

**JAIL CREDITS
OR
“I’VE GOT MORE TIME THAN MONEY”**



**Presented by: Honorable John Bull, Presiding Judge
San Antonio Municipal Court and
Honorable Terry Lewis, Associate Judge
Fort Worth**

Current Options for Adjudication

- Art. 45.022 Plea of Guilty or Nolo Contendere
- Straight Pay or partial pay
- 45.051 Deferred Disposition
- 45.0511 Defensive Driving
- 45.049 Community Service
- 45.0491 Waiver of Payment of Fines and Costs of Indigent Defendants
- Or...

You're going to

JAIL!

Where do your people go?

- Upon arrest do they go to:
 - 1) City Jail, City detention center or City processing Center
 - 2) County Jail
- If committed to jail by the Municipal Court Judge, are they committed to:
 - 1) City Jail
 - 2) County Jail
- If County Jail, do you have control over how long they are held pursuant to your commitment order.
- Did you know about AG opinion, MW-52 (September 4, 1979), which states, "...because persons are incarcerated for violating municipal traffic ordinances that implement article 6701 d are considered state statute violators, the city is relieved of its obligation to provide for the maintenance of such prisoners once they are accepted for incarceration by the sheriff of the county...If the violation is a city ordinance violation that is based on this section of the Texas Transportation Code, or is a Class A or B misdemeanor or felony violation then the county is responsible for payment. This obligation is not based on the law enforcement agency performing the arrest."

Relevant Statutory Sources

- CCP Art. 42.03
- CCP Art. 45.046(a)
- CCP Art. 45.048

CCP Art. 42.03 Sec. 2(a)

In all criminal cases the judge of the court in which the defendant is convicted SHALL give the defendant credit on the defendant's sentence for the time that the defendant has spent in jail for the case...

CCP Art. 45.046(a)

When a judgment and sentence have been entered against a defendant and the defendant defaults in the discharge of the judgment, the judge may order the defendant confined in jail until discharged by law if the judge at a hearing makes a written determination that:

CCP Art. 45.046(a)

...

- (1) the defendant is not indigent and has failed to make a good faith effort to discharge the fine and costs; or
- (2) the defendant is indigent and:
 - (a) has failed to make a good faith effort to discharge the fines and costs; and
 - (b) could have discharged the fines and costs under 45.049 without experiencing an undue hardship.

CCP Art. 45.048

A defendant placed in jail on account of failure to pay the fine and costs shall be discharged on habeas corpus by showing that the defendant:

- (1) is too poor to pay the fine and costs; or
- (2) has remained in jail a sufficient length of time to satisfy the fine and costs, at the rate of not less than \$50 for each period of time served, *as specified by the convicting court in the judgment in the case.*

45.046 VS. 45.048



45.046



45.048

...the judge may order the defendant confined in jail until discharged by law if the judge at a hearing makes a written determination...

(1) the defendant is indigent...

... A defendant placed in jail... shall be discharged on habeas corpus by showing that the defendant:

- is too poor to pay the fine and costs...

Concurrent sentencing

- Art. 42.08 CCP
- When the same defendant has been convicted in two or more cases...in the discretion of the court, the judgment in the second and subsequent convictions may...begin when judgment and the sentence in the preceding conviction has ceased to operate or...shall run concurrently with the other cases.

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- Billy Bob is arrested pursuant to a traffic stop for DWI, he is also cited for Speeding, No Driver's License and No Insurance. He is in Jail for 22 hours before posting Bail. Billy Bob subsequently pleads guilty to the three traffic violations, he is entitled to a jail credit of _____, on 1 case, 2 cases or 3 cases?

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- Same facts as first question but Billy Bob has plead guilty to Speeding with a fine and court costs totaling \$196, No Driver's License with a fine and court costs of \$166 and No Insurance with a fine and court costs totaling \$277. Billy Bob was unable to pay the fines and given community service. Billy Bob failed to perform any community service. He was arrested pursuant to capias pro fines and was in jail for 16 hours before seeing the judge. He appears before the court and is unable to pay. The Judge commits him to jail. How much of a credit is Billy Bob entitled to? How will the time run following a jail commitment?

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- Billy Bob is charged with felony possession of a controlled substance and cited for speeding, no DL and no insurance at the time of arrest. He is on parole at the time. Billy Bob never makes bond and is subsequently sentenced to the State Jail for 2 years. Billy Bob was given an arraignment setting on the traffic cases after being in jail for three days following the original arrest on the tickets and drug charge. He fails to appear. He sends a letter to your court from the penitentiary requesting time served. What action should you take? What actions can you take?

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- You may specify in your order that a day for jail credits equals:
 - 4 hours
 - 7 hours
 - 9 hours
 - 17 hours
 - 22 hours
 - 28 hours

It's your order. Are you being specific in your Judgments? That is what will dictate what happens to the case. Discretion is the word.