

Texas Office of Court Administration
Bench Card for Judicial Processes Relating to the Collection of Fines and Costs
Justice and Municipal Court Version – Applies to Fine-Only Offenses

LAWS IMPACTING THE ASSESSMENT AND COLLECTION OF FINES AND COSTS IN CRIMINAL CASES.¹

➤ **REQUIREMENTS FOR PROVIDING NOTICE TO DEFENDANTS**

- Citations must include information regarding alternatives to the full payment of any fine or costs assessed against the person if the person is convicted of the offense and is unable to pay that amount. (Art. 14.06(b))
- When a defendant fails to appear at an initial setting, including an initial setting set by citation, the justice or judge must not issue a warrant for the defendant's arrest for failure to appear, unless:
 - (1) the justice or judge previously provided notice by telephone or regular mail to the defendant, and that notice included:
 - a date and time that the defendant must appear before the justice or judge;
 - the name and address of the court in which the defendant must appear;
 - information regarding alternatives to full payment if the defendant is unable to pay any fine or costs owed;
 - (NEW) a statement that the defendant may be entitled to jail credit if the defendant was confined in jail or prison *after* committing the offense for which the defendant must now appear;² *and*
 - an explanation of the consequences if the defendant fails to appear as required by the notice; *and*
 - (2) the defendant failed to appear as required by the notice. (Art. 45.014)
- If a defendant mails or delivers a plea and jury waiver to the court prior to the defendant's scheduled court date, or after the defendant's scheduled court date but at least 5 business days before a scheduled trial, upon receiving the plea and waiver, the court must provide notice in person or by regular mail to the defendant, and that notice must include:
 - 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 alternatives to full payment if the defendant is unable to pay any fine or costs owed. (Art. 27.14(b))

➤ **REQUIREMENT TO RECALL AN ARREST WARRANT FOR FAILURE TO APPEAR (Art. 45.014)**

- If a defendant voluntarily appears to resolve an arrest warrant before it is executed, the justice or judge must recall the arrest warrant.

➤ **PROVISIONS RELATING TO BAIL AND PRETRIAL RELEASE (Arts. 17.42, 45.016)**

- A justice or judge may not, either instead of or in addition to a personal bond, require a defendant to post a cash or surety bond unless:
 - the defendant fails to appear with respect to the applicable offense; *and*
 - the justice or judge determines that:
 - the defendant has sufficient resources or income to give a cash or surety bond; *and*
 - a cash or surety bond is necessary to secure the defendant's appearance in court.
- If a defendant does not post bail within 48 hours after the court's order to do so, the justice or judge must reconsider the requirement that the defendant post a cash or surety bond and assume that the defendant does not have sufficient resources or income to post the cash or surety bond. The justice or judge may require the defendant to give a personal bond instead.

¹ Unless noted otherwise, statutory references are to the Texas Code of Criminal Procedure

² Credit is at the rate of \$150.00 for each day of confinement. (Art. 45.041(c-1))

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➤ **REQUIREMENT FOR ASSESSING ABILITY TO PAY DURING OR IMMEDIATELY AFTER SENTENCING** (Art. 45.041)

- During or immediately **after imposing a sentence in a case in which a defendant entered a plea in open court**, a justice or judge **must inquire whether the defendant has sufficient resources or income** to immediately pay all or part of the fine and costs.³
- If the justice or judge determines that the defendant does not have sufficient resources or income to immediately pay all or part of the fine and costs, the justice or judge **must determine whether the fine and costs should be:**
 - required to be paid at some later date or in a specified portion at designated intervals;
 - discharged by performing community service;
 - waived in full or part; or
 - satisfied through any combination of these methods.

➤ **ASSESSING A FINE AND COSTS WHEN DEFENDANT IS UNDER CONSERVATORSHIP OF DFPS OR IN EXTENDED FOSTER CARE** (45.041(b-6))

- When imposing a fine and costs, the justice or judge should not require a defendant who is under the conservatorship of the Department of Family and Protective Services or in extended foster care to pay the amount imposed. **Instead, the justice or judge should require the defendant to perform community service.**
- The justice or judge must provide the defendant **with a credit of \$100.00 for each 8 hours of community service performed.**

➤ **REQUIREMENTS AND OPTIONS FOR COMMUNITY SERVICE** (Arts. 45.049, 45.0492)

- An **order requiring a defendant to perform community service must specify:**
 - the number of hours to be performed; and
 - the date by which a defendant must submit proof of completion of the community service hours to the court.
- **Community service options have been expanded** to include not only service provided to a governmental entity or certain nonprofit organizations, but also:
 - attending a work and job skills training program, a preparatory class for the GED, an alcohol or drug abuse program, a rehabilitation program, a counseling program, a 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.
- A justice or judge may not order a defendant to perform more than **16 hours per week** of community service, unless the justice or judge determines that additional hours will not impose an undue hardship on the defendant or the defendant's family or dependents.
- A defendant **discharges \$100.00 of fines or costs for each eight hours of community service** performed.

➤ **WAIVER OF FINES AND COSTS; PRESUMPTION OF INDIGENCE** (Art. 45.0491)

- **Courts no longer need to wait for a defendant to default before waiving all or part of a fine or costs.** A justice or judge may waive all or part of a fine if the justice or judge determines that:
 - the defendant is indigent, does not have sufficient resources or income to pay all or part of the fine or costs, or was a child at the time of the offense; and

³ Unlike Article 42.15(a-1), Article 45.041 does not require the inquiry to be on the record.

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- discharging the fine or costs by an alternative method, including performing community supervision, would impose an undue hardship on the defendant.
- **A defendant is presumed to be indigent or without sufficient resources or income** to pay all or part of the fine or costs if the defendant:
 - is under the conservatorship of the Department of Family and Protective Services, or was in conservatorship of that department at the time of the offense; or
 - is designated as a homeless child or youth or an unaccompanied youth, or was so designated at the time of the offense.

➤ **REQUIREMENTS FOR ISSUING A CAPIAS PRO FINE; DUTY TO RECALL (Art. 45.045)**

- **A court may not issue a capias pro fine** for the defendant’s failure to pay or satisfy the judgment **unless**:
 - the court first holds a hearing to determine whether the judgment imposes an undue hardship on the defendant; and
 - the defendant fails to appear at the hearing or to comply with an order previously entered after an earlier undue hardship hearing (“It didn’t impose an undue hardship then, and it doesn’t impose one now”). (a-2)
- In addition, the court must **recall a capias pro fine** if, before the capias pro fine is executed, **the defendant**:
 - notifies the court** that the defendant is having a difficult time paying the fine and costs;⁴ or
 - voluntarily appears** and makes a good faith effort to resolve the amount owed. (a-5)

➤ **CONFINEMENT AFTER THE DEFENDANT DEFAULTS IN DISCHARGING THE JUDGMENT (Art. 45.046(a))**

- If a defendant defaults in discharging a judgment, a justice or judge may order the defendant **confined in jail only if the justice or judge holds a hearing and makes a written determination** that:
 - the defendant is not indigent and has failed to make a good faith effort to discharge the fine or costs; or
 - the defendant is indigent and has failed to make a good faith effort to discharge the fine or costs by performing community service when performance of such service would not have imposed an undue hardship on the defendant.

NOTE: *The U.S. Supreme Court has held that courts may not incarcerate a person for nonpayment of fines or fees without first establishing that the person’s failure to pay was willful. *Bearden v. Georgia*, 461 U.S. 660 (1983)*

➤ **JAIL CREDIT RATES (Art. 45.048)**

- A defendant who is placed in jail for failure to pay the fine and costs must be **given a credit of not less than \$150.00 for each period of confinement**, which period is determined by the court and must be not less than 8 hours or more than 24 hours.

➤ **DEFENDANT’S NOTICE OR MOTION TO RECONSIDER THE FINE OR COSTS (Art. 45.0445)**

- If a defendant notifies the court that the defendant has difficulty paying the fine and costs, **the justice or judge must hold a hearing to determine whether the judgment imposes an undue hardship on the defendant**. However, the justice or judge may decline to hold a hearing if the justice or judge: (1) can determine without holding a hearing that the judgment does impose an undue hardship on the defendant and an alternative method of

⁴ A defendant may notify the court by: (1) voluntarily appearing and informing the court or clerk in the manner established by the court for that purpose; (2) filing a motion with the court; (3) mailing a letter to the court; or (4) using any other method established by the court for that purpose. (Art. 45.0445(b))

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satisfying the fine and costs is available; or (2) previously held a hearing on the matter and is able to determine without holding another hearing that the judgment does not impose an undue hardship on the defendant.⁵

➤ **UNCOLLECTIBLE FINES AND FEES** (Art. 103.0081)

- A justice or judge **may enter a finding that a fine, fee, including a reimbursement fee, or other item of cost is uncollectible if:**
 - the defendant is deceased;
 - the defendant is serving a life sentence or a sentence of life without parole; or
 - the fine, fee, including a reimbursement fee, or other item of cost has been unpaid for at least 15 years

⁵ For instance, because the defendant's circumstances have not changed since the last hardship hearing.