

## Bench Card for Judicial Processes Relating to the Collection of Fines and Costs

### Justice and Municipal Court Version – Applies to Fine-Only Offenses

The U.S. Supreme Court has held that courts may not incarcerate a person for nonpayment of fines or fees without first establishing that the person's failure to pay was willful.<sup>1</sup>

There is new law in Texas which affects the imposition and collection of fines and court costs and impacts trial courts at all levels.<sup>2</sup> [Senate Bill 1913](#) and [House Bill 351](#) were passed by the 85<sup>th</sup> Legislature, Regular Session, and became effective on September 1, 2017.

Key procedural elements of the new law are as follows:<sup>3</sup>

#### ⇒ **NEW REQUIREMENTS FOR PROVIDING NOTICE TO DEFENDANTS**

- **Citations must include information regarding alternatives to the full payment** of any fine or costs assessed against the person if the person is convicted of the offense and is unable to pay that amount. (Art. 14.06(b))
- When a defendant fails to appear at the initial court setting, including failure to appear as required by a citation, a **justice or judge may no longer issue an arrest warrant for the defendant's failure to appear**, unless the justice or judge provides by telephone or regular mail to the defendant notice that includes: (Art. 45.014)
  - a date and time, within the 30-day period following the date that notice is provided, when the defendant must appear
  - the 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; *and*
  - an explanation of the consequences of defendant's failure to appear as required.
  - If the defendant is unable to appear at the designated time, the defendant may request an alternative date or time to appear.
- **Upon receiving a plea of "guilty" or "nolo contendere" and a waiver of jury trial** in a misdemeanor punishable by fine only, **a court must provide notice** to a defendant in person or by regular mail 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 the full amount.
- **Communication to a defendant from a public or private vendor contracted to provide collection services** for unpaid fines and court costs **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.

#### ⇒ **NEW REQUIREMENT TO RECALL AN ARREST WARRANT FOR FAILURE TO APPEAR** (Art. 45.014)

- **If a defendant voluntarily appears** and makes a good faith effort to resolve the warrant before it is executed **a justice or judge must recall the arrest warrant**.

#### ⇒ **NEW PROVISIONS RELATING TO BAIL, BOND, AND PRETRIAL RELEASE IN A JUSTICE OR MUNICIPAL COURT** (Arts. 17.42, 45.016)

- **A justice or judge may require** a defendant to give a **personal bond** to secure the defendant's appearance (without the assessment of a personal bond fee); however, **the justice or judge may not**, either instead of or in addition to the personal bond, **require a defendant to post a bail bond (cash or surety) unless**:
  - the defendant fails to appear; *and*
  - the justice or judge determines that:
  - the defendant has sufficient resources or income to give a bail bond; and a bail bond is necessary to secure the defendant's appearance in court.
- If a defendant does not post a required bail bond within 48 hours following the court's order to do so, **the justice or judge must reconsider the bail bond and presume that the defendant does not have sufficient resources** or income to give the bond, in which event, the justice or judge may require the defendant to give a personal bond.

#### ⇒ **NEW REQUIREMENT FOR ASSESSING ABILITY TO PAY DURING OR IMMEDIATELY AFTER SENTENCING** (Art. 45.041)

- At the sentencing of a defendant who enters a plea in open court, when imposing a fine and costs, **a judge or justice is required to inquire whether the defendant has sufficient resources or income** to immediately pay all or part of the fine and costs.

<sup>1</sup> *Bearden v. Georgia*, 461 U.S. 660 (1983).

<sup>2</sup> Jurisdictions required to operate a collection improvement program must also follow [rules](#) promulgated by the Texas Judicial Council. See [1 Tex. Admin. Code § 175](#).

<sup>3</sup> Statutory references are to the Texas Code of Criminal Procedure.

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(Art. 45.041) cont'd

- If the judge or justice determines that the defendant does not have sufficient resources or income, the judge or justice is required to **determine whether the fine and costs should be:**
  - required to 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.

⇒ **NEW REQUIREMENTS AND OPTIONS FOR COMMUNITY SERVICE** (Arts. 45.049, 45.0492)

- 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.
- **Community service options have been expanded** to include not only service provided to a governmental entity or certain nonprofit organizations, but also:
  - attending a work and job skills training program, a preparatory class for the GED, an alcohol or drug abuse program, a rehabilitation program, a counseling program, a 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.
- A **16-hour limit applies to the amount of community service** that a defendant may perform each week, unless the court allows additional hours after determining that additional hours will not impose an undue hardship on the defendant or the defendant's dependents.
- **Credit for each eight hours of community service** performed is **\$100 per day**.

⇒ **NEW WAIVER OF PAYMENT OPTION; PRESUMPTION OF INDIGENCE FOR CERTAIN CHILDREN** (Art. 45.0491)

- **Courts may waive all or part of a fine or costs** and **must no longer wait for a defendant to default** in payment to exercise this option if:
  - the court determines that the defendant is indigent: or the defendant does not have sufficient resources or income to pay all or part of the fine or costs or was a child at the time of the offense; and
  - discharging the fine or costs would impose an undue hardship on the defendant.
- **A defendant is presumed to be indigent** or to not have sufficient resources or income to pay all or part of the fine or costs if the defendant:
  - is in conservatorship of the Department of Family and Protective Services (i.e. CPS) or was in the conservatorship of that department at the time of the offense; or is designated as a homeless child or youth or an unaccompanied youth, or was so designated at the time of the offense.

⇒ **NEW REQUIREMENTS FOR ISSUING A CAPIAS PRO FINE; DUTY TO RECALL** (Art. 45.045)

- While a **court can issue a capias pro fine for unpaid fines and costs** after judgment and sentence, **a court may not issue a capias pro fine** unless:
  - the court first holds a hearing on the defendant's ability to pay, and:
  - the defendant fails to appear at the hearing; or
  - based on evidence presented at the hearing, the court determines that the capias pro fine should be issued.
- In addition, **the court must recall a capias pro fine** if:
  - the defendant voluntarily appears to resolve the amount owed; and
  - the amount owed is resolved in any manner authorized by the law.

⇒ **NEW PROVISION REGARDING COMMITMENT AFTER DEFAULT IN DISCHARGING A JUDGMENT** (Art. 45.046(a))

- Upon a defendant's default in the discharge of a judgment, a justice or judge may order the defendant **confined in jail if the justice or judge finds** at a hearing that:
  - the defendant is not indigent and has failed to make a good faith effort to discharge fines and costs; or the defendant is indigent; and
    - the defendant has failed to make good faith effort to discharge the fines and costs; and
    - the defendant could have discharged the fines and costs without undue hardship.

⇒ **NEW JAIL CREDIT RATES** (Art. 45.048)

- A defendant who is placed in jail for failure to pay the fine and costs imposed should be **given credit of not less than \$100** of the amount owed for each period of confinement (between 8-24 hours as determined by a justice or judge) served.