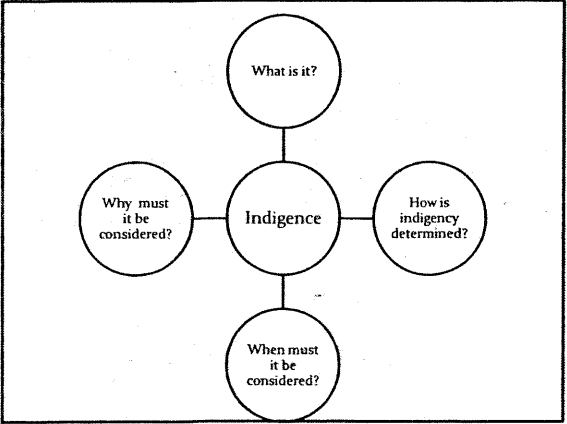


Indigence Issues

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- ### Indigence: What is It?
- Code Book: Indigent Persons
 - TRAP 20.1
 - TRAP 20.2
 - CCP 16.01
 - CCP 1.051
 - CCP 15.17
 - TRCP 145
 - TRCP 749a
 - TRCP 749a, b
 - CCP 43.10
 - Cont.
 - TRCP 217
 - TRCP 126
 - CCP 43.091
 - 45.0491

Indigence: What is It?

- TRAP 20.1: This deals with establishing indigence in civil cases by certificate or by affidavit
 - BUT WHAT ARE THE INCOME GUIDELINES? NOT IN THE LAW
- TRAP 20.2
 - NO DEFINITION OF INDIGENCE, NO FORMULA (other than court finding that appellant cannot pay or give security for record)

Indigence: What is It?

- CCP 16.01 Examining Trial
 - No mention of indigence
- CCP 1.051
 - For the purposes of this article and articles 26.04 (appt of counsel) and 26.05 (compensation of counsel) "indigent" means a person who is not financially able to employ counsel
 - What makes a person not financially able?

Indigence: What is It?

- CCP 15.17
 - Right to request appointment of counsel if the person cannot afford counsel (not in Class C's). Shall inform the person arrested of the procedures for requesting appointment of counsel. Shall ensure reasonable assistance
 - If person is indigent (????) and requests appointment of counsel and magistrate is authorized under 26.04, magistrate shall appt. If not authorized, magistrate (w/o unnecessary delay not later than 24 hrs) transmit request to designee under 26.04

Indigence: What is It?

- TRCP 145, 749a-b, 217, 126
 - Not even in our code book
- CCP 43.10
 - Talks about manual labor while in jail
- CCP 43.091, 45.0491
 - Waiver of Payment of Fine and Costs for Indigent Defendants

Indigence: What is It?

- Dictionaries:
 - Poverty; neediness
 - the condition of being extremely poor
 - a state of extreme poverty or destitution
 - Lacking necessities of life, such as food, clothing, etc.; impoverished (indigent)
 - A person who is extremely poor (indigent)
- CCP 1.051
 - For the purposes of this article and articles 26.04 (appt of counsel) and 26.05 (compensation of counsel) "indigent" means a person who is not financially able to employ counsel
 - What makes a person not financially able?

Indigence: What is It?

- No clear answer
 - At a minimum: can not afford representation
 - More commonly: extreme poverty or neediness; Lacking necessities of life

How Do We Know if the Defendant is Indigent?

- Only definitions in law relate to appointment of counsel
 - 125% below Federal Poverty Guideline
 - Cannot afford to hire an attorney (Art. 1.051 CCP)
- Other than that there are NO statutory procedures
- TMCEC Forms
 - Application for Time Payment, Extension, Community Service
 - Admonishment as to Financial Changes

Indigence: How is it Determined?

- Where is the guidance?
- This has to be a judgment call
- Collect as much financial information as possible
- Consider the financial resources of the defendant
- Use a form

Indigency Issues: When should it be considered?

- At Magistration?
 - Yes - appointment of counsel (may or may not be your job)
 - Art. 15.17 Must admonish re: the right to counsel and appointed counsel (not class C's)
 - Art. 26.04 Appointment of Counsel
 - Your county should have indigence defense plan
 - Guidelines to determine indigence will be set by the body of judges.

Indigency Issues: When should it be Considered?

- **When does the Court Consider the Financial Resources of the Defendant?**
 1. When determining whether Defendant has "Insufficient Resources" and will be Discharging Fines/Cost via Community Service (Art. 45.049, CCP)
 2. **PRIOR** to "commitment" on a capias pro fine (Sec. 45.046, C.C.P.)
 - Issuing the Capias Pro Fine is not a Touch Down
 - Don't Stop at the 50 yard line!
 - This is how folks get sued!
- **Setting Fine?**

Indigency Issues: When should it be Considered?

- **Art. 45.049 Community Service in Satisfaction of Fine or Costs**
 - Defendant must fail to pay a previously assessed fine or costs **OR**
 - Determined by the court to have insufficient resources
 - May discharge all or part of amount

Indigency Issues: When should it be Considered?

- **Art. 45.046 Commitment**
 - Prior to commitment, the must be judgment and sentence entered
 - Judge at a hearing must make **WRITTEN** determination that:
 - Def is not indigent and has not made good faith effort; or
 - Def IS indigent and has failed to make a good faith effort **AND** could have discharged under 45.049 (community service) without undue hardship
 - Can use electronic broadcast
 - Certified copy of judgment, sentence, and commitment order is sufficient to authorize confinement

Indigence History

**The Era of Pay or Lay
1890-1871**



Tex. Code Crim. Proc., Art. 45.53 (1966),
provided in pertinent part:

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

- "1. That he is too poor to pay the fine and costs;
and
- "2. That he has remained in jail a sufficient length
of time to satisfy the fine and costs, at the rate of
\$ 5 for each day."

And then Along Comes Preston Armour Tate

- Laborer
- *Chronic Scofflaw*
- 9 Convictions
- \$ 425.00
- Unable to Pay
- Municipal Judge
Converted Fine To Time
- 85 Days
- 21 Days Later - Writ of
Habeas Corpus



At Tate's Habeas Hearing The State Stipulates:

- He is Poverty Stricken
- His Whole Family Has
Been
- For All Periods of Time
Herein
- And Probably Always
Will Be
- \$25-\$60 Casual
Employment
- \$104 Monthly VA Check
- Supports a Wife and Two
Children
- Owns a Car

The Saga Begins!

- August 1968 - Habeas Relief DENIED by Harris County
Court at Law
- July 1969 - Habeas Relief DENIED by Texas Court of
Criminal Appeals
 - "His Status as indigent does not render him immune from
prosecution."

March 1971 - Tate v. Short
(SCOTUS)

"Since Texas has legislated a "fines only" policy for traffic offenses, that statutory ceiling cannot, consistently with the Equal Protection Clause, limit the punishment to payment of the fine if one is able to pay it, yet convert the fine into a prison term for an indigent defendant without the means to pay his fine. Imprisonment in such a case is not imposed to further any penal objective of the State."

Tate Mandates We Provide "Alternative Means"



Community Service Comes in THREE Flavors

1. As a Mandatory Remedial Measure (status offenses involving juveniles: MIP, DUI, MIC, Tobacco, etc.)
2. As a reasonable condition of Deferred Disposition (Art. 45.051(b)(10) CCP)
3. As a Means for an Indigent Person to Discharge fine and Costs (Note: Must be Indigent. Community Service is as good as \$\$\$)



Key Statutes: Community Service and the Indigent

Article 45.049 C.C.P.,
Community Service to in satisfaction of fine or costs:

- "insufficient resources or income to pay fine and costs"
- "discharge all or part of fine and costs"
- "must specify the number of hours the defendant is required to work"

*only for a governmental entity or nonprofit org. that provides services to the general public that enhances social welfare and the general well being of the community'

- agreement to supervise and report on the defendant's work

- generally not more than 16 hours per week

- not less than \$50 per 8 hours of community service

But What if the Defendant is Unable to Perform Community Service?

45.091 Waiver of Payment of Fines and Costs

- For Indigent Defendants
- Judge may waive payment on defaulting defendant on finding:
 - Defendant is indigent; and
 - Discharging judgment via Community Service will impose undue hardship.

III. Enforcement Mechanisms for Defendants who Default in Judgment

- A. Capias Pro Fine & Commitment (Secs. 45.045-046, C.C.P.)
- B. Civil Collection - Justice or judge may order fine and costs collected by execution against defendant's property in same manner as in a civil suit (Sec. 45.047, C.C.P.)
- C. Contempt - Sec. 21.002(b), Gov. Code Ex parte Gonzalez (1997)



Steps Leading Up to Commitment on Capias Pro Fine

- | | |
|---|---|
| 1. Appearance | 5. Arrest on CPF |
| 2. Plea | 6. Commitment Determination Order (Art. 45.046) |
| 3. Final Judgment | 7. Commitment |
| 4. Capias Pro Fine (not the same as a "Capias") | |

Why must we?

- Supreme Court (Tate v. Short)
 - Equal Protection under the 14th Amendment
- Required in Code of Criminal Procedure
- Code of Judicial Conduct
 - Canon 1 Upholding the Integrity and Independence of the Judiciary
 - Canon 2 Avoiding Impropriety
 - A judge shall comply with the law and act at all times in a manner that promotes public confidence
 - Canon 3 Performing duties Impartially and Diligently

Questions?

- Thankyou!