



IMPOSING FINES, FEES, & COURT COSTS

- Make meaningful use of the fine range because after a judgment is final, there is no statutory authorization to change the fine amount.
• If a defendant enters a plea in open court, the judge shall inquire whether the defendant has sufficient resources or income to immediately pay all or part of the fines and costs...
• For defendants who do not enter a plea in open court, if the judge determines that the defendant is unable to immediately pay the fine and costs...
• A judge may require any defendant 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.

2019 Poverty Guidelines

Table with 2 columns: Persons in Family / Household, Poverty Guidelines. Includes a note: For families/households with more than 8 persons, add \$4,420 for each additional person.

DETERMINING INDIGENCE

- Judges shall only consider a defendant's present ability to pay.
• Judges have discretion in determining whether a defendant is indigent.
• Judges may use the Federal Poverty Guidelines or the Living Wage Calculator as guidance for an indigence determination.
• Judges may also require a defendant under oath to provide income and asset information.
• The discretionary factors for determining "undue hardship" may also be helpful in determinations of indigence.
• When a defendant does not pay all the fine and costs at the time of sentencing, it is important for courts to communicate and document its expectation to the defendant...

BAIL

- As a general rule in Texas, bail may not be denied.
• It is important to distinguish bail set by a magistrate and bail set by a judge.
• It is well established in Texas case law that ability or inability to make bail does not, alone, control in determining the amount; it is an element to be considered along with the others in Art. 17.15, C.C.P.
• While bail should be sufficiently high to give reasonable assurance that the defendant will appear, it is not to be used as an instrument of oppression.
• A defendant in jail charged with a Class C misdemeanor must be released on personal bond or reduction of bail if the State is not ready for trial within 5 days of commencement of detention.

Table with 2 columns: Enforcement Type, Program/Action. Rows include Active Enforcement (Capias Pro Fine), Passive Enforcement (DPS Omni FTA Program, TxDOT Scofflaw Program), Private Enforcement (Collection Firms), and Civil Enforcement (Abstract of Judgment, Writ of Execution).

COURT ACTIONS ON NON PAYMENT

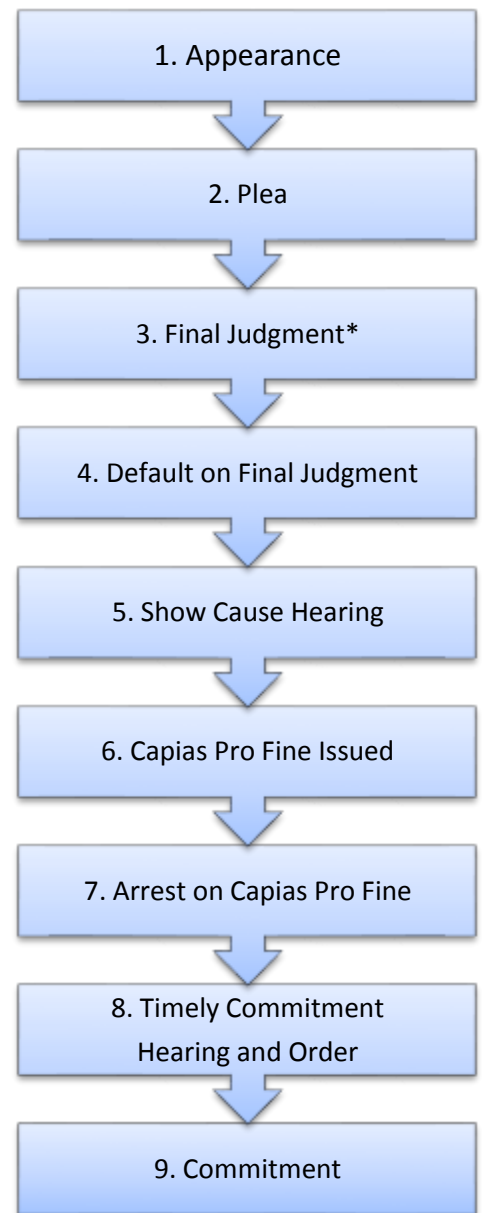
PERMISSIBLE ACTIONS

- Payment Plan or Extension of Time to Pay
• Community Service
• Waiver of All or Part of Fines or Costs if Alternative Means Impose an Undue Hardship
• Capias Pro Fine (after a show cause hearing)
• Commitment Hearing
• Suspension of Driver's License
• Refusal to Register a Motor Vehicle
• Collection Services
• Execution Against Property in Same Manner as in a Civil Suit

IMPERMISSIBLE ACTIONS

- Holding Defendant in Jail on a Capias Pro Fine Beyond the Business Day Following the Date of the Arrest Without the Commitment Requirements in Art. 45.045, C.C.P.
• Commitment to Jail Without Providing an Opportunity for Community Service or Without a Commitment Hearing and Written Determination under Art. 45.046, C.C.P.
• Requiring a Bond to See the Judge
• Refusal to Accept Filings
• Altering a Final Judgment (unless by a nunc pro tunc order for a clerical error)

Steps Leading to Commitment:



1. Article 45.041(a-1), C.C.P.
2. Article 45.041(b-2), C.C.P.
3. Article 45.049(a), C.C.P.
4. Article 1.053, C.C.P.
5. Article 45.0491(c), C.C.P.

6. Art. I, Sec. 2, Texas Constitution
7. Ex Parte Bufkin, 553 S.W.2d 116, 118 (Tex. Crim. App. 1977).
8. Article 17.151, C.C.P.
9. Article 45.0491, C.C.P.

10. Article 45.045(a-2), C.C.P.
11. Article 45.046, C.C.P.
12. Section 706.002, Trans. Code.
13. Section 702.003, Trans. Code.
14. Article 45.047, C.C.P.

* The defendant may seek a reconsideration of the fine or costs (see, Art. 43.035 and Art. 45.0445, CCP).

PROCEDURES RELATED TO FINES, FEES, COSTS, AND INDIGENCE

I. ABILITY TO PAY (Arts. 45.041, 45.0445)

A. Open Court Inquiry

- When imposing a fine and costs on defendant who enters a plea in open court, **judge required to inquire whether defendant has sufficient resources/income** to immediately pay all or part of the fine and costs.
- If judge determines defendant does not have sufficient resources/income, required to **determine whether fine/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.

B. Reconsideration (Defendant's Show Cause)

- Judge required to hold a hearing to determine whether judgment imposes an undue hardship if the defendant gives notice that they have difficulty paying the fine and costs in compliance with the judgment. 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 CHILDREN (Art. 45.0491)

A. Courts may waive all or part of a fine or costs and must no longer wait for a defendant to default if:

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

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

- in 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 Subsection (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 45.058(h).

III. JAIL CREDIT RATE (Art. 45.048)

A defendant should be given credit of not less than \$100 for each period of confinement (8-24 hours as determined by judge).

IV. CAPIAS PRO FINE (Art. 45.045)

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 judge finds undue hardship, then judge should consider alternate means (pay at later date, payment plan, community service, waiver, or combination). If judge finds there is no undue hardship, judge must order the defendant to comply within 30 days of the determination. Issuance of **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. 45.049, 45.0492)

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 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. 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, BOND, AND PRETRIAL RELEASE IN A MUNICIPAL COURT (Arts. 17.42, 45.016)

A. Post-charging, judge may require defendant to give **personal bond** (without assessment of personal bond fee); however, **the judge may not**, either instead of or in addition to personal bond, **require defendant to post a 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 defendant does not post a required bail bond within 48 hours of the court's order, **judge must reconsider bail bond and presume defendant does not have sufficient resources/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. 45.014, 45.045)

A. A justice or 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 justice or judge under Article 45.0445 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 for failure to appear at the initial court setting, unless notice by phone/mail that includes: (Art. 45.014)

- Date/time, within 30-day period following date of notice, when defendant must appear (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; and
- an explanation of the consequences of defendant's failure to appear as required.

C. Upon receiving a plea of "guilty" or "nolo contendere" and waiver of jury trial, 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

A. Judge may allow a defendant to appear by telephone or videoconference, if requiring 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.