

Regional Roundtables 2019-2020

“Get defendants on a plan they can succeed on from the get-go.”



Roundtable Discussions in Lewisville, TX



Texas Municipal Courts Education Center
Funded by a grant from the Texas Court of
Criminal Appeals

ACKNOWLEDGMENTS

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FROM THE DIRECTOR

Perhaps nothing makes us appreciate the special value and importance of a small group conversation like a pandemic and one too many Zoom meetings.

Between October 2019 and February 2020, TMCEC staff traveled more than 6,000 miles to bring the regional roundtable experience described in this publication to municipal court personnel. No Wi-Fi necessary! We travelled by car and airplane to five different cities in five different regions of Texas.

The temperature and the topography changed between cities, but the format of the conversation and the questions used in each locale remained the same. Another thing that remained constant was the collegiality of participants and careful consideration of the legal issues.

In recent years, the imposition of fines, the role of court costs, inability to pay, and matters pertaining to bail and jail commitments have been at the front of conversations regarding criminal justice in Texas. This subject matter is governed by many new laws. We believe that the successful implementation of these new laws is fostered by having the opportunity to have new conversations across the Lone Star State in small group settings.

Granted, we were disappointed that we were not able to make it to all 10 regions. We only made it to five before COVID-19 became part of our shared vocabulary. Nevertheless, we are grateful to the Texas Court of Criminal Appeals and the Texas Legislature for special rider funding that made these regional roundtables possible. Furthermore, we believe that the issues summarized in this publication will benefit all municipal courts throughout Texas and provide the foundation for future conversations.

Regards,



Ryan Kellus Turner
Executive Director
Texas Municipal Courts Education Center

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OVERVIEW

About TMCEC Regional Roundtables:

PURPOSE:

The purpose of the AY 20 Regional Roundtable series was to educate municipal judges and court personnel about the proper implementation of new procedures regarding bail, fines, fees, requests for community service, jail commitments, and jail misdemeanors. Special focus was given to alternative means of discharging defendants without an ability to pay in full. The program was a unique opportunity for people within the same region of Texas to engage with one another, share common issues, and have an open dialogue in a guided setting.

COURSE MATERIALS:

Course materials included a list of discussion questions; a Fines, Fees, Costs & Indigence Bench Card; 2019 & 2020 Court Costs Charts (Effective September 1, 2019 & Effective January 1, 2020); a comparison chart of Former and Amended Law - S.B. 346 (86th Regular Legislative Session); and a Comparison of Former and Amended Law - H.B. 351 and S.B. 1913 (85th Regular Legislative Session).

The curated list of discussion questions provided the structure for the roundtable and directed the flow of the timed conversation. Importantly, the course materials also included a “bench card.” One side of the card contains information related to fines, fees, costs, and indigence. The flip side of the card contains a summary of the law related to each question set. Altogether, the bench card provides education on current law, sets the legal backdrop participants will need to engage in the guided discussion, and acts as a handy tool for applying the concepts in court.

SET-UP:

TMCEC hosted roundtables in five of the state’s ten judicial regions. Each roundtable consisted of a timed conversation where each question had a recommended allotment of time. This ensures that each question associated with the nine enumerated topics was discussed.

Participants read the legal backdrop for each topic section of the bench card, then fielded the corresponding discussion questions.

REGION ONE

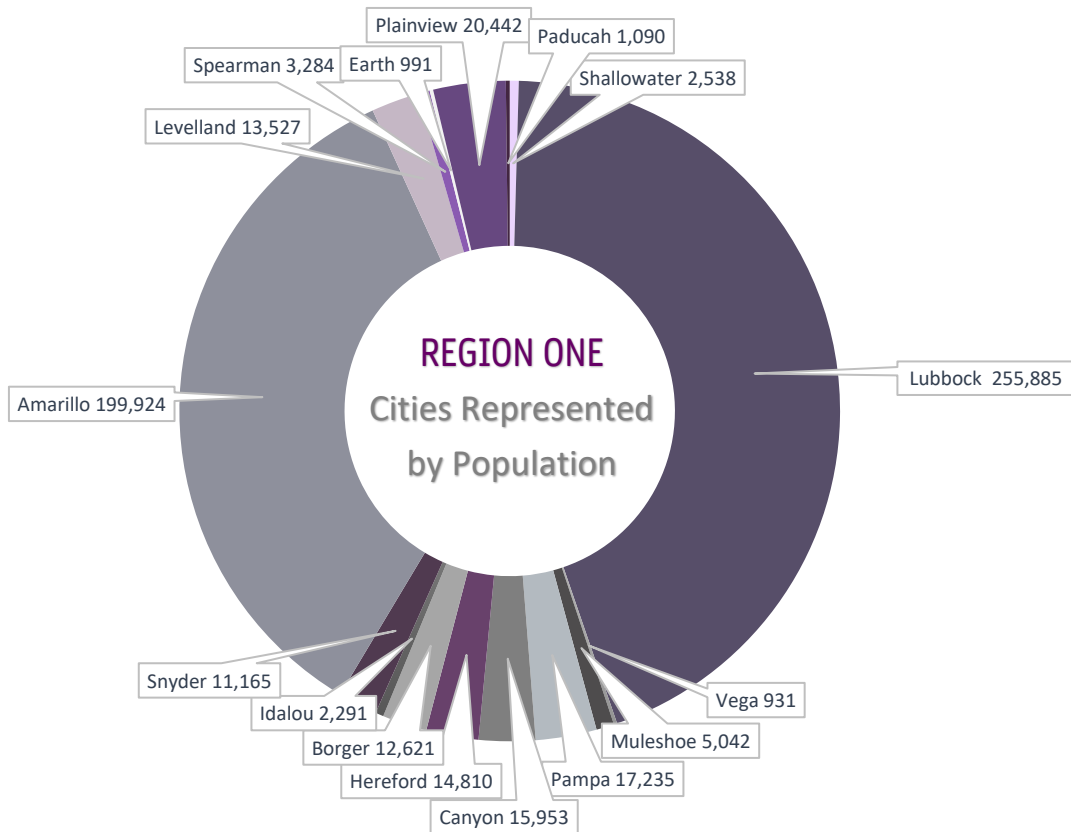
The regional roundtables began in the Texas Panhandle. The Canyon Municipal Court hosted the Region 1 Roundtable on October 4, 2019. Thirty-two representatives attended, including 18 judges. This region's participants represented cities of the panhandle plains, including Borger, Lubbock, Idalou, Amarillo, Hereford, Spearman, Paducah, Levelland, Pampa, Plainview, Canyon, Vega, Shallowater, Earth, Snyder, and Muleshoe.

This region had many ideas about how judges can meet the challenge of giving a reconsideration hearing to all defendants who request one under Article 45.0445(b) of the Code of Criminal Procedure. Responses highlighted the differences in approach between larger urban courts and smaller rural courts. Larger courts, like Lubbock and Amarillo, suggested creating a separate docket for "defendant's show cause hearings" to meet the challenge of reconsideration. However, smaller courts identified that this could pose a fiscal challenge, especially if additional judges or clerks were needed to manage these new dockets. Small courts in the region typically operate part-time, some even rely on judges to act as their own clerk.

Participants focused discussion on the new definition of community service (which was expanded in 2017). Courts noted that community service is a challenge in the region because there were few qualified providers and the public perceived "picking up trash by the highway" as the only available option. The region was excited for the opportunities created by the law change but remained concerned about the lack of traditional providers in the region. Some participants recommended creative solutions including connecting defendants to educational outlets. They noted that most towns have access to a community college, trade school, or GED program.

Throughout the discussion, the groups reiterated the double-edged sword of incorporating more technology into the courtroom. Participants identified the potential benefits (increased appearances, expanded community services options, full-coverage record keeping, etc.). But they also noted that the region is full of "internet deserts." Spotty connectivity and low bandwidth could impede Region 1 courts from fully utilizing digital tools.





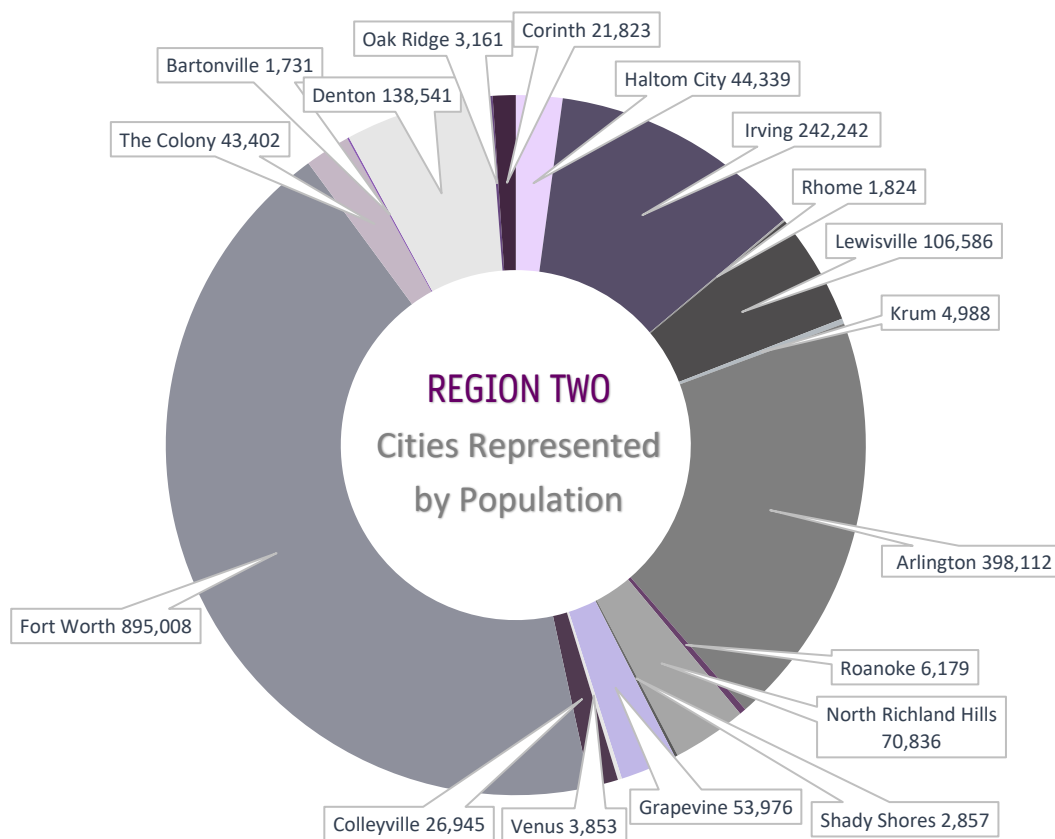
REGION TWO

The second regional roundtable was held in North Texas. The Lewisville Municipal Court hosted the Region 2 Roundtable on November 1, 2019. Twenty-seven representatives attended, including 14 judges. Cities represented include Rhome, Irving, Fort Worth, The Colony, Bartonville, Denton, Oak Ridge, Corinth, Colleyville, Lewisville, Haltom City, Krum, Arlington, Roanoke, Shady Shores, Venus, North Richland Hills, and Grapevine.

Participants identified that the region was prone to jail-credit reporting issues. Unlike most Texas cities, many North Texas cities host municipal jails. Therefore, a defendant with a Class C misdemeanor could accumulate jail credit from a number of facilities before appearing in a municipal court. Some judges noted that it can be difficult to identify the *origin* of a defendant's jail credit, since there is often an extended chain of custody. The group suggested possible additions to the courts' reporting process: identify concurrent credit (i.e., when a defendant has warrants in five cities but was jailed in one); confirming with jails the dates jail credit was awarded; and identifying which charges the jail credit was awarded for. The courts also agreed that this information could be better communicated to the public. They suggested altering orders to reflect these variations and create a more accurate public accounting of their jail-credit awards.

The group spent a great deal of time discussing the new “safe harbor” provisions in Art. 45.014 and 45.045 of the Code of Criminal Procedure and brainstormed ways to align ongoing initiatives to get the word out to their communities. Some courts pointed to the success of community outreach initiatives like mobile court where proceedings are held in community centers, libraries, or school gymnasiums. Mobile courts respond to the notion that people are generally scared to go to court itself, due to proximity to law enforcement or negative past experiences. Moving the physical location of the court to more neutral and community-friendly areas encourages greater participation.

Courts utilized a number of tools to get the word out about mobile court. They advertised on their court and city websites, posted notice on billboards and TxDOT traffic signs, engaged with social media, and appeared in traditional media like TV, radio, and print. Participants determined that these methods could be re-tooled to communicate new safe harbor provisions.



REGION THREE

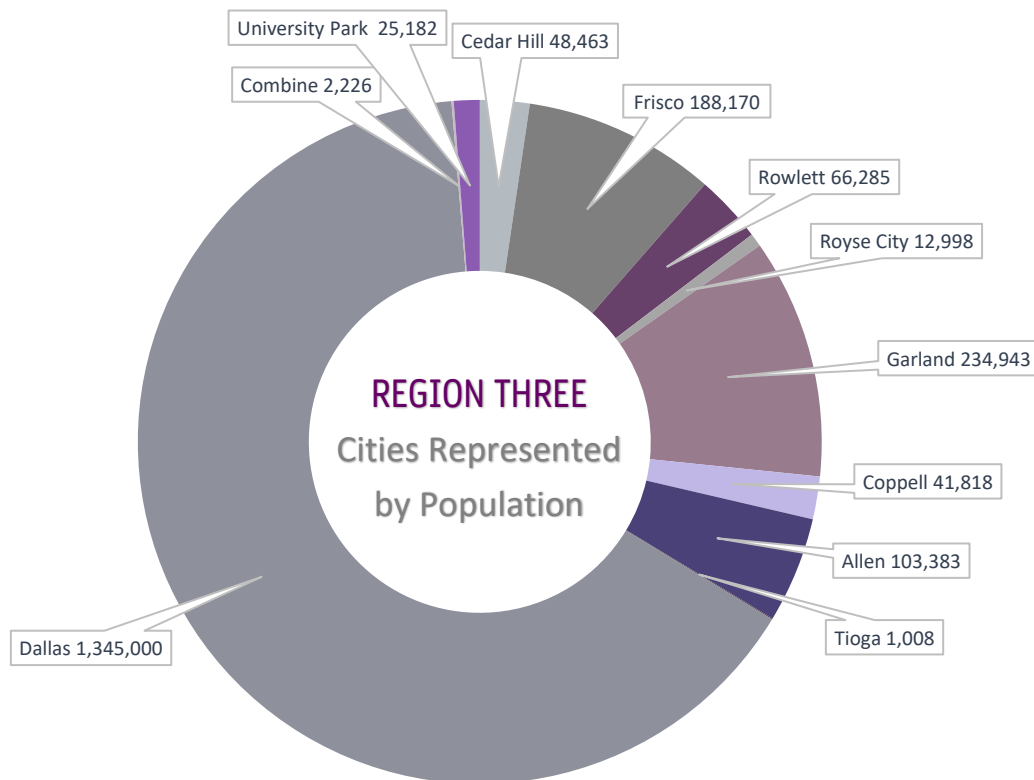
The third regional roundtable was also held in North Texas, this time capturing the metroplex of Dallas and its surrounding cities. The Dallas Municipal Court hosted the Region 3 Roundtable on December 6, 2019. Thirty-five representatives attended, including 20 judges. This region’s

participating cities included Dallas, Rowlett, Royse City, Frisco, University Park, Cedar Hill, Coppell, Combine, Allen, Garland, and Tioga.

Participants focused on the *capias pro fine* discussion section centered on jail access. Courts noted that, while they have access to temporary detention centers, they frequently lack access to jail for Class C misdemeanors. These cities often rely on the county to provide jail beds but most do not have the bed space or refuse to take or hold defendants charged with Class C misdemeanors. The City of Dallas contracts with Dallas County for their housing but admits it is an expensive proposition. Compounding this issue, jails charge a premium cost-per-day to cities who use them.

Participants also detailed the metroplex “grand tour” where a defendant may be arrested on a warrant somewhere else in the metroplex and held until their home jurisdiction (that issued the warrant) can pick them up. The group noted that “pick ups” do not always occur. Some defendants are released before their arrest can be communicated to their home jurisdiction. Others are simply too far away to justify the cost of going to get them. This leads to situations where a defendant may be picked up multiple times by different municipalities for the same charge. Courts lamented the lack of communication and alignment of resources between law enforcement, jails, and courts.

Region 3 also had unique insight on determinations of indigence. Courts acknowledged that they tend to assume every defendant could be indigent rather than waiting for defendants to prove this. This mindset allows courts to plan for 100% of defendants to use a payment plan. Participants acknowledged that courts from this region are largely located in urban centers and operate with full-time staff. These resources provide a different baseline from other regions and gives metroplex courts greater capacity to handle the administrative workload of managing payment plans.



REGION FOUR

The fourth regional roundtable was held in East Texas. The Tyler Municipal Court hosted the Region 4 Roundtable on January 17, 2020. Thirty-five representatives attended, including 19 judges. This region's participating cities included Diboll, Lufkin, Forney, Malakoff, Mount Enterprise, Jacksonville, Sulphur Springs, Garrison, Quitman, Tyler, Longview, Kilgore, Rusk, Overton, Cuney, Mount Vernon, Tatum, Winnsboro, Pineland, Alto, Henderson, and New London.

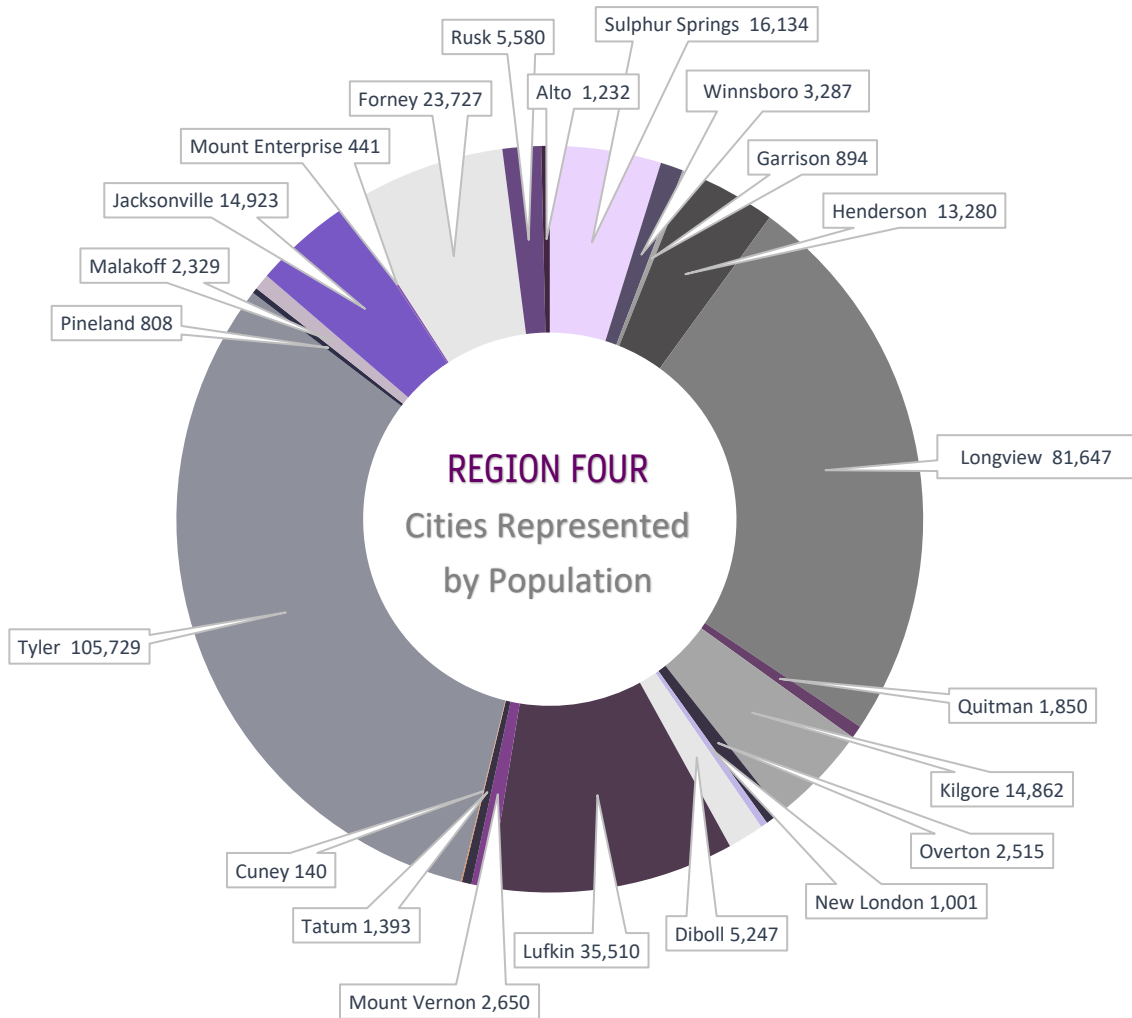
The law requires various notices about alternatives to full payment (on citation, prior to warrant, prior to *capias pro fine*, etc.). Region 4 courts communicated that they rely mostly on mailed notice for initial contact with defendants. However, they acknowledged that, while sending notice to a defendant's last known address technically suffices, achieving compliance generally requires more effort. Some courts had plans to follow-up mailed notice with phone calls. They noted anecdotally that phone calls had good return rates. However, some were worried about documenting notice by phone. Some clerks use case management software to keep track of notice by phone, recording the interaction in the digital case file. However, participants sometimes realized diminishing returns from increased effort.

To provide notice to defendants upon appearance before the court, many courts post required notices on the clerk's window or include the notice in the judge's planned pretrial remarks.

Region 4 provided a unique perspective on the expanded rules governing appearance by telephone or videoconference under Article 45.0201 of the Code of Criminal Procedure. Judges expressed initial enthusiasm for remote court (particularly judges who worked for multiple cities). However, they expressed concern over the decreased formality of proceedings.



Roundtable
Discussions
in Tyler, TX



REGION FIVE

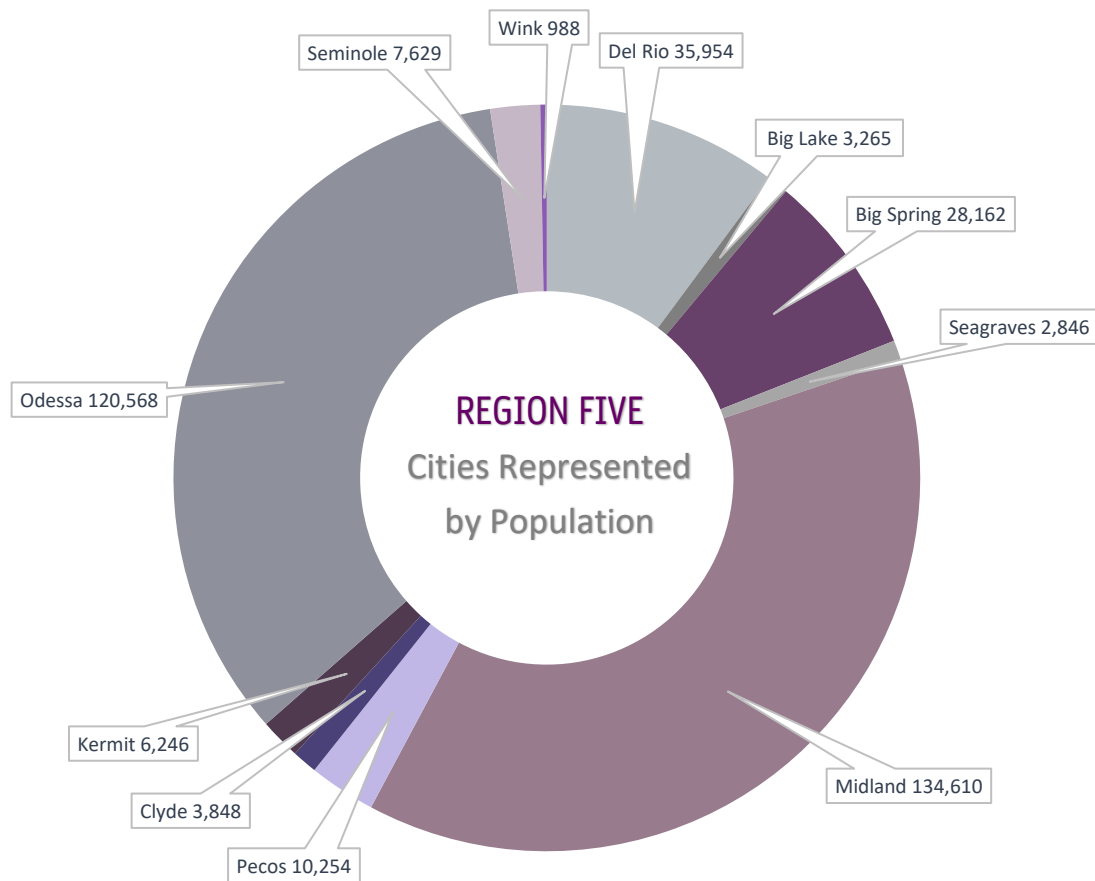
The regional roundtables concluded in West Texas. The Midland Municipal Court hosted the Region 5 Roundtable on February 7, 2020. Thirty-two representatives attended, including 15 judges. Hailing from the Chihuahuan Desert, this region’s participants represent cities near the New Mexico and Mexico borders, the Pecos River, and everywhere in between. Cities represented include Del Rio, Big Lake, Big Spring, Clyde, Kermit, Midland, Odessa, Pecos, Seagraves, Seminole, and Wink.

This region had many ideas about how judges can meet the challenge of giving a reconsideration hearing to all defendants who request one under Article 45.0445(b) of the Code of Criminal Procedure: specialized dockets, flexibility, and communication. For example, several participants said they have an open docket for individuals to come in for reconsideration. One judge explained that she has a specialized docket for reconsideration, but defendants are not limited to that docket. She will hold a reconsideration hearing at the end of any docket they attend.

Flexibility was a theme of the discussion. One judge shared that a defendant who works in the oil field called the court to explain that he could not come to a hearing. If he missed work, he would lose his job. The judge and the defendant worked it out by telephone instead. Flexibility was also discussed in decision-making. Participants preferred documentation of some kind to support an extension to pay or a change in how the judgment would be discharged but recommended being flexible enough to adjust based on a conversation with the defendant.

Another participant stressed the importance of providing defendants enough information at the initial appearance to know that if they need an extension, to come back to the court. Other participants agreed that telling defendants at the time of judgment to come back to the court if they cannot make a payment on time is a best practice.

Collectively, the group recommended keeping track of the number of reconsideration hearings conducted, even though that number is not reported to the Office of Court Administration.



EXECUTIVE SUMMARY

Regional directors and TMCEC staff guided participants through a structured discussion centered on statutes and procedures related to fines, fees, costs, and indigence, including new legislative changes. Below is a summary of common responses across all five regions using the structured topics and questions.

I. Ability to Pay (Arts. 45.041, 45.0445, CCP)

A. Open Court Inquiry: When imposing a fine and costs on a defendant who enters a plea in open court, the judge is required to inquire whether the defendant has sufficient resources/income to immediately pay all or part of the fine and costs.

1. What is said in your court?

Courts offered similar phraseology region-to-region: How would you like to take care of this fine? Are you prepared to pay that amount today? Could you pay within 30 days? What about 90 days? If I asked you to pay the maximum fine allowed right now, would you be able to?

A small number of courts opted for a more direct line of questioning: Where do you work? How much do you make? Are you on Supplemental Security Income (SSI) or Social Security Disability (SSD)?

These questions are generally a planned remark asked of every defendant for the sake of consistency and coverage (and so no one defendant feels singled out). Across regions, judges plan these questions as part of a standard “bench script.”

2. What kind of follow-up questions were asked?

Common follow-up questions include prompts for more information so defendants can chart their own path forward for discharging their debts. Many judges ask follow-up timing questions: Do you need more time? How much time do you need? Other judges want to hear about alternatives to payment the defendant might be interested in or have access to such as, “Could you do community service?”

3. Are there bad ways to ask this question?

Courts agreed that not asking at all was a bad option. Other bad methods include presumptive questions like “cash or card?” and imperatives like “you must pay today.” These approaches do not allow a defendant to communicate their present ability to pay and so cannot inform a judge’s order.

This line of questions also prompted several considerations. Courts recommended admonishing all court attendees to consider their ability to pay before pleas are taken to have them start thinking about how much time they might need to pay. Some courts engage other court personnel in the

process, having the prosecutor make a preliminary attempt to capture data at a pre-trial hearing or having a clerk pass out financial information forms.

Courts also repeated similar social considerations across the surveyed regions, noting that many defendants are embarrassed to talk about finances in front of a crowd in open court. Whatever track a judge chooses to take, courts agreed that ability-to-pay questioning works best if other court attendees cannot hear the defendant's answer. Some judges across regions recommended having defendants approach the bench to limit eavesdropping from a live audience.

4. When does the judge make the inquiry? Before, while, or after imposing the fine and costs?

Most courts make the ability-to-pay inquiry after imposing the fine and costs, with an eye toward scheduling the appropriate docket down the road. For example, many courts want to anticipate adding a defendant to an indigence docket or a payment plan docket.

5. Does your court pronounce the fine and cost together or separately?

Most courts announce the fines and costs together. They noted that the average defendant does not “feel” a difference between fines and costs on their pocketbook. Furthermore, the defendant will ultimately owe both, so it makes sense for a defendant to be concerned about the bottom line (i.e., how much they will end up paying overall).

Some courts announce the fines and fees separately: “Your fine is \$X, the costs & fees are \$Y, together it is \$Z.” The theory is that separating the two categories helps the defendant understand where the amounts are coming from. Separating amounts in this way highlights defendant-specific costs (e.g., warrant fee).

B. Reconsideration Hearing (“Defendant’s Show Cause” Hearing): A judge is required to hold a hearing to determine whether the judgment imposes an undue hardship if the defendant gives notice that they have difficulty paying the fine and costs in compliance with the judgment.

Most defendants charged with a Class C misdemeanor have the option to plea by mail. Defendants who enter a plea by mail never appear before a judge in open court. Therefore, they miss the built-in opportunity to describe their ability to pay. Under a recently-passed provision in Article 45.0445(b) of the Code of Criminal Procedure, a defendant can request a hearing by (1) voluntarily appearing, (2) filing a motion, (3) mailing a letter, or (4) any other method established by the judge.

1. How might a court meet the challenge of this requirement (i.e., give a hearing to every defendant who asks for one)?

Although the reconsideration hearing is new to statutory law, many courts have been conducting them for years. Therefore, most courts do not think this will create procedural challenges. Most courts already communicate to defendants that “if something goes wrong, just come talk to us because we want to resolve your case.” Most courts agreed with the operating theory that as long as a defendant wants to work with the court, the court will work with them.

Large courts across the regions foresee the creation of a new docket for these “defendant’s show cause” hearings. But they recognize that this may present a fiscal challenge, especially for small courts, who would be hosting more dockets than normal.

Courts generally agreed that the potential for additional show-cause hearings emphasizes the need to give defendants the ability to effectively address their case from the outset. Then a show-cause hearing is not necessary. Courts noted anecdotally that defendants become less and less likely to appear at subsequent hearings. So capturing data at the earliest hearing is critical to building a plan the defendant can successfully complete.

2. If it is not required to be reported by OCA, will your court keep track of the number of “defendant’s show cause” hearings held?

Courts found little consensus on the answer to this question but echoed similar concerns region-to-region. They noted that capturing data helps create a consistent narrative, justifies costs to city councils, and allows the court to define their own benchmarks. However, data collection burdens are already high across the board.

3. What documentation, if any, will your court likely expect defendants to present at this hearing (beyond things you would inquire about in an ability-to-pay inquiry)?

Judges would prefer to use self-reported information as a baseline. A number of courts cited a need for standard forms to capture this data (such as the TMCEC Application for Time Payment, Extension, Community Service, or Waiver sample form). Judges noted that using self-reported information had the added benefit of getting defendants to think about their financial situation and could facilitate more productive discussions.

Judges also suggested using independently verifiable documentation, such as written proof of federal benefits for Social Security Disability or Supplemental Security Income.

4. Would your court welcome technology that would allow defendants to submit their financial information to the court via an online portal prior to appearing in court?

Many courts expressed cautious interest. They acknowledged that ready access to this type of information could lead to quicker determinations, more holistic sentencing, and greater successful completion of conditions. However, courts tempered their enthusiasm by noting several potential downsides. They registered concern over handling and keeping defendants’ personal information and HIPPA protected information like Social Security Disability status. Access to this information also comes with added management burdens, particularly with expunctions, fielding public information requests, and maintaining cyber security.

Additionally, small, rural courts across regions noted that they often lack technology infrastructure. Many do not have court websites or robust case management software. And some face inadequate internet bandwidth for basic court functions.

II. Waiver of Payment Option; Presumption of Indigence for Certain Children

A. Waiver (Art. 45.0491, CCP): A municipal court may waive payment of all or part of the costs imposed on a defendant if the court determines that the defendant is indigent. And courts may waive all or part of a fine and must no longer wait for a defendant to default if: (1) the court determines the defendant is indigent or does not have sufficient resources/income to pay all or part of the fine or costs or was a child at the time of the offense; and (2) discharging the fine or costs through community service (or extension/installments) would impose an undue hardship.

1. What is the difference between a defendant being “indigent” and “not having sufficient resources to pay all or a part of a fine or costs?”

Generally, courts agreed that “insufficient resources” may be self-imposed. A defendant may have resources and access to capital, but may overextend it by over-spending, servicing debts, or otherwise living beyond their means. On the other hand, indigence was seen as a genuine lack of resources. Courts pointed to the federal poverty guidelines as a handy resource for determining indigence, but the term is not clearly defined. Someone who is indigent may also be receiving government benefits.

2. Which occurs more frequently in your court, partial or total waiver?

Participants concurred that they tend to do a total waiver. Three main reasons were given. One, if a court is looking to bring down the total cost for an indigent defendant, it is easiest to cut down the costs and fees because you do not need a showing of undue hardship (like you would with waiving fines). Two, with payment plans and partial payment, money that is paid first still goes to costs and fees, so waiving costs can help discharge fines earlier. And three, it is easiest to communicate total waiver to clerks inputting waivers into case management software or calculating by hand.

3. Does your case management software create any issues when waiving?

Most courts that use case management software agreed that the software can handle it. The real trick is making the judge’s orders sufficiently clear when communicating with the clerk exactly which costs and fees are being waived or in which proportions. Therefore, most consider it easier to use total waiver.

B. Undue Hardship: The law now provides examples of things that may constitute an “undue hardship.” These include: 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.

1. Are there any circumstances that are not addressed by the law which could also constitute an “undue hardship?”

A majority found the list useful and inclusive. Some additions include the loss or change of benefits.

2. What is the distinction between “hardship” and “undue hardship?”

Fines are designed to be a punishment and deter future criminal behavior (by their nature, they create a hardship). As a baseline, a hardship is something that can be managed with tools like payment plans or alternative means of discharge. In contrast, most courts agreed that a fine poses an “undue hardship” when it becomes unmanageable or insurmountable. In these situations, the defendant cannot pay and will never be able to pay. Some examples given include fines that force an untenable choice: I can pay but I won’t be able to feed my kids.

III. Jail Credit Rate (Art. 45.048, CCP): A defendant shall be given credit of not less than \$100 for each period of confinement (8-24 hours as determined by judge).

A. Has your court ever given more than the minimum amount of jail credit required by law?

Some courts give more, but most courts give the statutory minimum. When it comes to Class C misdemeanors, the fine amount is relatively low and can be satisfied by a few periods of confinement. Courts expressed reluctance to give more than the statutory minimum (without clear authority) but generosity in counting time. For example, some courts use the lowest period of confinement (8 hours = \$100) and others count transport and/or booking time as confinement.

Most courts also award jail credit when a defendant served time on a charge that was not a Class C misdemeanor.

B. Are you aware that generally the public cannot tell the difference between (1) when people are committed to jail for non-payment, (2) when jail credit is awarded because it is required by law, and (3) when judges give more than the minimum amount of jail credit required by law? Did you know that OCA data has been used to argue that Texans are incarcerated thousands of years over traffic-ticket debt?

All courts were unaware of the misconception that—by awarding jail credit for non-Class C misdemeanors—they were contributing to the public perception that they were incarcerating individuals for fine-only misdemeanors.

Many judges justified the inclination to award credit as a way to give a break to defendants who are already meeting obligations for other criminal charges and to recognize the hardship of jail time.

C. What data could be collected to more completely inform the public about jail credit?

Some judges suggested changes in order writing. For example, the order could capture more information relating to the award of jail credit and reflect the situation at hand to show whether (1) the defendant is committed to jail for non-payment; (2) jail credit is awarded because it is required by law; (3) the judge is giving more than the minimum amount of jail credit required by law; (4) the judge

is awarding jail credit with other charges pending; or (5) the judge is identifying concurrent credit (like when a defendant has warrants in five cities, is jailed in one and receives credit in all jurisdictions).

Clerks also have a role in the process. They noted that they are well-situated to use administrative and record-keeping tools to confirm the dates of jail credit awards, what warrant a defendant is coming into court on, and which charges the jail credit was awarded for.

D. In lieu of giving more jail credit than required by law, should courts consider using waiver?

A majority of courts agreed that waiver would be the better vehicle since it is tailored to the judge's discretion (unlike awards of jail credit, which are more formulaic). Courts want the data they produce to reflect the truth. And the truth is defendants do not spend much time in jail on Class C misdemeanors alone. Awarding jail credit to achieve the same result as waiver creates a false narrative.

Judges also noted that jail credit should be a judicial determination. Up until now, constables and warrant officers have been determining how much jail credit to put on paperwork.

Cities with municipal jails had more nuanced concerns. They explained that expanded reporting is easier said than done. Others noted that it is often difficult to tell when a defendant has jail credit from another municipal jail since the chain of custody can be long.

IV. Capias Pro Fine: A 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 the judge finds undue hardship, then the judge should consider alternative means (pay at a later date, payment plan, community service, waiver, or combination). If the judge finds there is no undue hardship, the judge must order the defendant to comply within 30 days of the determination. Issuance of a capias pro fine can only occur if the defendant fails to: (1) appear at the hearing or (2) comply as ordered as a result of the hearing.

A. Assuming a defendant shows up for a capias pro fine show cause hearing and the court determines there is no undue hardship, the court must now order the defendant to comply with the court's order within 30 days prior to issuing a capias pro fine.

1. What is this change in law attempting to accomplish?

Most courts agreed that those who show up to a show cause hearing deserve some credit. This change allows those who come in to take care of business to get an automatic 30-day extension (even if they can pay). However, this also seems like "kicking the can down the road." At some point, the court must close the case. In an instance where the defendant cannot demonstrate good cause for non-payment the court has less options. The defendant has had every opportunity to comply but still has not complied, likely will not comply, and cannot show good cause. Commitment is the last resort for compliance.

However, courts were sensitive to the allegation that they act as debtors' prisons. At the very least, courts agreed that this provision gives an opportunity for courts to document that they have given the defendant every opportunity to resolve his or her case. Now the case file can tell the whole story.

B. Jail Access

1. Does your court have ready access to a jail for Class C misdemeanors?

Most cities (except for some North Texas municipalities) do not maintain municipal jails. Operating a jail carries high liability and is seen as more trouble than it is worth. Since it is rare for an individual to be jailed on a Class C misdemeanor alone, most cities contract with or rely wholly on the county jail system to manage Class C misdemeanor offenders. While cities technically have access to jails, certain hurdles exist.

Judges raised several issues related to jail access across regions. Many brought up that county jails will not take defendants charged with a Class C misdemeanor for a number of reasons: overcrowding; incurring costs to the city from the county; and transportation issues (who is going to move a defendant from the municipal court to jail upon commitment).

2. Does your court utilize the *capias pro fine*?

Some municipal courts continue to use the *capias pro fine* in limited cases. Judges noted that the threat of arrest and commitment can bring some defendants into court. But courts expressed a preference for using other enforcement mechanisms. Some utilize the summons, OmniBase, Scofflaw, collections firms, and/or civil enforcement measures.

3. If you do use the *capias pro fine*, what procedures do you have in place to ensure a timely commitment hearing per Art. 45.045(a), CCP? *This question did not produce many responses, but it did present an opportunity for court personnel to read the provision in full.*

Under Art. 45.045(a) of the Code of Criminal Procedure, 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*, as defined by Article 43.015, 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 immediately or place the defendant in jail until the business day following the date of the defendant's arrest if the defendant cannot be brought before the court immediately.

Judges agreed with the principles of Article 45.045(a) but expressed worry about its applicability. It could be feasible in cities with full-time magistrates operating 24/7 but cities with part-time judges may have a harder time. The jail may notify a judge, but if a judge is not available, then the jail will release the defendant on notice to appear, re-arrest, and start the process all over again. At the other end of the spectrum, some police departments do not even pick these defendants up so warrants and *capias pro fines* continue to issue with no result or consequence.

V. Requirements and Options for Community Service

A. The definition of community service was expanded in 2017.

1. Since the law changed, has your court's community service practices changed?

The general theme for responses was to use the new community service opportunities to educate and improve the community. Suggested community service options included credit for:

- Advancing in education; many cities have community colleges, trade schools, or GED programs;
- Attending financial planning classes and implementing the lessons;
- Getting a driver's license, including the time and labor involved;
- Attending victim impact panels;
- Attending drug/addiction counseling;
- Attending parenting classes;
- Time invested searching for a job; and
- TxDOT distracted driving classes, both in-person and online.

Some courts suggested designating a Programs Coordinator to craft community service orders specific to the defendant. That person can collaborate with juvenile case managers who already vet youth programs. Community service remains a challenge for rural Texas with few qualified providers.

Courts saw the expanded community service rules as an opportunity to give defendants credit for the community-building activities they are already connected to or interested in (greater chance of successful completion). Most responses included a desire to tailor the community service to the offense. For example, defendants with a drug offense could receive credit for attending addiction counseling or a victim impact panel. In another example, transient populations (who may be difficult to stay in touch with) could receive credit for giving contact information and connecting to social services.

2. Under Article 45.049(d) of the Code of Criminal Procedure, a court may not order more than 16 hours of community service a week unless the judge determines that it would not constitute an undue hardship on the defendant or their dependents.

(a) What information does the court need to craft a community service order that the defendant can successfully complete?

Suggestions included identifying a defendant's obligations and barriers, such as work or education responsibilities, child and family care obligations, transportation barriers, mental and physical health status, etc.

(b) How can courts increase the chances of successful compliance of a community service order?

Across all the surveyed regions, courts agreed that seeking information regarding a defendant's existing obligations or barriers is critical to drafting a successful order. An order that does not take these factors into consideration will set a defendant up for failure and possible commitment.

Flexibility of the order was also important. If new information or conditions appeared, courts suggested allowing the defendant to communicate these changes and altering the order in response.

Some courts also acknowledged the importance of connecting defendants to services. Court is one of the few venues where an individual can be compelled to appear. Participants recommended using the court as a way station to connect defendants to services. Another suggestion was hosting social service providers and mental health professionals in-house.

VI. Provisions Relating to Bail, Bond, and Pretrial Release in a Municipal Court

A. Class C Misdemeanor Arrests

1. When an individual is arrested on a Class C misdemeanor warrant out of your court, do you perform magistrate duties?

Some cities contract with local jails to provide around-the-clock magistration services. In smaller cities, there are less magistrates (often a choice between the justice of the peace or the municipal judge), so municipal judges are more likely to magistrate the individuals who will appear before them in court. Some mid-sized cities have multiple judges while others utilize rotations. The odds of a municipal judge seeing someone they've magistrated decreases proportionally to the size of their city.

2. Does your locality regularly use Article 15.17(b) of the Code of Criminal Procedure, which authorizes certain defendants arrested on Class C misdemeanors to be released without bond and ordered to appear in court?

Article 15.17(b) states that, "After an accused charged with a misdemeanor punishable by fine only is taken before a magistrate under Subsection (a) and the magistrate has identified the accused with certainty, the magistrate may release the accused without bond and order the accused to appear at a later date in the applicable justice court or municipal court. This subsection does not apply to an accused who has previously been convicted of a felony or a misdemeanor other than a misdemeanor punishable by fine only."

The general response was that this section is a useful power for magistrates handling Class C misdemeanor offenders and is especially useful for the indigent population who are without cash or sureties. However, across the regions, magistrates were split on whether they have information about past convictions in front of them to successfully utilize Article 15.17(b).

VII. “Safe Harbor” - Recall of an Arrest Warrant for Failure to Appear and a Capias Pro Fine

A. Getting the word out: what is the best way for courts to communicate the “safe harbor” provisions to the public?

Participants had a number of ideas for getting the word out:

- Posting on the court website or social media;
- Adding an announcement to the court auto-teller message or clerk phone script;
- Including the notice in any correspondence sent to defendants;
- Robocalls;
- Utilizing virtual hearings (before COVID-19, this option was without express authority);
- Connecting with defense attorneys;
- Posting on billboards and electric signs; and
- Teaming up with other city agencies and departments to put the notice into utility bills.

Once the word is out, the challenge becomes getting people to participate. Courts agreed that, despite knowledge of “safe harbor” provisions, the public is likely to be wary of going to court. Most people generally do not want to be there. Some may fear arrest or contact with other government agencies. Some courts have found success in hosting court outside of the courthouse building, using firehouses, school gymnasiums, or local libraries to connect to communities. However, these participants noted that security concerns are a factor whenever judges are in the public eye. Other courts recommended rebranding “Warrant Roundup” as “Warrant Compliance” or an amnesty initiative.

VIII. Requirements for Providing Notice

A. The law requires various notices about alternatives to full payment (on the citation, prior to warrant, prior to capias pro fine, etc.) (collection firms must also give these notices).

1. How does your court provide these notices and what documentation do you have to prove they were given?

Courts communicated numerous means of providing required notices. Many worked with local police departments to include admonishments and court contact information on citations. Those with websites post the admonishments on the homepage. Others still use automated tellers or robocalls to communicate the message when defendants call the court. However, common concerns revolve around volume and cost. Automated systems and printed/mailed notice can be expensive for the court. Websites also involve high upfront costs.

IX. Appearance by Telephone or Videoconference (Art. 45.0201, CCP)

A. How may a court utilize Article 45.0201 and still meet its obligation to hold open court proceedings?

Most courts reported that they already have computers as part of their technology supply. However, (before COVID-19) very few had implemented videoconferencing software or hardware.

Courts agreed that expanding video conferencing could increase appearances, but they communicated common concerns and limitations. First, security. There is a growing awareness of the cybersecurity vulnerabilities of municipalities and local governments. These entities house defendants' sensitive personal information and have little capital to invest in security, making them targets for cyber-attack. Increasing the court's reliance on technology and digital interfaces could increase this risk. Second, courts noted that indigent defendants may not have access to technology, limiting the impact these changes would have on communities who need the most access. Finally, rural courts across each surveyed region noted low bandwidth or spotty internet in their communities.

Courts suggested numerous measures for satisfying Open Court requirements. Like in-person proceedings, the main concerns revolved around access (i.e., who can hear, see, and attend). Moving hearings online increases access for those who have reliable internet but impedes access for those who do not. Most agreed that the best practice was to err on the side of redundancy. For example, use a video conference system on large screens to broadcast clearly within the court room for those physically present, then couple this with robust online access.

A. What about identity issues? How can you be sure who is on the other side of the transaction?

Courts noted that they face similar challenges determining the identity of participants with in-person hearings and written communications. Almost every region raised concerns over processes for capturing and verifying signatures.



Roundtable Discussions in Dallas, TX



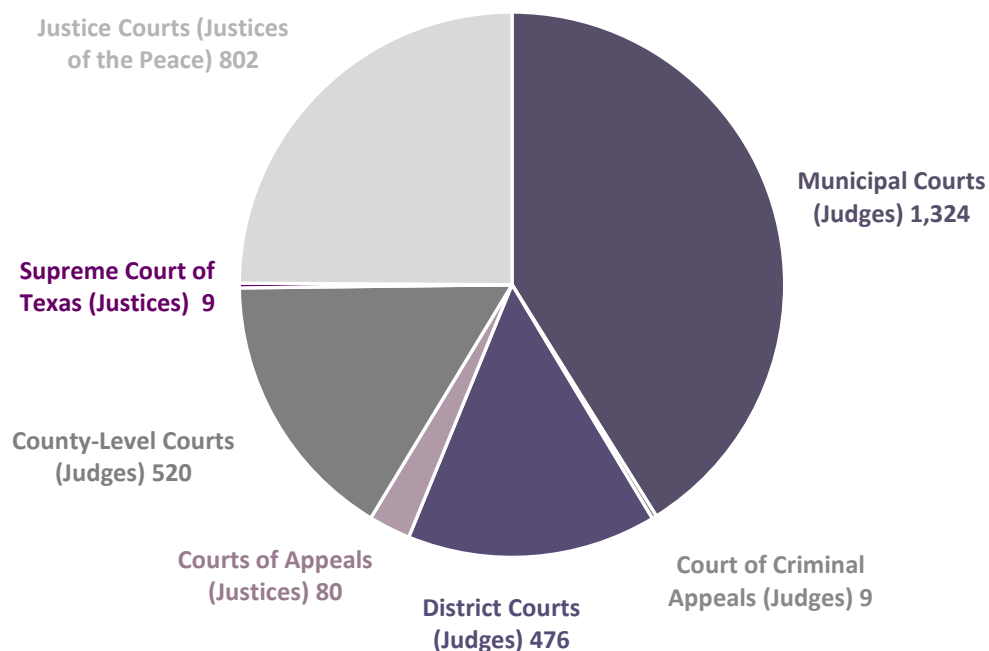
Roundtable Facilitators in Midland, TX

CONCLUSION

More individuals (e.g., defendants, witnesses, and jurors) come into contact with municipal courts than all other Texas courts combined. Because these interactions are often the only direct exposure a person will have to the courts, the public’s impression of the entire Texas judicial system is largely dependent upon their experience in municipal court. As such, it is vital that municipal courts ensure equal protection, preserve due process, and treat all individuals with dignity and respect. This starts with a firm grasp on all applicable laws.

TEXAS JUDICIARY BY THE NUMBERS

TOTAL NUMBER OF JUDGES: 3,220



Texas laws providing procedural protections to low-income defendants are among the best in the nation. In fact, *Tate v. Short* (1971), one of the early U.S. Supreme Court decisions related to indigence issues, originated in Texas. Since *Tate*, the Texas Legislature has addressed indigence and related issues numerous times. They have created, revised, and repealed state laws to reflect the most current guidance regarding indigence and the enforcement of fines. All criminal defendants, whether charged with a felony or a fine-only misdemeanor, are entitled to these procedural safeguards.

The structured format of the AY20 Regional Roundtable series fostered understanding, cooperation, application, and evaluation. The fair administration of justice has always been a foundation of TMCEC’s judicial education. In recent years, however, TMCEC has added emphasis to issues related to fines, fees, costs, and indigence. This is in response not only to significant legislative changes, but also increased media attention to fine-only misdemeanors. The roundtables represent

a continuation of this focus. They provided an opportunity for judges, court support personnel, and other municipal employees to get together and demonstrate a commitment to implementing new procedures regarding bail, fines, fees, community service, jail commitments, and jail credit.

The enterprise of municipal courts in Texas has undergone significant change in the last 20 years. Increased subject matter jurisdiction and a litany of new laws and legal issues have redefined their role. Challenging the misconception that municipal courts are little more than revenue generators that exclusively adjudicate traffic offenses, municipal courts in the 21st century serve a critical role in ensuring procedural fairness, preserving public safety, protecting quality of life in Texas communities, and deterring future criminal behavior.

TAKEAWAYS:

- 1. In response to new legislation, municipal judges have paid close attention to what to ask defendants during an open inquiry on ability to pay, what constitutes an undue hardship for the purposes of waiver, public perception of the court's message, crafting community service orders, and communicating safe harbor policies.**
- 2. Many courts had existing procedural safeguards in place for low-income defendants. Such procedures give defendants the ability to effectively address their case from the outset.**
- 3. Municipal courts are using innovative community service opportunities to educate and improve the community.**
- 4. Regarding orders and enforcing judgments, flexibility is key.**
- 5. To more completely inform the public about jail credit, courts should collect data that makes a distinction between pre-jail credit, post-jail credit, and credit otherwise rewarded by a judge in the interest of justice.**
- 6. Technology can be leveraged for sending notice, but potentially creates hurdles concerning the right to a public trial and receiving financial documentation from defendants.**
- 7. Communication is critical for implementing the new procedures, ensuring access and fairness for defendants, and dispelling unnecessary fears of arrest.**



Thank you to all who participated in the AY 20 Roundtables! TMCEC is pleased to announce the AY 21 Regional Roundtable and Statewide Summit. Look for more information on tmcec.com and in the upcoming Winter Academic Schedule.

