

APPLICATION FOR TIME PAYMENT, EXTENSION, OR COMMUNITY SERVICE (Page 1 of 4)

CAUSE NUMBER(S): \_\_\_\_\_

STATE OF TEXAS  
VS.

IN THE MUNICIPAL COURT  
CITY OF \_\_\_\_\_  
\_\_\_\_\_ COUNTY, TEXAS

INITIAL ALL THAT APPLY.

\_\_\_\_\_ The Court has advised me that I am responsible for satisfying the judgment and sentence:

in the amount of \$ \_\_\_\_\_ in Cause Number \_\_\_\_\_;

in the amount of \$ \_\_\_\_\_ in Cause Number \_\_\_\_\_;

in the amount of \$ \_\_\_\_\_ in Cause Number \_\_\_\_\_; and

in the amount of \$ \_\_\_\_\_ in Cause Number \_\_\_\_\_.

\_\_\_\_\_ I assert that I am unable to pay the fine and costs immediately and that the following information is documentation that I have insufficient resources or income to pay today.

\_\_\_\_\_ I request that the Court extend the payment to a later date.

\_\_\_\_\_ I request that the Court grant a time payment plan.

\_\_\_\_\_ I request that I be able to discharge the fine and costs by performing community service, because I have no resources to pay and I am unable to pay the fine and costs.

\_\_\_\_\_ I have been determined to be indigent by the federal government and I am receiving or I am eligible to receive assistance under a federal program. Name of program: \_\_\_\_\_.

APPLICATION FOR TIME PAYMENT, EXTENSION, OR COMMUNITY SERVICE

Name: \_\_\_\_\_ Telephone Number: \_\_\_\_\_

Address: \_\_\_\_\_

Employer: \_\_\_\_\_ Job Title: \_\_\_\_\_

Employer's Address: \_\_\_\_\_

Salary: \$ \_\_\_\_\_ per \_\_\_\_\_ Employer's Telephone Number: \_\_\_\_\_

Marital Status (Check One): Married  Single  Divorced  Widowed

Spouse's Name: \_\_\_\_\_ Spouse's Salary: \$ \_\_\_\_\_ per \_\_\_\_\_

Spouse's Employer: \_\_\_\_\_ Spouse's Job Title: \_\_\_\_\_

List the source and amount of any other income you receive: \$ \_\_\_\_\_

List all your dependents, their ages, and their relationship to you: \_\_\_\_\_

Your residence is (Check One): Rented  Owned  Rent-Free

LIST ALL BANK ACCOUNTS IN YOUR NAME OR FROM WHICH YOU MAY WITHDRAW FUNDS:

Name of Institution	Address of Institution	Type of Account	Account Balance
_____	_____	_____	_____
_____	_____	_____	_____

**ESTIMATE YOUR AVERAGE CURRENT MONTHLY EXPENSES FOR YOU AND YOUR FAMILY:**

- a. Home mortgage payment, rent, or lot rental for trailer: \$ \_\_\_\_\_
  - b. Routine home maintenance: \$ \_\_\_\_\_
  - c. Utilities (electricity, water, gas, telephone): \$ \_\_\_\_\_
  - d. Food and sundries: \$ \_\_\_\_\_
  - e. Clothing: \$ \_\_\_\_\_
  - f. Laundry and cleaning: \$ \_\_\_\_\_
  - g. Newspapers, periodicals, & books, including school books: \$ \_\_\_\_\_
  - h. Medical, dental, and drug expenses: \$ \_\_\_\_\_
  - i. Insurance (auto, life, medical, homeowners/renters): \$ \_\_\_\_\_
  - j. Transportation, including auto payments: \$ \_\_\_\_\_
  - k. Taxes not deducted from wages or included in mortgage: \$ \_\_\_\_\_
  - l. Alimony or support payments: \$ \_\_\_\_\_
  - m. Religious/charitable contributions: \$ \_\_\_\_\_
  - n. Other expenses (use reverse side if necessary): \$ \_\_\_\_\_
- \_\_\_\_\_ \$ \_\_\_\_\_
- \_\_\_\_\_ \$ \_\_\_\_\_
- \_\_\_\_\_ \$ \_\_\_\_\_
- \_\_\_\_\_ \$ \_\_\_\_\_

**LIST ALL REAL ESTATE OWNED BY YOU OR YOUR SPOUSE:**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**LIST & GIVE THE VALUE FOR ALL PERSONAL PROPERTY OWNED BY YOU OR YOUR SPOUSE:**

- a. Deposits in financial institutions and cash on hand: \$ \_\_\_\_\_
- b. Household goods and supplies (use reverse side if necessary):
 

_____	\$ _____	_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____	_____	\$ _____
- c. Household furniture and furnishings (use reverse side if necessary):
 

_____	\$ _____	_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____	_____	\$ _____
- d. Jewelry (use reverse side if necessary):
 

_____	\$ _____	_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____	_____	\$ _____

APPLICATION FOR TIME PAYMENT, EXTENSION, OR COMMUNITY SERVICE (Page 3 of 4)

e. Sports equipment and musical instruments (use reverse side if necessary):

_____	\$ _____	_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____	_____	\$ _____

f. Television, home theater, media, and stereo equipment (use reverse side if necessary):

_____	\$ _____	_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____	_____	\$ _____

g. Household appliances (use reverse side if necessary):

_____	\$ _____	_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____	_____	\$ _____

h. Automobiles, trucks, trailers, boats, and accessories (use reverse side if necessary):

_____	\$ _____	_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____	_____	\$ _____

i. Machinery and tools, lawn and garden equipment (use reverse side if necessary):

_____	\$ _____	_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____	_____	\$ _____

j. Office equipment, supplies, furniture, and inventory (use reverse side if necessary):

_____	\$ _____	_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____	_____	\$ _____

k. Farming equipment, supplies, livestock, and other animals (use reverse side if necessary):

_____	\$ _____	_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____	_____	\$ _____

l. Any other property not listed above (use reverse side if necessary):

_____	\$ _____	_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____	_____	\$ _____

APPLICATION FOR TIME PAYMENT, EXTENSION, OR COMMUNITY SERVICE (Page 4 of 4)

LIST ALL OF YOUR CREDITORS (including credit cards) AND THE AMOUNT YOU OWE EACH (Use reverse side if necessary):

_____ \$ _____	_____ \$ _____
_____ \$ _____	_____ \$ _____
_____ \$ _____	_____ \$ _____
_____ \$ _____	_____ \$ _____
_____ \$ _____	_____ \$ _____
_____ \$ _____	_____ \$ _____

YOUR INITIAL BY EACH OF THE FOLLOWING STATEMENTS INDICATES THAT YOU HAVE READ THE STATEMENT, UNDERSTAND IT, AND AGREE TO IT.

\_\_\_ I promise that until my fines have been paid in full, I will notify this Court in person or by first-class mail of any changes of my address or telephone number at the following address (court address) \_\_\_\_\_ within five (5) days of the change.

\_\_\_ I understand that until my fines and court costs are paid in full I have a continuing obligation to notify the Court of any changes in my financial status that may hinder my ability to satisfy the judgment or help me satisfy the judgment.

\_\_\_ I understand that if I pay any part of the fine, costs, or restitution (if applicable) on or after the 31<sup>st</sup> day after judgment was entered that I am responsible for paying a \$25 time payment fee (Section 133.103, Local Government Code).

\_\_\_ I understand that submitting false financial information to the Court constitutes the crime of tampering with a governmental record, punishable by incarceration and/or the imposition of a fine. (Sec. 37.10, Penal Code) I swear that all the information in this application is true, correct, and complete to the best of my knowledge and belief.

Date: \_\_\_\_\_ Defendant's Signature: \_\_\_\_\_

Sworn and subscribed before me this day \_\_\_\_\_ of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
(Judge) (Clerk) (Deputy Clerk)

(municipal court seal)

COMMUNITY SERVICE ORDER (Art. 45.049, C.C.P.)

CAUSE NUMBER: \_\_\_\_\_

STATE OF TEXAS

§

IN THE MUNICIPAL COURT

VS.

§

CITY OF \_\_\_\_\_

§

\_\_\_\_\_ COUNTY, TEXAS

ORDER

ON THIS DATE appeared \_\_\_\_\_, Defendant in the above styled and numbered cause, who, having been found guilty by the Court and assessed a fine and costs totaling \$ \_\_\_\_\_ in this cause on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, (and the Court having determined that the Defendant has failed to pay such fine and costs) (and the Court having determined that the Defendant has insufficient resources or income to pay such fine and costs), it is hereby

ORDERED, ADJUDGED, AND DECREED that the Defendant discharge (all of the fine and costs owed) (the remaining fine and costs owed) by performing community service as follows:

- 1. The Defendant shall work a total of \_\_\_\_\_ hours;
- 2. The Defendant's work shall be completed no later than \_\_\_\_\_, 20\_\_\_\_;
- 3. The Defendant shall perform the community service for a (government agency) (non-profit organization) that provides services to the general public that enhances the social welfare and general well-being of the community;

and the Court having further found that the working of more than 16 hours of community service per week (will)(will not) work a hardship on the Defendant, it is further

ORDERED, ADJUDGED, AND DECREED that the Defendant shall work no more than \_\_\_\_\_ hours per week in performing the above-ordered community service. A defendant is considered to have discharged \_\_\_\_\_ of fines or costs for each eight hours of community service.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Judge, Municipal Court

City of \_\_\_\_\_

\_\_\_\_\_ County, Texas

(municipal court seal)

Editor's Note: The Court may require the Defendant to discharge a fine and costs at not less than a minimum of \$50 for every eight hours of community service performed. Art. 45.049(e), C.C.P.

WAIVER OF PAYMENT OF FINE AND COSTS FOR INDIGENT DEFENDANTS (Art. 45.0491, C.C.P.)

CAUSE NUMBER: \_\_\_\_\_

STATE OF TEXAS

§

IN THE MUNICIPAL COURT

VS.

§

CITY OF \_\_\_\_\_

§

\_\_\_\_\_ COUNTY, TEXAS

ORDER

On the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, came to be heard Cause Number \_\_\_\_\_ wherein \_\_\_\_\_, hereinafter called Defendant, was convicted of a misdemeanor offense to wit: \_\_\_\_\_ on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ and ordered to pay fine and costs in the amount of \$\_\_\_\_\_.

The Defendant has defaulted on payment of the fine and costs. After due consideration of the facts and circumstances regarding the Defendant's default in the aforementioned judgment in which the Defendant was ordered to pay a fine and costs of \_\_\_\_\_, the Court determines as follows:

- 1. The Defendant is indigent; and
- 2. Each alternative method of discharging the fine or cost under Article 45.049, Code of Criminal Procedure, would impose an undue hardship on the Defendant.

Accordingly, pursuant to Article 45.0491, Code of Criminal Procedure, the Court waives the stated fine and costs for indigent Defendant.

ORDERED, ADJUDGED, AND DECREED.

Entered this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

(municipal court seal)

\_\_\_\_\_  
Judge, Municipal Court  
City of \_\_\_\_\_  
\_\_\_\_\_ County, Texas

**Editor's Note:** During the 78th Legislature, "indigent" was defined statutorily to mean an individual who earns not more than 125 percent of the income standard established by applicable federal poverty guidelines. Sec. 133.002, L.G.C. Ultimately, however, in determining whether a defendant is eligible to discharge fine and costs via community service, the Court determines whether the Defendant has "insufficient resources or income to pay the fine or costs." Art. 45.049, C.C.P.

DEFENDANT'S MOTION TO LAY OUT FINE IN JAIL

CAUSE NUMBER: \_\_\_\_\_

STATE OF TEXAS

§

IN THE MUNICIPAL COURT

VS.

§

CITY OF \_\_\_\_\_

§

\_\_\_\_\_ COUNTY, TEXAS

DEFENDANT'S MOTION TO LAY OUT FINE IN JAIL

On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, I was found guilty of the offense of \_\_\_\_\_ and was assessed a fine and court costs totaling \$ \_\_\_\_\_ dollars, of which \$ \_\_\_\_\_ is unpaid.

I understand that I may ask the Court to grant me an extension of time to pay, a payment plan, or community service to discharge the fine and costs for all or part of the fine and costs. I DO NOT WANT an extension to pay, I DO NOT WANT a payment plan, and I DO NOT WANT to perform community service to discharge the fine and costs. I REFUSE TO PAY THE FINE AND COSTS ORDERED BY THE COURT.

I understand that I may ask the Court to consider my financial situation to decide if I am indigent. "Indigent" means that I do not earn more than 125 percent of the income standard established by applicable federal poverty guidelines. If the Court found me indigent, I could not be jailed to pay the fine and costs. I DO NOT claim that I am indigent. I DO NOT WANT a hearing on whether I am indigent.

I was 17 years old or older when I committed the offense. I am of sound mind. I request the Court to order me to jail immediately. If my request is granted, I will be given jail credit at not less than 8 hours or more than 24 hours as the period I must remain in jail to satisfy not less than a minimum of \$50 of the fines and costs. I understand that the Judge will determine the rate at which I earn jail credit.

The Court has not encouraged me to make this motion. I understand that I have been convicted of an offense punishable by the imposition of a monetary fine, not by a term of incarceration. My request to discharge the fine and costs through commitment to jail has not been influenced by the Court or any individual, other than myself. This motion is made freely and voluntarily.

I have read this entire motion, I understand it and I agree to sign it and present it to the Judge. I want the Judge to grant this motion and order me to jail.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Defendant's Signature

Printed name and address: \_\_\_\_\_  
\_\_\_\_\_

Telephone number(s): \_\_\_\_\_

Motion granted

Motion denied

\_\_\_\_\_  
Date

\_\_\_\_\_  
Judge, Municipal Court

(municipal court seal)

City of \_\_\_\_\_

COMMITMENT

On this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the Court considered the foregoing Defendant's Motion to Lay Out Fine in Jail. THE COURT FINDS that the motion was made freely and knowingly and the Court determines that the request should be granted.

It is therefore ORDERED that the Defendant, \_\_\_\_\_, is committed to the custody of the [(Chief of Police)(City Marshal) of the City of \_\_\_\_\_] (Sheriff of \_\_\_\_\_ County), Texas until such time as Defendant's fine and costs have been discharged as provided by law and that this Motion and Commitment be kept with the papers of this cause.

Unless otherwise specified in the judgment or sentence in said cause, pursuant to Article 45.048(b), Code of Criminal Procedure, the Court specifies that the Defendant remain in jail a sufficient length of time to satisfy the fine and costs at the following rate:

\_\_\_\_\_ hours (not less than 8 or more than 24) to earn

\_\_\_\_\_ (minimum dollar amount \$50) until such time as Defendant's fine and costs have been discharged.

It is ORDERED that this Motion and Commitment be kept with the papers of this cause.

ENTERED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Judge, Municipal Court

City of \_\_\_\_\_

(municipal court seal)

\_\_\_\_\_ County, Texas

ORDER OF COMMITMENT (CAPIAS PRO FINE) (Art. 45.046, C.C.P.)

CAUSE NUMBER: \_\_\_\_\_

STATE OF TEXAS	§	IN THE MUNICIPAL COURT
VS.	§	CITY OF _____
_____	§	_____ COUNTY, TEXAS

TO ANY PEACE OFFICER OF THE STATE OF TEXAS – GREETINGS:

You are commanded to take into custody and commit to the jail of your County the above-named Defendant, who was, on the \_\_\_\_\_, day of \_\_\_\_\_, 20\_\_\_\_, convicted before the Municipal Court in the City of \_\_\_\_\_, \_\_\_\_\_ County, Texas of the offense of \_\_\_\_\_ and was assessed a fine and court costs totaling \$ \_\_\_\_\_, of which \$ \_\_\_\_\_ is unpaid.

The undersigned finds that EITHER:

- (1) the arrestee is the same person as the Defendant in the cause described above;
- (2) the Defendant has intentionally failed to make a good faith effort to pay said fine and costs; and
- (3) the Defendant is not indigent and has failed to make a good faith effort to discharge said fine and costs;

OR

- (1) the arrestee is the same person as the Defendant in the cause described above;
- (2) the Defendant has intentionally failed to make a good faith effort to pay said fine and costs; and
- (3) the Defendant is indigent and:
  - (a) has failed to make a good faith effort to discharge the fine and costs under Article 45.049, Code of Criminal Procedure (community service);
  - (b) could have discharged the fine under Article 45.049, Code of Criminal Procedure, (community service) without experiencing any undue hardship.

Therefore, you are commanded to keep the Defendant in custody until the sum of \$ \_\_\_\_\_ is fully paid or Defendant is otherwise discharged by law. Unless otherwise specified in the judgment or sentence in said cause, pursuant to Article 45.048(b), Code of Criminal Procedure, the Court specifies that the Defendant remain in jail a sufficient length of time to satisfy the remaining fine and costs at the following rate:

\_\_\_\_\_ hours (not less than 8 or more than 24) to earn  
\_\_\_\_\_ (minimum dollar amount \$50) to satisfy the fine and costs.

In the event Defendant is committed for defaulting in more than one judgment, jail credit is to be assessed:

- Concurrently (at the same time, per judgment until jail credit exceeds or equals the sum total of fine and costs); or
- Consecutively (“stacked,” one sentence of confinement is to follow another until jail credit exceeds or equals the sum total of fine and costs) with following cause(s): *List cause number(s), Court(s), date of judgment(s), offense(s), and fine and costs total(s)*

Ordered on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

(municipal court seal)

\_\_\_\_\_  
 Judge, Municipal Court  
 City of \_\_\_\_\_  
 \_\_\_\_\_ County, Tex.

## Indigence and Related Issues

### A. History to the Present

From as early as 1890 until 1971, individuals convicted in municipal court that had insufficient resources to pay their fines or court costs were forced into labor or incarcerated:

*When a defendant is convicted of a misdemeanor and his punishment is assessed at a pecuniary fine, if he is unable to pay the fine and costs adjudged against him, he may for such time as will satisfy the judgment be put to work in the workhouse, or on the county farm, or public improvements of the county, as provided in the succeeding Article, or if there be no such workhouse, farm or improvements, he shall be imprisoned in jail for a sufficient length of time to discharge the full amount of fine and costs adjudged against him...<sup>1</sup>*

While the Court of Criminal Appeals upheld the constitutionality of labor or prison for the poor, it ruled that the amount of jail credit earned could not be based merely on the population of the county.<sup>2</sup>

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.<sup>3</sup>

The U.S. Supreme Court, however, disagreed. In reversing the Court of Criminal Appeals, it held that the Equal Protection Clause of the 14<sup>th</sup> Amendment prohibits states from imposing a fine as sentence and automatically converting it to a jail term solely because the defendant is indigent and cannot pay the fine in full.<sup>4</sup>

*Tate v. Short* remains a milestone, not only in Texas, but also in American jurisprudence. By the time the case was remanded to the Court of Criminal Appeals, the Texas Legislature had already revised the judgment provision of the Code of Criminal Procedure to permit courts to order payments be made immediately, late or in intervals. As a result of *Tate*, courts are now required to take into consideration the defendant's economic resources and income.<sup>5</sup> Overruling a long line of case law under *Tate*, indigent defendants may not be jailed without first allowing the defendant an alternative means of discharging the fine.

### B. Payment

Ideally, upon entering the judgment, a defendant will pay the court in the manner specified by the judgment (*i.e.*, immediately, later or in intervals).<sup>6</sup> In the event that a payment plan is requested or deemed necessary, the court should inform the defendant that in the event any part of the fine, court costs, or restitution is unpaid come the 31<sup>st</sup> day after the judgment, a \$25 time payment fee will be assessed per conviction.<sup>7</sup> Note, a defendant need not be deemed indigent by the court in order to receive a payment plan.

### C. Community Service

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<sup>1</sup> Article 793, Code of Criminal Procedure. [Repealed.]

<sup>2</sup> *Ex parte Ferguson*, 132 S.W.2d 408 (Tex. Crim. App. 1939).

<sup>3</sup> *Ex parte Tate*, 445 S.W.2d 210 (Tex. Crim. App. 1969).

<sup>4</sup> *Tate v. Short*, 401 U.S. 395 (1971); Ryan Kellus Turner "Pay or Lay: *Tate v. Short* Revisited." *Municipal Court Recorder*, Vol. 12, No. 3 (March 2003).

<sup>5</sup> *Ex parte Tate*, 471 S.W.2d 404 (Tex. Crim. App. 1971).

<sup>6</sup> Article 45.041, Code of Criminal Procedure.

<sup>7</sup> Section 133.103, Local Government Code.

While the Texas Attorney General opined that community service could be ordered as a reasonable condition of deferred disposition in 1988,<sup>8</sup> community service was not added as a way for indigent defendants to discharge their fines until 1993.

**Article 45.049, Code of Criminal Procedure**

**Community Service in Satisfaction of Fine or Costs**

- (a) A justice or judge may require a defendant who fails to pay a previously assessed fine or costs, or who is determined by the court to have insufficient resources or income to pay a fine or costs, to discharge all or part of the fine or costs by performing community service. A defendant may discharge an obligation to perform community service under this article by paying at any time the fine and costs assessed.
- (b) In the justice's or judge's order requiring a defendant to participate in community service work under this article, the justice or judge must specify the number of hours the defendant is required to work.
- (c) The justice or judge may order the defendant to perform community service work under this article only for a governmental entity or a nonprofit organization that provides services to the general public that enhance social welfare and the general well-being of the community. A governmental entity or nonprofit organization that accepts a defendant under this article to perform community service must agree to supervise the defendant in the performance of the defendant's work and report on the defendant's work to the justice or judge who ordered the community service.
- (d) A justice or judge may not order a defendant to perform more than 16 hours per week of community service under this article unless the justice or judge determines that requiring the defendant to work additional hours does not work a hardship on the defendant or the defendant's dependents.
- (e) A defendant is considered to have discharged not less than \$50 of fines or costs for each eight hours of community service performed under this article.
- (f) A sheriff, employee of a sheriff's department, county commissioner, county employee, county judge, justice of the peace, municipal court judge, or officer or employee of a political subdivision other than a county is not liable for damages arising from an act or failure to act in connection with manual labor performed by a defendant under this article if the act or failure to act:
- |   |  |  |
|---|--|--|
| <p>(1) was performed pursuant to court order; and</p> <p>(2) was not intentional, willfully or wantonly negligent, indifference or reckless disregard for the safety of</p> | <p>For further discussion on the interplay between indigence and due process, see Chapter 4 of this publication.</p> | <p>or performed with conscious others.</p> |
|---|--|--|

Note the following about Article 45.049:

- It requires the court to make an official determination of insufficient resources for those who upon pronouncement of judgment cannot pay.
- The statute also applies to previously assessed fines and costs.
- The defendant may discharge all or part of the amount owed through community service.
- The court must specify the number of hours to be worked.
- It restricts for whom the community service may be performed.
- It requires the community service provider to supervise the defendant and report back to the court.
- It places a general limitation on the number of hours that can be ordered per week.
- It provides general limited immunity to governmental personnel.

<sup>8</sup> See, Attorney General Opinion No. JM-898 (1988).

Generally, with the exception of indigent default in payment of fine and/or costs, performed in lieu of paying a fine.

For additional information on conducting an indigent hearing, see *TMCEC Bench Book*.

defendants and defendants who community service cannot be

In 2001, the Legislature recognized that encounter situations where the performance of community service may create an undue hardship on the defendant. The Legislature created Article 43.091, which allows the court to—in specific circumstances—waive the collection of the fine and state court cost.

municipal courts sometimes

#### Article 43.091, Code of Criminal Procedure

##### Waiver of Payment of Fines and Costs for Indigent Defendants in Justice or Municipal Court

A municipal court, regardless of whether the court is a court of record, or a justice court may waive payment of a fine or cost imposed on a defendant who defaults in payment if the court determines that:

- (1) the defendant is indigent; and
- (2) each alternative method of discharging the fine or cost under Article 43.09 would impose an undue hardship on the defendant.

Note the following about Article 43.091:

- For this provision to be applicable, the defendant must first default in the payment of the fine and costs.
- For reasons unknown, the Legislature placed this provision, that only applies to municipal and justice courts, outside of Chapter 45.
- While the statute refers to Article 43.09, courts should interpret this provision carefully in light of the prohibition of incarcerating indigent defendants provided in *Tate* [See also, Article 43.03(d)]. While Article 43.09(h) is essentially the same as 45.049 (municipal courts community service statute), judges are discouraged from applying Article 43.09(a). There is authority suggesting that Article 43.09 does not apply to municipal or justice courts.<sup>9</sup>

#### D. “Laying Out” Fines

Municipal judges and key personnel should be prepared on occasion for convicted defendants to request “laying out” their fines and costs. To “lay out” one’s fines and costs means that the defendant wishes to be sent to jail until the balance of the amount owed is fully discharged by jail credit. It is of paramount importance that judges be aware that this is not a sentencing option authorized by the modern Code of Criminal Procedure but rather an option that may only be utilized at the request of the defendant and with the permission of the court. (Historically, it is worth noting that the 1925 Code of Criminal Procedure authorized the “laying out” of fines and it was recognized as a statutory option as late as 1939).<sup>10</sup>

Because municipal court jurisdiction does not entail criminal cases punishable by confinement or imprisonment, municipal judges must be particularly careful to not allow defendants to “lay out” their fines in a manner which resembles sentencing the defendant to jail. Critical to this distinction is that the defendant’s motion to “lay out” the fine and costs is tantamount to a request from the defendant that the court find the defendant in default and allow the defendant to discharge the balance owed through jail credit (*i.e.*, the defendant is essentially sending him or herself to jail with the permission of the court).

Note, there is no statutory authority that requires a municipal judge to grant a request to “lay out” fines. Some judges view “laying out” as an easy way out for lazy defendants that unfairly imposes additional expense on the city or county.

<sup>9</sup> See, Attorney General Opinion No. MW-386 (1981) citing *Ex parte Young*, 136 S.W.2d 863 (Tex. Crim. App. 1940), holding that the specific enactment, recodified as Article 45.048, prevails over the general rule stated in Article 43.09.

<sup>10</sup> See, Attorney General Opinion No. O-1563 (1939).

Other judges, however, find the practice of “laying out” the fine agreeable because it saves the court time, energy and human resources that are more than likely going to be used in committing the defendant to jail on a *capias pro fine* at some future point in time (*i.e.*, if the defendant is determined to go to jail, the court can either let him go now or send him to jail after he defaults).

Because of the irregular nature of “laying out” a fine and cost, it is strongly recommended that the judge document that the defendant is not being committed against his or her will. In essence, a motion to “lay out” a fine and costs in jail should include at a minimum that the defendant understands and attests that he or she:

- May request that the court grant an extension of time to pay, a payment plan, or community service in lieu of payment;
- Does not want an extension to pay, a payment plan, or community service instead of paying the fine and costs;
- May ask the court to consider his or her financial situation to decide if he or she is indigent (*i.e.*, financially unable to pay);
- Cannot be jailed to pay the fine and costs if determined to be indigent;
- Does not claim to be indigent and does not want an indigent hearing;
- Was at least 17 years old or older at the time of the offense;
- Is of sound mind and freely requests the court to commit the defendant to jail immediately;
- Is aware that if the request is granted, he or she will be given jail credit at not less than eight hours or more than 24 hours as the period in jail to satisfy not less than \$50 of the fines and costs; and
- Is aware that the judge will determine the rate at which the defendant earns jail credit.

The court should provide the defendant with a copy of the motion and read the entire motion aloud. Prior to allowing the defendant to sign the motion and present it to the court, the judge should be convinced that the defendant understands its entire contents. The motion preferably in the presence of others. The by the judge and retained with the judgment.

See TMCEC *Forms Book*,  
Motion to Lay Out Fine in  
Jail.

should be made in open court and motion, if granted, should be signed

### III. Enforcement Mechanisms for Judgment

#### Defendants who Default in

#### A. *Capias Pro Fine*

Unlike county and district trial courts, municipal courts do not sentence defendants to jail upon conviction. Rather, they sentence them to pay fines and possibly other sanctions. It would be misleading, however, to think that municipal court never send convicted defendants to jail. While the two proceeding sentences may seem contradictory, they are not.

What distinguishes jail-bound municipal court defendants from those in county and district courts is that their trip to jail is not a part of the sentence but rather a result of the defendant’s failure to comply with the terms of the judgment of the court (*e.g.*, paying a fine and court costs, taking a driving safety course, attending counseling, *etc.*).

A *capias pro fine* (Latin for “that you take for the fine”) is a specialized warrant issued post-judgment for convicted defendants who intentionally fail to discharge the judgment. In addition to Article 45.048, previously detailed, Chapter 45 contains two provisions pertinent to understanding and applying this enforcement mechanism.

#### Article 45.045(a), Code of Criminal Procedure *Capias Pro Fine*

If the defendant is not in custody when the judgment is rendered or if the defendant fails to satisfy the judgment according

to its terms, the court may order a *capias pro fine* issued for the defendant's arrest. The *capias pro fine* shall state the amount of the judgment and sentence, and command the appropriate peace officer to bring the defendant before the court or place the defendant in jail until the defendant can be brought before the court.

Note the following about Article 45.045(a):

- While the judgment provisions contained in the Code of Criminal Procedure authorize the court to order the defendant to “pay the fine and costs immediately,” the U.S. Supreme Court has held that a state cannot impose a fine as a sentence and then automatically convert it into a jail term solely because the defendant is indigent and cannot pay the fine in full.<sup>11</sup> Alas, barring an official determination that the defendant is not indigent, a court may order that the defendant be arrested but may not leave the defendant committed to jail on a *capias pro fine*.
- On two instances, the Court of Criminal Appeals has held that failure to comply with the requirements of Article 45.045 have resulted in defendants being released on *habeas corpus*:
  - *Ex parte Palvado* – *Capias pro fine* was defective because it was not signed by the judge, amount of fine was not shown and it was not returned until four days after it was returnable.<sup>12</sup>
  - *Ex parte Winford* – Docket suggesting filing of a complaint, issuance of a warrant and a plea of guilty are no substitute for a final judgment and are insufficient to authorize imprisonment on a *capias pro fine*.<sup>13</sup>
- A *capias pro fine* is not a commitment order. defendant being brought immediately before authorizes the defendant to be temporarily placed in jail, the defendant may only be kept there until the defendant can be brought before the court. At such time, a formal commitment order may be prepared.
 

See TMCEC Forms Book, Order of Commitment.

Preference is given to the court. While the law
- Other notable Court of Criminal Appeals opinions pertaining to *capias pro fines*:
  - *Ex parte Smith* – Unreasonable, arbitrary and discriminatory ordinances violating the Texas and U.S. Constitutions may not be validly enforced by means of a *capias pro fine*.<sup>14</sup>
  - *Ex parte Watson* - Ordinances preempted by state law may not be enforced by means of a *capias pro fine*.<sup>15</sup>
  - *Ex parte Smith* - A *capias pro fine* cannot be issued prior to either a complaint or a warrant and subsequently a valid judgment.<sup>16</sup>
  - *Ex parte Jonishkies* – A defective complaint can invalidate a subsequent *capias pro fine*.<sup>17</sup>
  - *Ex parte Bozeman* – An unsworn complaint cannot be the basis of either a judgment or a subsequent *capias pro fine*.<sup>18</sup>
  - *Ex parte Ambrose* – A *capias pro fine* cannot be issued by a judge who is an injured party to an alleged crime.<sup>19</sup>
  - *Jones v. State*<sup>20</sup> – A judgment for a traffic violation together with the court's finding that the defendant failed to satisfy the terms of the judgment is sufficient probable cause to support issuance of a *capias pro fine*.

<sup>11</sup> *Bearden v. Georgia*, 461 U.S. 380 (1983).

<sup>12</sup> 129 S.W.2d 306 (Tex. Crim. App. 1939).

<sup>13</sup> 85 S.W. 1146 (Tex. Crim. App. 1905).

<sup>14</sup> 211 S.W.2d 204 (Tex. Crim. App. 1948).

<sup>15</sup> 225 S.W.2d 850 (Tex. Crim. App. 1949).

<sup>16</sup> 265 S.W. 170 (Tex. Crim. App. 1924).

<sup>17</sup> 227 S.W. 952 (Tex. Crim. App. 1921).

<sup>18</sup> 270 S.W. 2d 300 (Tex. Crim. App. 1958).

<sup>19</sup> 24 S.W. 291 (Tex. Crim. App. 1893).

<sup>20</sup> 119 S.W.3d, 766, 786 (Tex. Crim. App. 2003).

**Article 45.046, Code of Criminal Procedure  
Commitment**

(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 determines that:

- (1) the defendant intentionally failed to make a good faith effort to discharge the judgment; or
- (2) the defendant is not indigent.

(b) A certified copy of the judgment, sentence and order is sufficient to authorize such confinement.

Note the following about Article 45.046:

- Prior to commitment, a judgment and sentence must be entered against the defendant.
- The defendant must default in the discharge of the judgment prior to being committed to jail.
- The decision to commit the defendant to jail is within the discretion of the judge.
- Prior to commitment, the judge must affirmatively find that the defendant failed to make a good faith effort to discharge the judgment.
  - Presumably, this provision could apply to indigent defendants who have been given an alternative means of discharging their fines and costs (through installment payments or community service) and who have nonetheless defaulted.
  - *Tate* fundamentally stands for the proposition that indigent people cannot be incarcerated without being given an alternative means of paying the fine and cost. *Tate* should not be misconstrued “as precluding imprisonment as an enforcement method when alternative means are unsuccessful.”<sup>21</sup>
  - In accordance with *Tate*, an indigent determination must be made prior to commitment.
  - A “certified copy” presumably means signed and bearing the court’s seal.

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<sup>21</sup> *Tate v. Short*, 401 U.S. 395 (1971).