

STATE OF TEXAS

RESOLUTION

of the

TEXAS JUDICIAL COUNCIL

Modification of Statutes Governing Assessment and Satisfaction of Criminal Court Costs

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Council is charged with improving the administration of justice; and

WHEREAS, in 1971 the United States Supreme Court held that imprisoning a defendant unable to pay fines denied equal protection;¹ and

WHEREAS, in 1983 the United States Supreme Court held that a person could not be punished for his or her poverty and that before imposing jail for failure to pay court costs or fines, courts are required to inquire as to whether the missed payment was attributable to inability to pay, and if so, “consider alternative measures of punishment other than imprisonment;”² and

WHEREAS, the *Bearden* case also found that “states are not powerless to enforce judgments against those financially unable to pay a fine...[and can] establish a reduced fine or alternate public service in lieu of a fine that adequately serves the state’s goals of punishment and deterrence, given the defendant’s diminished financial resources;” and

WHEREAS, in fiscal year 2015, the Texas justice and municipal courts assessed over \$1 billion in court costs and fines in fine-only offenses; and

WHEREAS, despite the fact that the courts in the state are provided statutory authority to allow defendants to satisfy these legal financial obligations through community service, work programs, electronic monitoring and tutoring programs, less than 2 percent (only 67,108) of the cases were fully or partially satisfied through these options; and

WHEREAS, over 16 percent of the assessments in these fine-only offenses were satisfied by jail credit; and

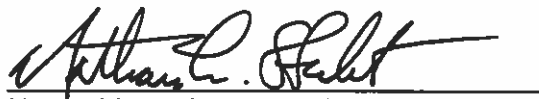
WHEREAS, judges need additional flexibility and tools to ensure that defendants comply with their legal financial obligations without causing an undue hardship on the defendant.

¹ *Tate v. Short*, 401 U.S. 395 (1971)

² *Bearden v. Georgia*, 461 U.S. 660 (1983)

NOW THEREFORE, BE IT RESOLVED that the Texas Judicial Council urges the Legislature to:

1. Require that citations, summonses, and other notices from the court to defendants contain standard language regarding options for the defendant, if found guilty, to satisfy the fines and court costs, including non-monetary alternatives authorized under law, and the consequences for failing to appear;
2. Require courts to provide – via telephone, electronically or by mail – to the defendant notice of options for reestablishing compliance, including non-monetary alternatives authorized under law, at least 30 days prior to issuance of a warrant for failure to appear or a *capias pro fine*;
3. Prohibit courts from requiring defendants not in custody to post bail in order to set a hearing with the court or to have a warrant lifted and be permitted to plead not guilty on a ticket where there was a previous failure to appear at the initial appearance;
4. Prohibit courts from requiring any defendant in custody on a Class C misdemeanor charge from having to post monetary bail to secure release;
5. Clarify that judges are required to assess a defendant's ability to pay fines and court costs prior to assessment of those fines and court costs;
6. Provide judges the express authority to waive fines and court costs at any time if a defendant has an inability to pay those fines and costs;
7. Provide additional options for judges and defendants to satisfy court costs and fines;
8. Increase the amount of credit provided to individuals satisfying court costs and fines through community service from not less than \$50 per 8 hours to not less than \$100 per 8 hours;
9. Ensure that judges review non-compliance with payment of fines and court costs for willful non-compliance prior to issuance of a warrant by holding a show cause hearing to determine whether the defendant willfully did not pay the fines and costs owed in the case;
10. Ensure that defendants voluntarily seeking to reestablish compliance at a court are not arrested at the court on warrants on Class C misdemeanors issued for failure to pay fines and court costs;
11. Repeal or amend court costs and fees that are imposed on defendants due to their inability to pay fines and court costs immediately, including repealing the time payment fee (\$25), transaction fee (\$2), and the driver's responsibility program;
12. Authorize judges to waive the Omnibase fee and scofflaw program fee for defendants who have an inability to pay;
13. Limit the percentage authorized to be charged in fees by private collections companies and attorneys to no more than 15 percent of the total debt owed to the court;
14. Limit impacts of failure to pay that result in further recidivism by capping the amount of time a driver's license can be suspended for failure to pay to 2 years;
15. Grant similar authority to municipal judges as justice court judges to issue occupational drivers' licenses and clarify the authority of courts to charge filing fees for the action; and
16. Prohibit courts from referring cases to private collections companies prior to adjudication of guilt.



Honorable Nathan L. Hecht
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