

## **Bench Card for Judicial Processes Relating to the Collection of Fines and Costs**

### **District and County Court Version – Applies to Jailable Offenses**

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.<sup>1</sup>

There is new law in Texas which affects the imposition and collection of fines and court costs and impacts trial courts at all levels.<sup>2</sup> [Senate Bill 1913](#) and [House Bill 351](#) were passed by the 85<sup>th</sup> Legislature, Regular Session, and became effective on September 1, 2017.

Key procedural elements of the new law are as follows:<sup>3</sup>

⇒ **NEW REQUIREMENT FOR ASSESSING ABILITY TO PAY DURING OR IMMEDIATELY AFTER SENTENCING** (Art. 42.15)

- At the sentencing of a defendant who enters a plea in open court, when imposing a fine and costs **the judge is required to inquire whether the defendant has sufficient resources or income** to immediately pay all or part of the fine and costs.
- At this time, **the judge shall also consider** the defendant's financial history and other relevant ability to pay information.
- If the judge determines that the defendant does not have sufficient resources or income, **the judge is required** to 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 through the performance of community service;
  - waived in full or part; or
  - satisfied through any combination of these methods.

⇒ **NEW REQUIREMENTS AND OPTIONS FOR COMMUNITY SERVICE** (Art. 43.09)

- Any **order requiring a defendant's performance of community service must:**
  - specify the number of hours to be performed;
  - designate which agency will perform the administrative duties associated with defendant's placement in a community service program; and
  - include 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; or 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.

<sup>1</sup> *Bearden v. Georgia*, 461 U.S. 660 (1983).

<sup>2</sup> Jurisdictions required to operate a collection improvement program must also follow [rules](#) promulgated by the Texas Judicial Council. See [1 Tex. Admin. Code § 175](#).

<sup>3</sup> Statutory references are to the Texas Code of Criminal Procedure.

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(Art. 43.09) cont'd

- A **16-hour limit applies to the amount of community service** that a defendant may perform each week, unless the court allows additional hours after determining that additional hours will not impose an undue hardship on the defendant or the defendant's dependents.
- **Credit for each eight hours of community service** performed is **\$100 per day**.

⇒ **NEW WAIVER OF PAYMENT OPTION** (Art. 43.091)

- **Courts may waive all or part of a fine or costs and must no longer wait for a defendant to default** in payment to exercise this option if:
  - the court determines that the defendant is indigent; or the defendant 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.

⇒ **NEW REQUIREMENTS FOR PROVIDING NOTICE TO DEFENDANTS FROM COLLECTIONS VENDORS** (Art. 103.0031(j))

- **Communication to a defendant from a public or private vendor contracted to provide collection services** for unpaid fines and court costs **must include**:
  - 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.

⇒ **NEW REQUIREMENTS FOR ISSUING A CAPIAS PRO FINE; DUTY TO RECALL** (Art. 43.05)

- While a **court can issue a capias pro fine for unpaid fines and costs** after judgment and sentence, **a court may not issue a capias pro fine** unless:
  - the court first holds a hearing on the defendant's ability to pay; and
  - based on evidence presented at the hearing, the court determines that the capias pro fine should be issued; or the defendant fails to appear at the hearing.
- In addition, the court must **recall a capias pro fine** if:
  - the defendant voluntarily appears to resolve the amount owed; and
  - the amount owed is resolved in any manner authorized by the law.

⇒ **NEW JAIL CREDIT RATES** (Art. 43.09)

- A defendant who is placed in jail for failure to pay the fine and costs imposed should be given **credit of not less than \$100** of the amount owed for each day served.