because, once the hold is ordered, neither the court nor law enforcement need to make any additional contact with the defendant to effect compliance. As of January 1, 2017, 732 cities and 243 counties participated in the program and courts had entered 16.7 million cases.[8] The program's website boasts a 68 percent clearance rate,[9] which is significantly higher than the estimated 25 percent clearance rate for arrest warrants.[10]

FTA/FTP Program Reimbursement Fee

Under the FTA/FTP Program, whenever a court reports a case to DPS, a $10 reimbursement fee is assessed against the defendant.[11] Prior to 2020, the fee was $30.[12] OmniBase's only revenue from the program comes from this fee. The typical allocation of the reimbursement fee is $6 to OmniBase and $4 to the local government. These allocations are provided in individual contracts with DPS. Despite inflation and increased operating costs for OmniBase, the fee is less than it was in 1995.[13] Like a court cost, the fee is not

due until the case is disposed of.[14] Furthermore, if the court finds, at any time, that a defendant is indigent, the court may not assess the reimbursement fee.[15] If the fee has been assessed prior to the indigence finding, the defendant may not be required to pay it.[16] As with any court cost, the fee may be waived under Article 45A.257 of the Code of Criminal Procedure. If the fee is paid and either (1) the defendant perfects an appeal; (2) the charges are dismissed; (3) the defendant posts a bond or gives other security to reinstate the charge for which the warrant was issued; (4) the fines and costs owed are paid or discharged; or (5) any suitable arrangement to satisfy the fines and costs owed is reached, the court shall send a clearance notice to DPS.[17] This does not prohibit a court from sending a clearance notice to DPS if the reimbursement fee is not paid. Therefore, it is inaccurate to say that payment of the reimbursement fee is required for a hold to be lifted.

FTA/FTP Program Criticisms

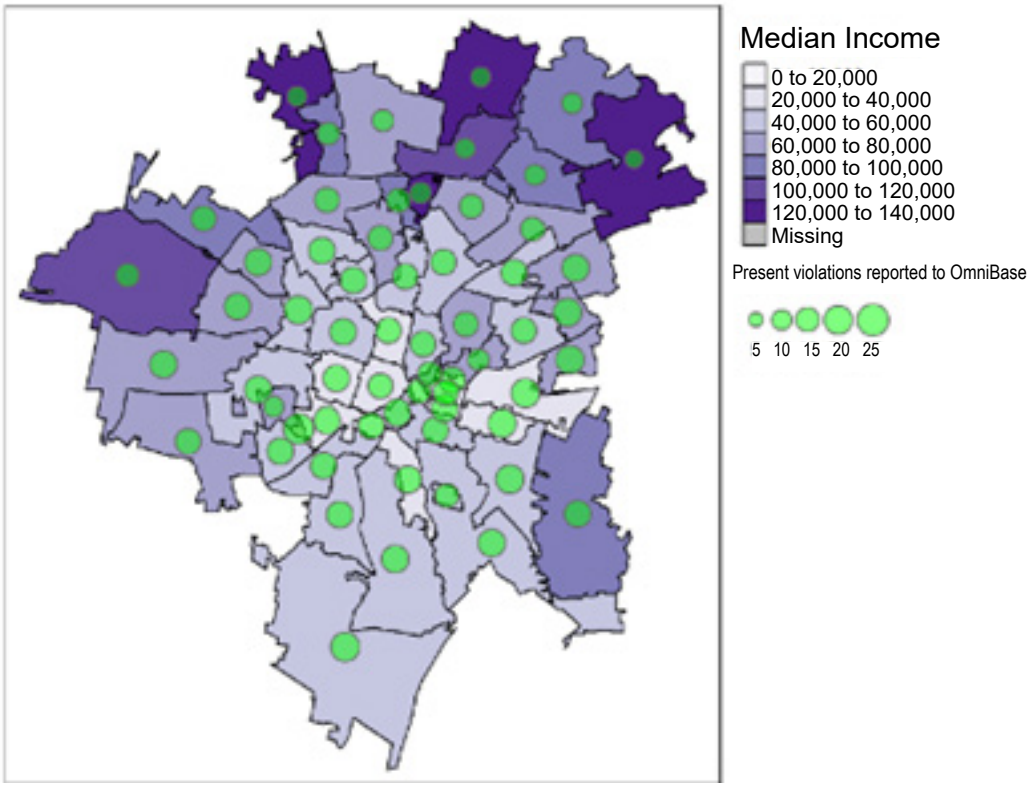
The italicized statements below are common examples of criticism against the FTA/FTP Program. Commentary is provided after each one.

It is ineffective.[18]

According to a 2023 University of Texas at San Antonio (UTSA) study, the FTA/FTP Program has a 73 percent clearance rate, which means that 73 percent of the cases reported to OmniBase are resolved.[19] Notably, this is an increase from the 2017 clearance rate on the OmniBase website.[20] Courts do not report cases to OmniBase unless they are at an impasse where the defendant fails to appear or pay. Because 73 percent of these impasses are resolved through the program, it is a stretch to call it ineffective. Furthermore, it is effective for "pass-through" defendants that do not reside in or near the jurisdiction where they are charged. For example, if a judge in West Texas orders a hold for a defendant from East Texas, it has the same effect as if the defendant was from West Texas. Arrest warrants, for various reasons, are often less likely to be executed if the defendant is not a local resident.

It discriminates against low-income and minority individuals.[21]

The UTSA study contains numerous findings that the program does not discriminate. The study found "no statistically significant variation across racial groups" and "[found] no evidence that the rate of OmniBase reports per area is uniquely reflective of socio-economic disadvantage."[22] The image from the report, at right, shows the percentage of violations with renewal holds in sections of San Antonio with a wide range of median household incomes:[23]



While there is a slightly lower percentage in higher income areas, the difference is negligible. There does not appear

to be a disproportionately high use of the program in low-income areas. Entry into the FTA/FTP Program does tack a $10 fee onto the total amount owed, but judges may not assess or collect it if the defendant is indigent.[24] Therefore, the program does not create any new financial burden that did not exist prior to an indigent defendant's entry into the program.

It cuts economic growth by restricting an individual's ability to drive and wastes valuable police time to cite people for driving with a license that is only invalid because of unpaid fines and fees or non-appearance.[25]

All functions of the criminal justice system could be seen as cutting economic growth. Should courts not assess criminal fines because that money could instead be used by defendants to support local businesses? Should courts not require appearances at all because that time could be better spent by the defendant going to work? Should a convicted mass murderer be allowed to work at a grocery store in the interest of economic growth? If law enforcement did not issue citations for people driving without a valid license or there were no consequences for doing so, the program would be toothless. The program relies on defendants' desire to avoid the consequences of driving without a valid license. Prior to a renewal being denied, defendants are usually given at least three notices related to their hold: the required warning from law enforcement under Section 706.002 of the Transportation Code, one from the court when they are referred to the program, and one from DPS 60 days prior to their renewal date.

If law enforcement did not issue citations for people driving without a valid license or there were no consequences for doing so, the program would be toothless.

It does not allow a hold to be lifted until all fines, costs, and fees are paid in full.[26]

Holds may be lifted upon payment of the $10 reimbursement fee and a "suitable arrangement to satisfy the fine and costs within the court's discretion."[27] This could be a payment plan or community service. While there may be some judges that will not order a hold lifted until amounts owed are paid in full, this is not in the spirit of Chapter 706. Victor Alcorta, General Counsel for OmniBase, says that "critics of the program claim that judges will not lift a renewal hold unless a fine is paid in full, which discourages some individuals from coming to court to explore alternatives to monetary payment. We've worked hard to defend judicial discretion in this law so that judges can work with individuals on a case-by-case basis to achieve compliance."

It is debt-based.[28]

To call amounts owed to a court following conviction "debt" is misleading. True, they are both money owed, but "debt" connotes money that was voluntarily borrowed that is owed to a person or a business—not the government or courts.[29] Money owed to a court is more accurately referred to as a legal financial obligation (LFO). Laws surrounding consumer debt and LFOs are completely different and should not be conflated. For example, declaring Chapter 7 bankruptcy will not clear punitive fines owed to a court.[30]

It is "very similar" to the repealed Driver's Responsibility Program (DRP).[31]

The DRP prescribed "surcharges" following traffic convictions regardless of whether the defendant showed up to court or paid the fine. The DRP was more akin to an additional sentence for all traffic defendants than a passive enforcement mechanism.

It leads to license suspensions.[32]

The program does not lead to license suspensions. A suspended license is distinguishable from a license that

may not be renewed. License suspensions are generally irreversible for a set amount of time. An OmniBase hold is easily reversible if the license holder simply addresses the charges against them.[33] Furthermore, because Texas driver's licenses only need to be renewed every eight years, it can take up to eight years for the FTA Program to have any impact on a defendant's ability to drive.

Conclusion

For 30 years, passive enforcement has played an important role in holding individuals legally accountable. Passive enforcement is not only effective, but it also provides courts with an enforcement option to achieve compliance without any physical government interference into people's lives (e.g., arrest warrants and capias pro fines). In some courts, passive enforcement is the primary enforcement strategy. In others, it is the only viable strategy. Whether legislation terminating or hindering the FTA/FTP Program and other passive enforcement strategies will become law in Texas is unknown. However, without passive enforcement, many courts may revert to arresting people as the primary means of achieving compliance with court obligations while others may effectively be left with no enforcement options at all.

---

[1] Tex. Code Crim. Proc. Ann. §§ 15.01; 45A.104.
[2] Tex. Code Crim. Proc. Ann. § 43.015(1).
[3] Tex. Code Crim. Proc. Ann. § 43.015(2).
[4] According to TMCEC's Fines, Fees, Costs, Indigence, and Related Issues "bench card," the four main types of enforcement in the municipal court context are active enforcement (e.g., arrest warrant and capias pro fine), passive enforcement (e.g., the FTA/FTP Program), private enforcement (e.g., collection firms), and civil enforcement (e.g., abstract of judgment)
[5] Ryan Kellus Turner, *Municipal Courts and the Texas Judicial System* 202 (1st ed. 2022).
[6] The FTA/FTP Program is commonly referred to as "OmniBase" or "Omni." This refers to the company, OmniBase Services of Texas, that operates the program.
[7] Despite the program's 2001 expansion to include failure to pay, many still refer to it as the "FTA Program."
[8] OmniBase Services of Texas Home Page, https://www.omnibase.com (accessed February 11, 2025).
[9] *Id*.
[10] OmniBase Services of Texas Failure to Appear (FTA) Program Page, https://www.omnibase.com/program (accessed February 12, 2025).
[11] Tex. Transp. Code Ann. § 706.006(a).
[12] S.B. 346 (2020). Prior to the fee changing from $30 to $10 in 2019, 2/3 of the fee (just under $20) went to the State. For $30 fees collected for offenses committed on or before December 31, 2019, the State still collects this portion.
[13] According to Victor Alcorta, OmniBase's General Counsel, postage for mailing notices to defendants alone requires using about 25 percent of the fees they receive today. In 1995, it was closer to 5 percent.
[14] Tex. Transp. Code Ann. § 706.006(a-1).
[15] Tex. Transp. Code Ann. § 706.006(d).
[16] *Id*.
[17] Tex. Transp. Code Ann. § 706.005(a).
[18] Texas Appleseed, *Get More Texans on the Road and Off to Work: End the Failure to Appear/Pay (FTAP) Program*, https://www.texasappleseed.org/sites/default/files/2024-06/omnibaseworkforce_3-pagerbrief_june17_2024-final.pdf (accessed February 11, 2025).
[19] Branco Ponomariov & R. Hartley, *Task 3 report: Analysis of internal case management system data: selected trends,* University of Texas at San Antonio, January 27, 2023, https://rpubs.com/brancolp/996103.
[20] *Supra* note 8.
[21] Cynthia Yue, *OmniBase or Omni-Bust: How the Texas Department of Public Safety Marginalizes the Poor,* Equal Justice Under Law, December 14, 2018, https://equaljusticeunderlaw.org/thejusticereport/omnibase-or-omni-bust-how-the-texas-department-of-public-safety-marginalizes-the-poor.
[22] *Supra* note 19.
[23] *Supra* note 19.
[24] *Supra* note 15.
[25] Fines and Fees Justice Center, *Free to Drive: National Campaign to End Debt-Based License Restrictions,* https://finesandfeesjusticecenter.org/campaigns/national-drivers-license-suspension-campaign-free-to-drive/ (accessed February 10, 2025).
[26] Texas Appleseed, Texas Fair Defense Project, et al. *Exit OmniBase!*, https://services.austintexas.gov/edims/document.cfm?id=340210 (accessed February 11, 2025).
[27] Tex. Transp. Code Ann. § 706.005(a)(5)
[28] *Supra* note 18.
[29] Consumer Financial Protection Bureau, *What is debt?,* https://files.consumerfinance.gov/f/documents/cfpb_building_block_activities_what-is-debt_handout.pdf (accessed February 10, 2025).
[30] Fines and Fees Justice Center, *Clearing the Path to a New Beginning: A Guide to Discharging Criminal Justice Debt In Bankruptcy,* October 14, 2020, https://finesandfeesjusticecenter.org/articles/discharging-cj-debt-in-bankruptcy/.
[31] *Supra* note 18.
[32] Texas Appleseed & Texas Fair Defense Project, *Support Legislation to End Driver's Suspensions for Unpaid Fines & Fees*, https://www.texasappleseed.org/sites/default/files/2023-05/support-legislation-to-end-license-suspensions-for-fines-fees-032519.pdf (accessed February 11, 2025).
[33] Tex. Transp. Code Ann. § 706.005(b).

In Light of *Tate*: What "Alternative Means" Means

Alternative means are alternative punishments.

In *Tate v. Short*, the U.S. Supreme Court suggested that alternatives to immediate cash payments exist and may be specified by legislative enactment or judicial authority.[1] In *Bearden v. Georgia*, the Court ruled that if a defendant willingly refuses to comply with these alternative measures, the court is justified in using imprisonment to enforce collection.[2] This line of cases spurred legislation requiring the use of acceptable alternative means. But what are "acceptable alternative means?"

Because the answer is based upon legislative enactment and judicial authority, it will differ from state to state. Texas has defined alternative means as payment at a later date,[3] installment payments,[4] and community service.[5] These statutes give judges discretion in the application of the alternative means defined. Though they do not explicitly allow other alternative means of payment, methods such as community service are sufficiently broad to provide judges flexibility in ordering discharge of the judgment.

This article examines how Texas implements these alternatives and the legal and policy implications surrounding their use as a substitute for imprisonment.

> ...methods such as community service are sufficiently broad to provide judges the flexibility in ordering discharge of the judgment.

A. Installment Payments

Installment payments are a type of "alternative means" explicitly contemplated in *Tate v. Short*.[6] Texas law requires judges, in imposing a fine and costs, to allow the defendant to pay the fine and costs in "specified portions at designated intervals" if the judge determines that the defendant is unable to immediately pay the fine and costs.[7] Additionally, installment payments are one of the options a judge is required to consider after determining that a defendant who entered a plea in open court does not have sufficient resources or income to immediately pay all or part of the fine and costs.[8]

Whereas court orders for installment payments are guided by judicial discretion, related courts costs are not. Courts are required to assess a fee if the defendant pays any part of a fine, court costs, or restitution, or another reimbursement fee on or after the 31st day after a judgment.[9] This time payment reimbursement fee is $15 and must be deposited into a separate account within the city's general revenue fund to be used for the purpose of improving the collection of outstanding court costs, fines, reimbursement fees, restitution, or improving the efficiency of the administration of justice.[10]

Judges have broad latitude in the amount of time a defendant may be allowed for payment of a fine, and in the amount and frequency of payment plans given; however, the assessment of the time payment reimbursement

fee is mandatory if any amount is paid after the 31st day after the date that judgment is entered.

B. Community Service

Discharging fines by community service is explicitly provided for under Texas law. Article 45A.254 of the Code of Criminal Procedure allows the court to require a defendant who fails to pay as previously ordered, or who the court determines has insufficient resources or income to pay, to discharge all or part of the fine and costs by performing community service. The judge has broad latitude as to the number of hours of community service which will be required, as long as not less than $100 is discharged for each eight hours of community service performed.[11] A judge may not order more than 16 hours of community service per week unless it is determined that additional hours do not cause undue hardship to the defendant or dependents.[12] A defendant may discharge an obligation to perform community service under Article 45A.254 by paying at any time after the judge assessed the fine and costs.[13]

In 2017, the Texas Legislature expanded what constitutes community service.[14] In addition to traditional work for a government or nonprofit, alternatives include job training programs, high school equivalency prep, substance abuse or rehabilitation programs, counseling, self-improvement, mentoring, or similar activities.[15] The judge may also order community service at an educational institution.[16]

In 2023, the Texas Legislaure introduced a major shift with youth diversion, offering an alternative to formal criminal prosecution.

C. Children

In 2023, the Texas Legislature introduced a major shift with youth diversion, offering an alternative to formal criminal prosecution. Subchapter E of Chapter 45 of the Code of Criminal Procedure outlines the process for diverting eligible children charged with non-traffic Class C misdemeanors. For those not eligible for diversion, Texas law provides special provisions related to alternative means of discharge.

For offenses committed on or after January 1, 2025, judges are required to allow children to elect how they discharge the judgment, including alternative means. If a diversion is not required under Subchapter E or Article 45.041(a-2), the child is entitled under Article 45.041(b-3) to elect to discharge the fine and costs by community service, paying at a later date, or installment payments.[17] This election must be in writing and singed by the defendant and parent or guardian.[18] The court must keep a written record of the election and give a copy to the defendant.[19]

Chapter 45A includes two community service statutes for defendants under 17. Article 45A.459 offers the same community service options as Article 45A.254 but limits the hours to 200 or fewer. Article 45A.460 applies specifically to juveniles charged with Class C misdemeanors on school grounds where the juvenile attends, including the option of a tutoring program in addition to other community service options.

Defendants under the conservatorship of the Department of Family and Protective Services or in extended foster care have special provisions regarding fines, costs, and indigence. A judge may not require a defendant under the conservatorship of the Department of Family and Protective Services or in extended foster care to pay fines and costs, but may instead require community service as outlined in Articles 45A.254, 45A.459, or 45A.460.[20] Similarly, for purposes of waiver (discussed below), a defendant is presumed indigent and unable to pay fines or costs if they are or were in the conservatorship of the Department of Family and Protective Services, or if they are or were designated as a homeless or unaccompanied youth at the time of the offense.[21]

D. Waiving Fines and Costs

Beginning in 2001, the Legislature authorized municipal courts to waive fines and costs for certain defendants. Waiver is not an alternative means of discharging the fine and costs. It waives payment of all or part of the fine and costs without changing the judgment. The legislative history of the waiver process from 2001 to 2019 had key changes expanding eligibility and the criteria for waiving fines and costs. (See History of Waiver chart on Page 42.)

Article 45A.257 provides that a municipal court may waive all or part of the fine if the defendant is indigent, lacks sufficient resources, or was a child at the time the offense was committed and discharging the fine or cost would cause undue hardship to the defendant. For costs, the threshold is lower. Waiving the costs does not require a finding of undue hardship. A defendant is presumed indigent if they are or were in the conservatorship of the Department of Family and Protective Services or were designated as a homeless or unaccompanied youth. In determining undue hardship for waiving the fine, the court may consider factors such as physical or mental impairments, pregnancy, family responsibilities, work obligations, transportation issues, homelessness, and any other relevant factors. The decision to waive fines or costs is at the court's discretion.

Waiver is distinct from alternative means. However, when using alternative means to discharge a judgment causes the defendant undue hardship, waiver is a tool available to the judge.

E. Alternative Means Are Alternative Punishments

From a policy standpoint, "alternative means" does not mean eliminating punitive consequences for criminal behavior on the basis of socioeconomics. Part of the *Tate* decision is regularly overlooked:

> "The State is not powerless to enforce judgments against those financially unable to pay a fine; indeed, a different result would amount to inverse discrimination since it would enable an indigent to avoid both the fine and imprisonment for nonpayment whereas other defendants must always suffer one or the other conviction."[22]

Citing *Williams v. Illinois* (1970),[23] the Court, in qualifying its mandate that alternative means be provided to indigent defendants, acknowledged the existence of a valid state interest in enforcing payment of fines. The Court also emphasized that its holding did not suggest any constitutional infirmity in imprisonment of a defendant with the means to pay a fine who refuses or neglects to do so. Nor was the *Tate* decision to be understood "as precluding imprisonment as an enforcement method when alternative means are unsuccessful despite the defendant's reasonable efforts to satisfy the fines by those means."[24] In reiterating the holdings of *Williams and Tate*, the Court, in *Bearden v. Georgia*, also "recognized limits on the principle of protecting indigents in the criminal justice system."[25]

Under *Bearden*, "alternative means" are "alternative punishments."[26] In the context of court-ordered fines and court costs, alternative means can entail either a non-monetary substitute or, as the Court stated in *Tate*, "a procedure for paying fines in installments."[27] Alternative means do not, however, mean preventing the lawful incarceration of indigent defendants.

---

[1] *Tate v. Short*, 401 U.S. 395, 399-401 (1971).

[2] *Bearden v. Georgia*, 461 U.S. 660, 668 (1983).

[3] Tex. Code Crim. Proc. Ann. §§ 45A.251(b)(1)(B); 45A.252(b)(1).

[4] Tex. Code Crim. Proc. Ann. §§ 45A.251(b)(1)(C); 45A.252(b)(1); 45A.253(a).

[5] Tex. Code Crim. Proc. Ann. §§ 45A.252(b)(2); 45A.254.

[6] *Tate v. Short*, 401 U.S. 395, 400 n.5 (1971).

[7] Tex. Code Crim. Proc. Ann. § 45A.253(a).

[8] Tex. Code Crim. Proc. Ann. § 45A.252.

[9] Tex. Code Crim. Proc. Ann. § 102.030.

[10] *Id*.

[11] Tex. Code Crim. Proc. Ann. § 45A.254(e).

[12] Tex. Code Crim. Proc. Ann. § 45A.254(d).

[13] Tex. Code Crim. Proc. Ann. § 45A.254(f).

[14] Act of May 29, 2017, 85th Leg., R.S., ch. 977, § 16, sec. 45.049, 2017 Tex. Gen. Laws 3966, 3972 (amended 2023) (current version at Tex. Code Crim. Proc. Ann. § 45A.254); Act of May 29, 2017, 85th Leg., R.S., ch.1127, § 15, sec. 45.049, Tex. Gen. Laws 4317, 4322 (amended 2023) (current version at Tex. Code Crim. Proc. Ann. § 45A.254).

[15] Tex. Code Crim. Proc. Ann. § 45A.254(c).

[16] *Id.*

[17] H.B. 4504 (2023), as part of the legislature's statutory revision program, repealed most of Chapter 45 and reorganized its provisions in new Chapter 45A. However, Chapter 45 was not repealed in its entirety because other bills passed during the same session as H.B. 4504 amended Chapter 45. The most notable example is Subchapter E of Chapter 45 (Youth Diversion). Another important example is Article 45.041(b-1), which was amended by H.B. 3186. As amended, the provision permitting a judge to allow a child to elect how to discharge the fine and costs became a requirement. However, Article 45A.253 says "may" regarding this election because it reorganized Article 45.041 as it existed prior to the effect of H.B. 3186, which changed the "may" to "shall." Because amendments like this one were not incorporated into Chapter 45A by H.B. 4504, they remain in Chapter 45. Therefore, because H.B. 4504 is a non-substantive revision of Chapter 45, practitioners must look to Article 45.041(b-1) for the correct version of the law. These remnants in Chapter 45 will likely be made part of Chapter 45A in the next legislative session.

[18] Tex. Code Crim. Proc. Ann. § 45A.253(c)

[19] *Id.*

[20] Tex. Code Crim. Proc. Ann. § 45A.253(d).

[21] Tex. Code Crim. Proc. Ann. § 45A.257(c).

[22] *Tate*, 401 U.S. at 399 (1971).

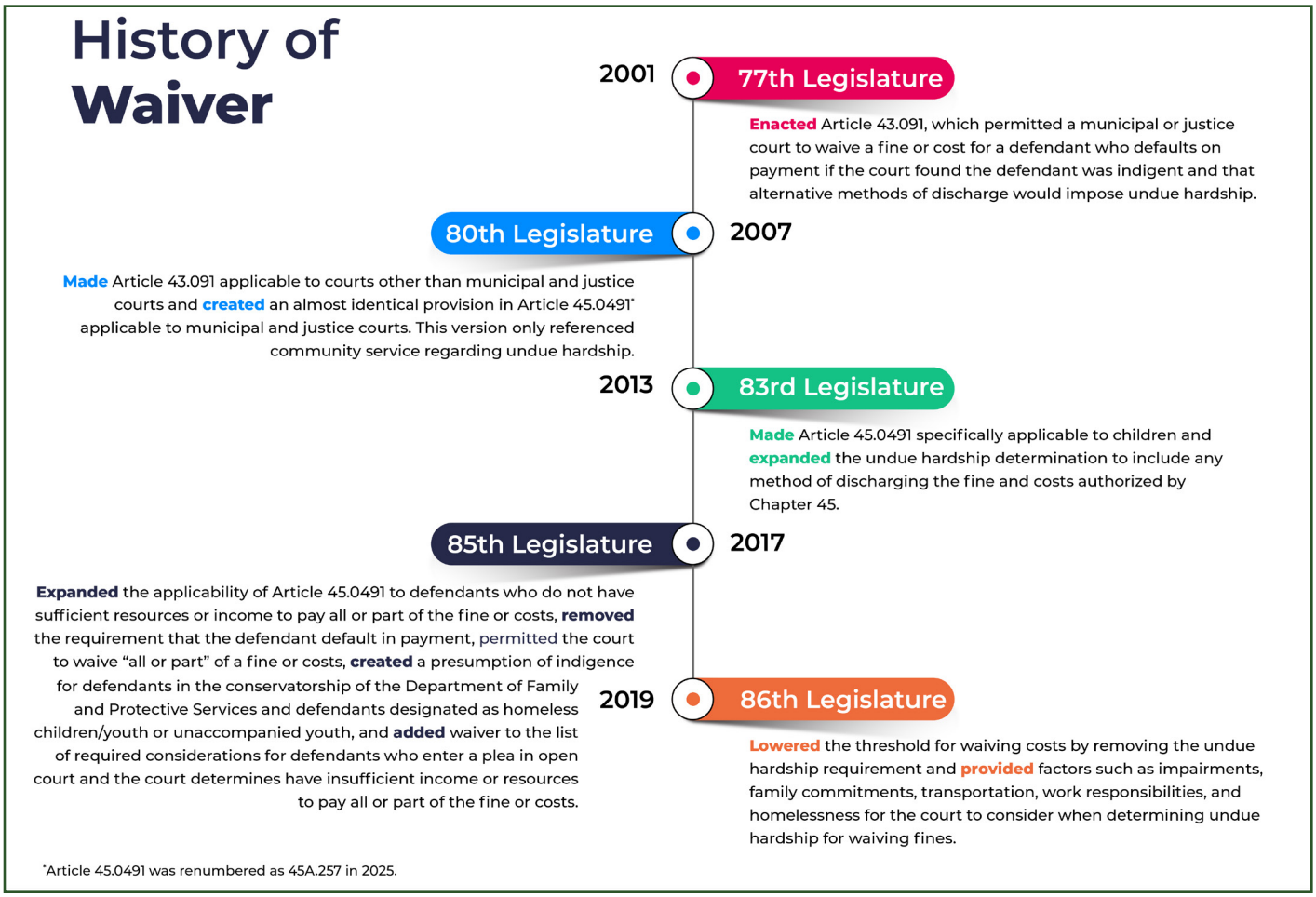
[23] *Williams v. Illinois*, 399 U.S. 235, 244 (1970).

[24] *Tate*, 401 U.S. at 400-01 (1971).

[25] *Bearden*, 461 U.S. at 664-65 (1983).

[26] *Bearden*, 461 U.S. at 674.

[27] *Tate*, 401 U.S. at 671 n. 5. It is also important to note that "[t]he State is free to choose from among the variety of solutions already proposed and, of course, it may devise new ones." *Id.* at 671.



Setting the Record Straight: Class C Misdemeanors, the Right to Counsel, and Commitment to Jail

Neither federal case law nor the DOJ "Dear Colleague" Letter supports the argument that the U.S. Constitution forbids commitment of indigent persons in the absence of appointed counsel.

A defendant accused of a Class C misdemeanor, like any other defendant accused of a criminal matter in Texas, has the right to be represented by counsel in an adversarial judicial proceeding.[1] In Texas, the constitutional right to counsel is implemented through the Code of Criminal Procedure (primarily Articles 1.051 and 26.04). 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.[2] This right to representation, however, does not necessarily entitle a defendant to court appointed counsel.

Class C Misdemeanors Are Generally Excluded from Texas Appointment of Counsel Statutes

For purposes of Article 1.051 of the Code of Criminal Procedure, "indigent" means a person who is not financially able to employ counsel.[3] However, such indigent defendants are generally only entitled to a court appointed attorney in an adversarial judicial proceeding that may result in punishment by confinement.[4] This excludes Class C misdemeanors in which the sentence is limited to the payment of the fine and costs to the state.[5] This means that a defendant accused of a Class C misdemeanor has the right to be represented by counsel, but is not entitled to *court appointed* counsel. Note that Article 26.04 of the Code of Criminal Procedure "authorize[s] *only* the judges of the county courts, statutory county courts, and district courts trying criminal cases" (or their designees) to appoint counsel for indigent defendants who are arrested, charged, or appealing a conviction of misdemeanors punishable by confinement (i.e., Class A or Class B misdemeanors) or a felony.[6]

> ...the Sixth and Fourteenth Amendments require only that no indigent criminal defendant be sentenced to a term of imprisonment unless the State had afforded him the right to appointed counsel.

Class C misdemeanor cases do not warrant the appointment of counsel under either federal or Texas case law. The U.S. Supreme Court, in *Scott v. Illinois,* 440 U.S. 367 (1979), drew a bright line between incarceration (as part of a sentence) and the mere threat of incarceration (separate from a sentence), holding that the Sixth and Fourteenth Amendments require only that no indigent criminal defendant be sentenced to a term of imprisonment unless the State had afforded him the right to appointed counsel.[7] Citing *Scott v. Illinois,* Texas appellate courts have been consistent and clear: When the sentence in a criminal case consists only of monetary punishment, be it a Class C misdemeanor,[8] or even a misdemeanor punishable by confinement, a defendant is not entitled under the U.S. Constitution or Texas law to court appointed counsel.[9] The Court of Criminal Appeals has similarly held "that when Only a fine is actually assessed in a misdemeanor case,

the judgment is not void even though the defendant was indigent, was not represented by counsel, and was convicted under a statute which included imprisonment as a possible punishment."[10]

Statutory Exception: Interest of Justice Appointments

Texas law, however, does not absolutely preclude appointments of counsel in Class C misdemeanor cases and provides that any court may appoint counsel if it concludes "the interest of justice" requires representation.[11]The law is silent regarding the procedure or funding for such appointments and what "the interest of justice" means. A defendant's indigent status does not appear to be determinative. Texas legal scholars have opined that interest of justice appointments should be determined largely on the basis of whether the case presents defensive possibilities that only an attorney could adequately present to the court.[12] While the Court of Criminal Appeals has not addressed interest of justice appointments in the context of Class C misdemeanors, federal case law suggests that "special circumstances," in which failure to appoint counsel results in a trial lacking "fundamental fairness" and violates due process, could trigger such an appointment.[13]

Waiver of Right to Counsel Requirements Are Inapplicable to Class C Misdemeanors

The right to counsel in Class C misdemeanor cases also operates differently than in cases involving sentences of incarceration regarding waiver of the right to counsel. Article 1.051(f) of the Code of Criminal Procedure

Under *Argersinger*, in misdemeanors "that end up in the actual deprivation of a person's liberty, the accused will receive the benefit of 'the guiding hand of counsel' so necessary when one's liberty is in jeopardy."

permits the right to counsel to be waived "voluntarily and intelligently" in writing. That subsection goes on to say that a waiver is invalid if obtained in violation of subsections (f-1) or (f-2), which only apply to adversary judicial proceedings that may result in punishment by confinement. Case law is instructive as to whether Article 1.051(f) mandates such a waiver in Class C misdemeanor cases. The language of Article 1.051 comes from the U.S. Supreme Court case, *Argersinger v. Hamlin*, which held that "absent a knowing and intelligent waiver, no person may be imprisoned for any offense . . . unless he was represented by counsel at his trial."[14] The Court was clear, however, that its holding was limited to misdemeanors where defendants were sentenced to a term of incarceration.[15] Under *Argersinger*, in misdemeanors "that end up in the actual deprivation of a person's liberty, the accused will receive the benefit of 'the guiding hand of counsel' so necessary when one's liberty is in jeopardy."[16] More recent Supreme Court case law states that "only trials that end up in the actual deprivation of a person's liberty require that the accused receive 'the guiding hand of counsel.' A court that ends up fining a defendant has not placed that liberty in jeopardy."[17] Of course, though not required, nothing precludes a judge from ascertaining whether a defendant has intelligently and knowingly waived the right to counsel or from making sure a defendant understands the right to counsel and the disadvantage of proceeding pro se.

Of course, though not required, nothing precludes a judge from ascertaining whether a defendant has intelligently and knowingly waived the right to counsel or from making sure a defendant understands the right to counsel and the disadvantage of proceeding pro se.

Court Appointed Counsel in the Context of Commitment to Jail for a Class C Misdemeanor

In Texas, some indigent defendant advocates contend that case law and the DOJ's "Dear Colleague" letter make it clear that the U.S. Constitution forbids commitment of indigent persons to jail in the absence of the appointment of counsel. The opposite is true. The DOJ letter states that "[t]he Sixth and Fourteenth Amendments require due process protections, such as access to counsel in *appropriate cases*, as well as notice, when imposing and enforcing fines and fees."[18] As previously explained, however, case law makes it clear that Class C misdemeanors are not *appropriate cases*. Commitment to jail for either willful nonpayment or failure to discharge through alternative means is not the same as a jail sentence and does not trigger the right to *court appointed* counsel. These claims misrepresent federal precedent. They also contradict civil libertarians who, while advocating for broader indigent defense in Texas, acknowledge that Texas law aligns with *Scott v. Illinois* and constitutional requirements.[19]

---

[1] Tex. Code Crim. Proc. Ann. § 1.051(a).
[2] Tex. Code Crim. Proc. Ann. § 1.051(a).
[3] Tex. Code Crim. Proc. Ann. § 1.051(b).
[4] Tex. Code Crim. Proc. Ann. § 1.051(c). The only exceptions are interest of justice appointments (discussed below).
[5] Tex. Code Crim. Proc. Ann. § 45A.251(a).
[6] Tex. Code Crim. Proc. Ann. § 26.04 (emphasis added).
[7] 440 U.S. 367 (1979).
[8] *Bush v. State*, 80 S.W.3d 199, 199 (Tex. App.—Waco 2002, no pet.).
[9] *Fortner v. State*, 764 S.W.2d 934, 934-35 (Tex. App.—Fort Worth 1989, no pet.).
[10] *Empy v. State*, 571 S.W.2d 526, 528 (Tex. Crim. App. 1978) (capitalization of "Only" in original text for emphasis). In 1987, the Legislature amended Article 26.04. It retained the phrase "punishable by imprisonment," but clarified that the right to court appointed counsel was guaranteed to defendants accused of Class A and Class B misdemeanors regardless of the punishment imposed in their cases.
[11] Tex. Code Crim. Proc. Ann. § 1.051(c).
[12] George B. Dix and John M. Schmolesky, 42 Criminal Practice and Procedure, Sec. 29.32 (Texas Practice 3d ed. Thompson Reuters/West 2011).
[13] Ryan Kellus Turner, "The Oversimplification of the Assistance of Counsel in the Adjudication of Class C Misdemeanors," *The Recorder* (January 2009).
[14] *Argersinger v. Hamlin*, 407 U.S. 25, 37 (1972). The Court reversed the Florida Supreme Court which had relied on the U.S. Court for the Southern District of Florida practice of appointing counsel only where imprisonment for the offense was greater than six months.
[15] *Id*. at 40.
[16] *Id*.
[17] *United States v. Jennings*, 323 F.3d 263, 276 n.5 (4th Cir. 2003), citing *Alabama v. Shelton*, 535 U.S. 654, 658 (2002), quoting *Argersinger* at 40.
[18] DOJ Dear Colleague Letter of April 20, 2023 (emphasis added), available at https://www.justice.gov/archives/media/1288301/dl.
[19] *See* B. Mitchell Simpson, *A Fair Trial: Are Indigents Charged with Misdemeanors Entitled to Court Appointed Counsel?* 5 Roger Williams U. L. Rev. 417, 434, n. 127 (2000). The author, in offering a critique of *Scott v. Illinois*, 440 U.S. 367 (1979), explains that Texas is among the states that have not expanded the right to counsel for indigents charged with misdemeanors beyond what is required by the U.S. Constitution in the standards announced in *Scott*.

Safe Harbor and Second Chances: Innovative Court Practices to Encourage Defendants to Appear

To address some of the main reasons defendants do not come to court to take care of their cases, some courts have implemented "safe harbor" policies, walk-in dockets, and hardship dockets aimed at increasing appearances in court.

Some defendants do not come to court for fear of being arrested. Presiding Judge Ed Spillane, of the College Station Municipal Court, knows this firsthand. "Almost everyone I see in jail tells me that they are in the jail due to fear of coming to court. They fear an approaching police officer at the door ready to arrest them because they either do not have the money to pay a fine or they failed to appear on a charge. I do see defendants in jail for other charges but a very large percentage are defendants who just failed to come to court." Failing to go to court and take care of a case results in the culmination of that very fear.

In response to concerns about defendants avoiding court due to fear of arrest, the 85th Texas Legislature passed S.B. 1913 and H.B. 351 in 2017. These laws require the recall of certain warrants and capiases pro fine under specific conditions. A judge is required to recall an arrest warrant for the defendant's failure to appear if the defendant voluntarily appears and makes a good faith effort to resolve the arrest warrant before it is executed.[1] Similarly, the court must recall a capias pro fine if, before it is executed, the defendant either (1) requests a reconsideration hearing under Article 45A.258 of the Code of Criminal Procedure and the hearing is set or (2) voluntarily appears and makes a good faith effort to resolve the capias pro fine.[2]

Beyond these legal requirements, some municipal courts have a broad, general no-arrest or "safe harbor" policy for defendants who come to the court with active warrants. Such a policy is good for defendants, courts, and cities. Judge Spillane says a policy allowing a defendant not to be arrested at the municipal court issuing the warrant solves numerous problems. "One, it would help free our jails of defendants who owe fines for misdemeanor cases. Two, it would encourage defendants to come to court and take advantage of what the court provides: a chance to make a plea, have a trial, receive community service if indigent, or even a waiver of the fines and fees should community service be an undue hardship. Three, it would make it clear that jail is not the first punishment for fine-only cases."

Posting information on recalling warrants and any specialized court policies or dockets on the court's website will help reach defendants who are afraid to appear in court.

Note that the amnesty described here is only for Class C misdemeanors, not any other level of crimes. A defendant in a municipal court who also has active warrants in other courts would not fall under this "safe harbor."

Walk-In Dockets

Another reason why defendants do not come to court is scheduling conflicts. Some municipal courts in Texas make the judge available during specified hours (a walk-in docket) for any defendant with a pending case to appear without prior scheduling. The judge can hold uncontested hearings (like indigence or show cause), dispose of uncontested cases, set cases for contested hearings, recall warrants, and hear uncontested motions to modify, for example, payment plans and extensions to pay. The Austin Municipal Court has a walk-in court Monday through Thursday from 8:30 a.m. – 11:00 a.m. and 1:30 p.m. – 4:00 p.m. This has been the practice in that court for 20 years. The court also recently added a walk-in docket on Thursday evenings from 6:00 – 8:00 p.m. Presiding Judge Sherry Statman says they hope to possibly hold walk-in court at other locations. One goal of this special docket is "to work with defendants to help them avoid situations where they might be at risk for arrest," says Judge Statman. At this docket, defendants can see a judge to request payment plans and those who are indigent may request community service. Defendants can also request extensions on community service or payment plans, request that jail credit be applied to their cases, hand in late paperwork, show hardship or other inability to complete community service, and bring other issues before the court. "Recognizing the diversity of our City, Spanish translators are available in person at this docket and other language interpreters can be contacted via phone," says Judge Statman.

"Defendants can also request extensions on community service or payment plans, request that jail credit be applied to their cases, hand in late paperwork, show hardship or other inability to complete community service, and bring other issues before the court."

A court considering use of a walk-in docket should also consider instituting the above mentioned no-arrest policy at the courthouse for defendants with active warrants. Defendants who voluntarily come in to the Austin Municipal Court, for example, will not be arrested. This is important in order to avoid the appearance that the docket is used as bait to lure in recalcitrant defendants.[3]

Hardship Dockets

Judge Statman has created a new docket that may be unique to any Texas court. "If a defendant is in custody at the central booking facility, facing possible commitment for failure to complete previously assigned community service, and indicates in the commitment proceeding that his or her failure was due to a hardship, a judge may immediately release that defendant to appear at a weekly hardship docket. At this docket, defendants may provide any documentation they might have and discuss their situation so that a judge can determine if waiving part or all of the fees and fines is appropriate per Article [45A.257] of the Texas Code of Criminal Procedure," says Judge Statman.

Considerations and caution are of course important if implementing any of these procedures. Best practices must always operate within the confines of the law.[4]

Warrant Amnesty Periods

In addition to special dockets, another potential solution is "warrant amnesties," conducted by the College Station Municipal Court, along with other courts. For example, during the amnesty period, Judge Spillane waives the $50 warrant reimbursement fee for any defendant who comes to court to take care of his or her case. Judge Spillane says, "I'm always amazed how many defendants come to court just hearing the word

'amnesty.' We often clear 500 cases each amnesty period," says Judge Spillane, "Every judge signing a warrant really wants defendants to come to court and take advantage of what our criminal justice system should provide, a chance to have your case heard by a judge or jury and a fair and efficient opportunity to close that case."

> "Why not encourage defendants to come to court and not be in jail by having a practice that coming to court removes any pending warrant out of that court for misdemeanor charges on fine-only cases?"

"Why not encourage defendants to come to court and not be in jail by having a practice that coming to court removes any pending warrant out of that court for misdemeanor charges on fine-only cases?," says Judge Spillane. "Defendants in fine-only cases are under warrant primarily for failing to come to court and/or not paying a fine. In both cases, rewarding defendants who come to court by taking them out of warrant is a winning solution for the court and for the defendant. Society and law and order always benefit from defendants coming to court and not being in jail. The fine can only be disbursed through a payment plan or alternative means like community service when the defendant comes to court and arranges such a plan." "No matter how many wonderful programs we have at court as alternatives to fines and fees for indigent defendants, we cannot offer them should defendants avoid coming to court out of fear of an active warrant. Jail does not solve these problems."

---

[1] Tex. Code Crim. Proc. Ann. § 45A.104(g).
[2] Tex. Code Crim. Proc. Ann. § 45A.259(g).
[3] Tex. Code Jud Conduct, Canon 2(A) (A judge… should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.).
[4] All prosecutions in municipal court must be conducted by the municipal attorney or by a deputy municipal attorney. Tex. Code Crim. Proc.Ann. § 45A.005(c). Not having a prosecuting attorney present will limit the kinds of hearings which may be held. Dismissals (other than compliance dismissals) would require the prosecution to move for dismissal. Tex. Crim. Proc. Ann. § 32.02. *See*, TMCEC Compliance Dismissal chart: https://www.tmcec.com/wp-content/uploads/2023/11/Compliance-Dismissals-Chart-2023-FINAL.pdf. A judge should not hear any evidence or testimony, sworn or otherwise, in a case that has not been adjudicated. Tex. Code Jud. Conduct, Canon 6(C)(2). Sentencing hearings may be ex parte (TMCEC Bench Book, Sentencing, Page 203 (2023)), but trials require an attorney for the State to be present. In addition to the judge, courts need to factor in the costs of scheduling a clerk, prosecutor, and bailiff at the walk-in docket. For cities without in-house prosecutors, this could entail a review of any agreements with attorneys. Courts should also be aware of related staffing issues such as overtime and other potential human resources issues for court personnel. Judges and clerks at such dockets must take care that no plea is taken from a person who was a juvenile at the time the offense was alleged, unless that person's parent is present. Tex. Code Crim. Proc. Ann.§ 45A.452. A judge should exercise caution and verify that any underage defendant is accompanied by either a parent or a legal guardian, or that the case be reset to give notice.

Understanding the Gaps in State Data on Indigence in Criminal Courts

Sharing accurate, court-collected data strengthens public confidence in the justice system and demonstrates a commitment to fairness and continuous improvement.

The Office of Court Administration (OCA) gathers valuable data on court operations. Understandably, any effort to capture and track data for more than 7.5 million filings annually poses significant challenges. Up until 2014, OCA included a cautionary statement in the annual statistical report admonishing that its "statistics do not attempt to portray everything courts or judges do, or how much time is spent on court-related activities not represented" in the data collected. Each defendant faces specific and individual circumstances, and each case brings unique facts. Even with well-thought out data fields, limitations exist. For example, it may not fully capture the complexities of assessing indigence issues in criminal courts. Relying solely on this incomplete data to evaluate the treatment of indigent defendants could inadvertently undermine existing protections and potentially highlight concerns where none may be present. The following analysis will discuss the specific data currently collected and explain why it should not be the sole basis for assessing how indigent defendants are treated in Texas courts.

OCA Data Available	Data Unavailable
Number of Cases Filed	Number of Defendants, and Number Determined to be Indigent
	Number of Failure to Appear (FTA) and Violate Promise to Appear (VPTA), and Number Dismissed
Number of Cases Disposed	Number of Indigence Determinations
	Number of Cases Satisfied with Jail Time Prior to Court Appearance or Trial
	Number of Cases per Defendant per Year
Number of Cases Satisfied with Jail Time	Whether Defendant was Held on Higher Charges; Number of Days Served
	Fines Satisfied by Jail Credit Consecutively vs. Concurrently; Number of Days Served; Dollar Amounts Credited
	Number of Capias Pro Fine (CPF) Cases that End in Arrest and Jail Time
Number of Cases with Community Service Restitution (CSR)	Number of Cases Where Community Service Was Offered, Dollar Amount Satisfied with Community Service
Total Dollar Amount Paid	Number of Cases with Extensions and Amount Paid; Length of Time Between Judgment and Final Payment

Number of Cases Filed

Although the total number of cases filed is useful, it is not sufficient in isolation to assess the concerns of advocacy groups struggling to reform the system. One complaint leveled at municipal courts across the nation is "piling on" fines and costs for defendants who fail to appear (FTA or VPTA).[1] Because FTA is a separate criminal offense,[2] a fine, warrant reimbursement fee, and court costs accompany it. Contrast this with mere non-appearance that does not result in a charge of FTA, but results in a warrant and the accompanying warrant reimbursement fee. Current data does not delineate between the two

scenarios. To add confusion, "FTA" is used by some to describe both scenarios. Do indigent defendants tend to have more cases-per-person than non-indigent defendants, as has been alleged?[3] No data exists to answer that question.

Without knowing the number of cases *per defendant*, and how many of those cases are related to a defendant's failure to appear (distinguishing those cases with a FTA charge and without), it is difficult to say with any certainty whether these complaints are applicable to Texas courts. Basing these accusations on the simple number of cases filed gives an inaccurate assessment.

Number of Cases Disposed

The number of cases disposed is a metric applicable to determining the overall volume of cases and their movement through the caseflow process in criminal courts. However, this does not paint any picture of the treatment of indigent defendants in these courts.

Judges may make indigence determinations at magistration, at the time of judgment, and upon default in discharging the judgment. In many instances, such determinations are mandatory.[4] How many indigence determinations occur each year in Texas courts? How many disposed cases resulted in a determination that the defendant could not pay? There is no data to answer those questions.

Number of Cases Satisfied with Jail Time

One complaint levied against municipal courts is that, when a defendant owes $5,000 in fines, that defendant will likely serve 100 days in jail (at the former minimum statutorily prescribed rate of $50 per day, which was raised to $150 in 2021).[5] However, this presumes that the fines will be satisfied consecutively, and at the statutory minimum rate per day for fine-only offenses.[6] Anecdotal evidence suggests that judges often convert fines to jail time to be discharged concurrently. It is also often presumed jail credit is always the result of judges choosing to jail defendants who have not paid, but there are circumstances when judges must give jail credit for Class C cases. Judges must give jail credit to defendants for time served in the case prior to judgment. New laws also require judges to give credit for time served as part of a sentence for another offense after the Class C misdemeanor was committed. This jail sentence has no relation to the Class C case, and reflects no action by a municipal judge to order the confinement of a defendant in municipal court. How often do these variations occur? There is no data on how many days defendants given jail credit served in jail or how many dollars were satisfied with jail time. There is no data on the number of cases disposed of with jail credit prior to a court appearance or trial or what type of charge the defendant was given credit for.

Anecdotal evidence suggests that judges often convert fines to jail time to be discharged concurrently.

Use of the capias pro fine[7] in fine-only cases is often the subject of criticism.[8] In cases where the judgment is satisfied with jail time credit, how often were capiases pro fine issued? In cases where a capias pro fine was issued, how often did it result in commitment to jail? How often did it result in release? How often was the defendant given other options to discharge the judgment? If released, how often was jail time credit given for any time served on the capias pro fine? How much credit? There is no data.

Total Dollar Amount Paid

Extensions to pay and payment plans are examples of "alternative means." The U.S. Supreme Court has ruled that alternative means must be made available by courts for indigent defendants.[9] Courts are still accused of

applying a "pay or lay" policy[10] even though that practice was ruled illegal in 1971.[11] Anecdotal evidence suggests that many courts offer community service, payment plans, and extensions as standard practice to any defendant, whether indigent or not. How often? That is hard to say without data.

Merely knowing the reported number of cases satisfied and the dollar amount paid does not demonstrate whether, why, or how various alternative means are being used by courts. Without knowing the number of cases with extensions given or the length of time between judgment and final payment, it is impossible to answer those questions.

The Key to Making an Informed Assessment Is More Data

Several allegations of potential wrongdoing come from the Department of Justice's (DOJ) report on the Ferguson Police Department.[12] It's important to note that before concluding any wrongdoing in the city of Ferguson, the Department of Justice spent around 100 days there, reviewing over 35,000 pages of documents, as well as thousands of emails and other electronic materials.[13] The key to making an informed assessment of court processes is more data. The data available through OCA is useful for assessing many subjects but is insufficient for the specific purpose of levying complaints against a criminal court's treatment of indigent defendants.

When data is shared openly, it can highlight areas of success and identify opportunities for improvement, which can drive positive change.

Most courts collect their own data, and doing so allows them to capture a more accurate and comprehensive picture of their operations and outcomes. By sharing this data, courts foster transparency, building trust with the public and ensuring accountability. When data is shared openly, it can highlight areas of success and identify opportunities for improvement, which can drive positive change. Additionally, sharing court data can dispel misconceptions or stereotypes, leading to a more informed and engaged community. Ultimately, sharing accurate, court-collected data strengthens public confidence in the justice system and demonstrates a commitment to fairness and continuous improvement.

---

[1] American Civil Liberties Union, *Modern Day Debtors' Prisons: The Ways Court-Imposed Debts Punish People for Being Poor*, at 9 (2014)

[2] Generally, the offenses based upon a defendant's failure to appear are Failure to Appear, defined in Section 38.10 of the Penal Code, and Violation of Promise to Appear, defined in Section 543.009 of the Transportation Code.

[3] *See*, *e.g.*, American Civil Liberties Union, *In for a Penny;* VERA Institute*, Incarceration's Front Door*; Texas Criminal Justice Coalition, *Wrong Way for Texas*.

[4] During or immediately after imposing a sentence in a case where the defendant entered a plea in open court, judges must inquire whether the defendant has sufficient resources or income to immediately pay all or part of the fine and costs. Tex. Code Crim. Proc. § 45A.252. The court may not issue a capias pro fine for the defendant's failure to satisfy the judgment according to its terms unless the court holds a hearing to determine whether the judgment imposes an undue hardship. Tex. Code Crim. Proc. § 45A.259(d). Note that OCA collects data on the number of show cause hearings; however, the data does not delineate between the different types of show cause hearings. There is no data specifically for the number of hearings conducted under Article 45A.259. Prior to committing a defendant to jail for defaulting in the discharge of the judgment, judges must make a written determination at a hearing that the defendant (1) is not indigent and has failed to make a good faith effort to discharge the fine and costs or (2) is indigent and 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. Tex. Code Crim. Proc. Ann. § 45A.261(a).

[5] Taggart and Cambell, *In Texas, It's A Crime to be Poor,* BuzzFeed (Oct. 7, 2015, 4:21 PM) https://www.buzzfeed.com/kendalltaggart/in-texas-its-a-crime-to-be-poor.

[6] Tex. Code Crim. Proc. Ann. § 45A.262.

[7] Tex. Code Crim. Proc. Ann. § 45A.259.

[8] *See*, *e.g.*, Class Action Complaint, *Gonzales v. City of Austin*, 1:15-cv-00956-SS, 64, et. seq. (October 27, 2015).

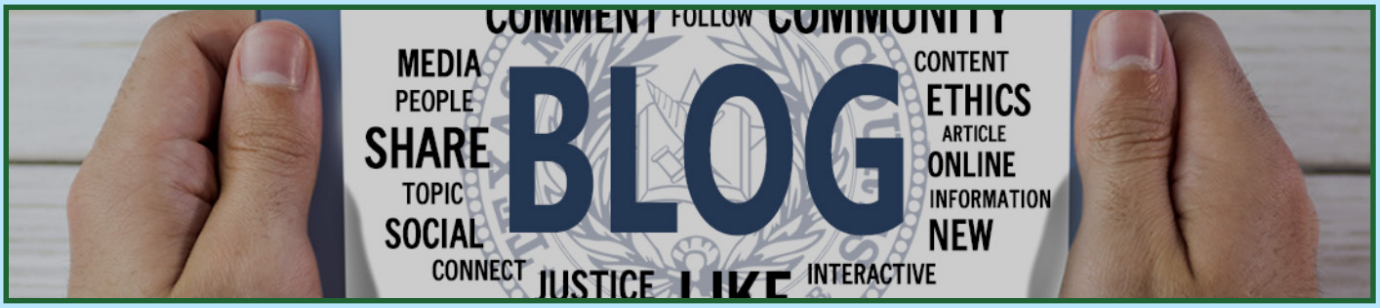
[9] *Tate v. Short*, 401 U.S. 395 (1971).

[10] *See*, *e.g.*, Second Amended Complaint – Class Action, *McKee et. al. v. City of Amarillo*, 2:16-cv-00009-J (2015); Class Action Complaint, *Gonzales et. al. v. City of Austin*, 15-cv-00956-SS (2015).

[11] *Tate*, 401 U.S. at 399.

[12] U.S. Dept. of Justice Civil Rights Div., *Investigation of the Ferguson Police Department* (2015).

[13] *Id*. at 1.



Full Court Press *REPRINT*

The Blog of the Texas Municipal Courts Education Center

Protections Regarding Fines and Fees in Chapter 45A: Safeguarding Justice for All

Municipal courts in Texas are tasked with ensuring fair and equitable treatment for all defendants, particularly those unable to pay fines and court costs due to indigence. With the implementation of Chapter 45A of the Texas Code of Criminal Procedure, the procedural safeguards for indigent defendants have been reorganized. This blog highlights some key protections in Chapter 45A and explains the legal distinction between waiving fines and waiving court costs.

Key Protections and Procedural Safeguards in Chapter 45A

1. Assessment of Indigence

Under Art. 45A.252, when a defendant enters a plea in open court, courts must evaluate the defendant's financial situation to determine their ability to pay fines and court costs. This step allows for a meaningful sentence that is tailored to the individual case.

2. Service as an Alternative

Courts may permit defendants with insufficient resources or income to discharge fines and court costs through community service under Art. 45A.254.

3. Waiver of Fines and Costs

Courts have the authority to waive fines and court costs for defendants under specific conditions:

- **Fines**: Waiving fines requires a finding that the defendant is indigent and that other alternatives, such as community service, would impose an undue hardship (Art. 45A.257(a)).
- **Court Costs:** Waiving court costs does not require a finding of undue hardship. Courts

may waive court costs based solely on indigence (or if the defendant was a child at the time of the offense) (Art. 45A.257(c)).

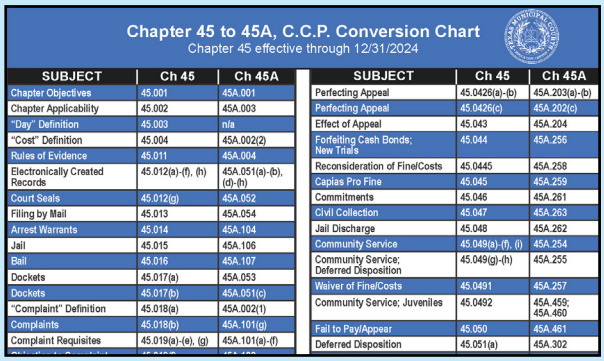
Prohibition Against Incarceration for Nonpayment

Under Art. 45A.261, a court cannot confine a defendant in jail after failure to pay fines or costs unless, after notice and hearing, it determines a defendant is not indigent and also failed to make a good faith effort to discharge the sentence. Indigent defendants can only be confined if they fail to make a good faith effort to discharge through community service AND the court finds that they could have done so without experiencing any undue hardship. This follows the principle of *Bearden v. Georgia* that the nonpayment (or failure to discharge) must be willful before incarceration is a possibility.

Special Provisions for Juveniles

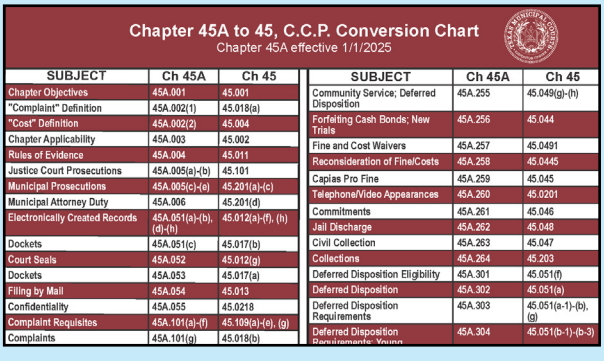
Under Art. 45A.459, courts may provide additional flexibility for juveniles, such as educational programs or community service to discharge fines and costs, instead of monetary penalties.

Mark Goodner, Full Court Press: The Blog of the Texas Municipal Courts Education Center (Jan. 27, 2025)



Chapter 45 to 45A, C.C.P. Conversion Chart
Chapter 45 effective through 12/31/2024

SUBJECT	Ch 45	Ch 45A
Chapter Objectives	45.001	45A.001
Chapter Applicability	45.002	45A.003
"Day" Definition	45.003	n/a
"Cost" Definition	45.004	45A.002(2)
Rules of Evidence	45.011	45A.004
Electronically Created Records	45.012(a)-(f), (h)	45A.051(a)-(b), (d)-(h)
Court Seals	45.012(g)	45A.052
Filing by Mail	45.013	45A.054
Arrest Warrants	45.014	45A.104
Jail	45.015	45A.106
Bail	45.016	45A.107
Dockets	45.017(a)	45A.053
Dockets	45.017(b)	45A.051(c)
"Complaint" Definition	45.018(a)	45A.002(1)
Complaints	45.018(b)	45A.101(g)
Complaint Requisites	45.019(a)-(e), (g)	45A.101(a)-(f)
Perfecting Appeal	45.0426(a)-(b)	45A.203(a)-(b)
Perfecting Appeal	45.0426(c)	45A.202(c)
Effect of Appeal	45.043	45A.204
Forfeiting Cash Bonds; New Trials	45.044	45A.256
Reconsideration of Fine/Costs	45.0445	45A.258
Capias Pro Fine	45.045	45A.259
Commitments	45.046	45A.261
Civil Collection	45.047	45A.263
Jail Discharge	45.048	45A.262
Community Service	45.049(a)-(f), (i)	45A.254
Community Service; Deferred Disposition	45.049(g)-(h)	45A.255
Waiver of Fine/Costs	45.0491	45A.257
Community Service; Juveniles	45.0492	45A.459; 45A.460
Fail to Pay/Appear	45.050	45A.461
Deferred Disposition	45.051(a)	45A.302



Chapter 45A to 45, C.C.P. Conversion Chart
Chapter 45A effective 1/1/2025

SUBJECT	Ch 45A	Ch 45
Chapter Objectives	45A.001	45.001
"Complaint" Definition	45A.002(1)	45.018(a)
"Cost" Definition	45A.002(2)	45.004
Chapter Applicability	45A.003	45.002
Rules of Evidence	45A.004	45.011
Justice Court Prosecutions	45A.005(a)-(b)	45.101
Municipal Prosecutions	45A.005(c)-(e)	45.201(a)-(c)
Municipal Attorney Duty	45A.006	45.201(d)
Electronically Created Records	45A.051(a)-(b), (d)-(h)	45.012(a)-(f), (h)
Dockets	45A.051(c)	45.017(b)
Court Seals	45A.052	45,012(g)
Dockets	45A.053	45.017(a)
Filing by Mail	45A.054	45.013
Confidentiality	45A.055	45.0218
Complaint Requisites	45A.101(a)-(f)	45.109(a)-(e), (g)
Complaints	45A.101(g)	45.018(b)
Community Service; Deferred Disposition	45A.255	45.049(g)-(h)
Forfeiting Cash Bonds; New Trials	45A.256	45.044
Fine and Cost Waivers	45A.257	45.0491
Reconsideration of Fine/Costs	45A.258	45.0445
Capias Pro Fine	45A.259	45.045
Telephone/Video Appearances	45A.260	45.0201
Commitments	45A.261	45.046
Jail Discharge	45A.262	45.048
Civil Collection	45A.263	45.047
Collections	45A.264	45.203
Deferred Disposition Eligibility	45A.301	45.051(f)
Deferred Disposition	45A.302	45.051(a)
Deferred Disposition Requirements	45A.303	45.051(a-1)-(b), (g)
Deferred Disposition Requirements: Young	45A.304	45.051(b-1)-(b-3)

IMPAIRED DRIVING SYMPOSIUM

July 30-31, 2025

Embassy Suites by Hilton Denton
Convention Center
3100 Town Center Trl.
Denton, TX 76201

The 2025 Impaired Driving Symposium, specifically curated for judges, will be held Wednesday and Thursday, July 30-31, 2025, at the Embassy Suites by Hilton Denton Convention Center in Denton.

This special two-day, 8-hour conference gives judges the opportunity to learn about roles and responsibilities in impaired driving cases alongside judges from all levels of the judiciary.

CREDIT This Symposium will count for an estimated 8 hours of judicial education and 6 hours of CLE.

REGISTRATION Registration fees are $150; CLE reporting is $100.

IMPAIRED DRIVING SYMPOSIUM LODGING and PER DIEM

ALL PARTICIPANTS ATTENDING THE ENTIRE CONFERENCE ARE ELIGIBLE FOR TRAVEL REIMBURSEMENT. THOSE WHO LIVE AND WORK 30+ MILES FROM DENTON ARE ALSO ELIGIBLE FOR ONE FREE NIGHT AT THE EMBASSY SUITES BY HILTON DENTON CONVENTION CENTER ON JULY 30, 2025.

Questions? Please contact Ned Minevitz at ned@tmcec.com.

TMCEC 4-HOUR VIRTUAL CLINICS

COUNT AS LIVE HOURS!

- Three more Live Virtual Clinics to be offered in AY 25
- Four Hours of live, continuous Judicial Education, Clerk Certification, and CLE Credit for Attorneys
- Scheduled from 1-5 p.m.
- $100 Registration; $50 Optional CLE Reporting Fee

Virtual clinics are synchronous, live events for purposes of judicial education and clerk certification and can be used in combination with TMCEC webinars and other TMCEC seminars to complete required training hours.To register, go to register.tmcec.com and login. Click the OLC tab and select the virtual clinic listed under Live Courses.

April 23, 2025
Court Security Clinic

June 4, 2025
Magistrate Duties

July 30, 2025
Court Efficiency: Records and Procedures

TEXAS MUNICIPAL COURTS EDUCATION CENTER
2210 Hancock Drive
AUSTIN, TX 78756
www.tmcec.com

Change Service Requested

Presorted Standard
U.S. Postage
PAID
Austin, Texas
Permit No. 114

MISSION STATEMENT

TMCEC

To provide high quality judicial education, technical assistance, and the necessary resource materials to assist municipal court judges, court support personnel, and prosecutors in obtaining and maintaining professional competence.

About TMCEC

The Texas Municipal Courts Education Center (TMCEC) was formed in 1984 by the Texas Municipal Courts Association (TMCA) to provide extensive, professional continuing education and training programs for municipal judges and court personnel. TMCEC is primarily financed by a grant from the Court of Criminal Appeals from funds appropriated by the Legislature to the Judicial and Court Personnel Training Fund.

In 2006, TMCEC was incorporated as a 501(c)(3) non-profit corporation exclusively for charitable, literary, and educational purposes of providing: (1) judicial education, technical assistance, and the necessary resource material to assist municipal judges, court support personnel, and city attorneys in obtaining and maintaining professional competence in the fair and impartial administration of criminal justice; and (2) information to the public about the Texas judicial system and laws relating to public safety and quality of life in Texas communities.

Sponsoring more than 50 events and providing professional and law-related education to more than 5,000 people annually, TMCEC is one of the largest organizations of its kind in the United States of America. TMCEC offers mandatory and continuing education for municipal judges and municipal court personnel, including prosecutors, and conducts training in various locations throughout the state and online. TMCEC has an outstanding cadre of faculty members that consists of judges, attorneys, and other professionals from throughout the nation. TMCEC takes pride in the quality and content of its conferences, publications, resources, and general work product. The organization has earned the praise of judges, attorneys, policy makers, and court professionals both nationally and throughout the Lone Star State.