

THE BRIEF



Information for Texas Municipalities about Texas Municipal Courts (January 2018)

Judgment and Sentence Fines and Court Costs

In Texas, it is the law that when a person accused of a Class C misdemeanor is convicted in municipal court, the judgment and sentence is that the defendant pays the fine and court costs. The law seems simple.

But is it? Consider the following: A defendant enters a plea of guilty to a traffic offense. After accepting the plea, the court gives the defendant an opportunity to be heard before sentencing. The judge imposes a lenient sentence and fines the defendant only one single dollar (\$1.00).

How much money does the defendant owe?

- One correct answer, the least amount of money the defendant could legally owe, is \$93.10 (i.e., a \$1.00 fine + a minimum of \$92.10 in court costs).
- Another possible answer, assuming that under state law the city has ordinances authorizing the assessment of local fees, is \$105.10 (i.e., a \$1.00 fine + a minimum of \$92.10 in court costs + \$12.00 in local fees).
- Yet another possible answer exists if the defendant does not pay the fine and court costs owed within 30 days of the judgment, the court blocks the defendant's ability to renew their driver's license, or a warrant is issued. The defendant could owe \$210.00 (i.e., a \$1.00 fine + a minimum of \$92.10 in court costs + \$12.00 in local fees + \$105.00 in additional court costs). If the city uses a private collection firm, add another 30 percent to the balance.

How much was that fine again? Is it really simple?

Fines and Court Costs

In 2016, approximately \$680 million in fines and costs were collected. Texas cities kept two-thirds of that (nearly \$458 million) and remitted nearly \$221 million to the state.

It is important that city officials understand the difference between *fines* and *court costs*.

Fines are not court costs. Fines are punishment. The purpose of a fine is to deter criminal behavior. (Some believe custom tailored fines are the most effective deterrent.) A fine is set either by a judge or a jury within a range set by the Legislature for state law violations or by a city council for city ordinance violations. Judges and juries are

required to consider the full range of punishment in setting fines. Fines are generally retained by the local government.

Despite their potentially staggering financial impact, court costs are not intended to be punishment. Court costs are intended to defray governmental expense (court costs include fees). State law mandates that court costs be imposed in all criminal cases upon a defendant's "conviction" (which includes charges in municipal courts that are dismissed per a driving safety course or deferred disposition). Ninety percent of court costs collected in municipal courts must be remitted to the State Comptroller. One attorney general opinion stated that payment of court costs superseded payment of fines. State law authorizes the Comptroller to audit cities over matters of court costs.

Court Costs Climb at a High Price

Between 1965 and 2005, court costs in Texas increased 1,760 percent. Controversy has accompanied the increase. Critics contend that most court costs have little to do with cases pending in local courts or their operations and that state law requires the judiciary to collect taxes on illegal behavior. The Court of Criminal Appeals recently invalidated two court costs on such grounds. However, it has also held that a court cost need not arise out of a particular case in order to be legitimate and that as long as the court cost relates to the criminal justice system it is not a tax or a violation of separation of powers.

Repeated increases in court costs by the state government combined with state policies that overemphasized collections of court costs in municipal courts contributed to the public perception that revenue generation is more important than fairness. As detailed in the November issue of *The Brief*, public perception is tied to public confidence and the future of municipal courts likely hinges on whether the public believes that these courts are truly about justice or simply revenue generation.

In contrast to the discretion judges generally have in determining fines, state law, until recently, afforded Texas judges few options and limited discretion in matters pertaining to court costs (even in cases involving indigent and low income defendants).

New Laws, More Options

The good news: State law changed on September 1, 2017. As detailed in the September issue of *The Brief*, the Legislature passed H.B. 351 and S.B. 1913, which provide judges more leeway in using installment payments, community service, full or partial waiver, or any combination when a defendant is unable to pay *either* the fine *or* court costs.

***The Brief* is a periodic briefing for Texas mayors, city council members, and other local officials highlighting issues and increasing awareness and understanding of municipal courts in the Lone Star State. For more information visit: www.tmcec.com.**

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