



# DRIVEN BY DEBT

# HOUSTON

JULY 2020

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## **Special Thanks to Annie E. Casey Foundation**

This report is a product of our work with the Annie E. Casey Foundation's Southern Partnership to Reduce Debt, which is developing strategies to lessen the impact of criminal and civil judicial fines and fees, as well as medical fees, high-cost consumer products and student loan debt, on communities of color.

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## INTRODUCTION

**Houston-area courts have placed nearly 550,000 holds preventing people from renewing their driver's licenses because they owe fines related to traffic tickets and other low-level, fine-only misdemeanor cases.**<sup>1</sup> These holds on licenses stem not from dangerous driving behavior, but simply due to unpaid debt. These driver's license renewal holds are most heavily concentrated in the city's lower-income areas, where residents are the least able to afford their court debt.

Holds from the Houston Municipal Court are placed on Black residents' licenses at a rate nearly twice their representation in the city's population: 40% of these license holds are applied to Black people, who make up 22% of the city's population.<sup>2</sup> These holds drive people further into the criminal legal system, exposing them to additional tickets, police interactions, arrests and jail. **Especially in this moment of reckoning with racial injustice, these practices require scrutiny.**

When people cannot drive, their ability to obtain and keep employment suffers dramatically. People who are already struggling with poverty are pushed further into debt. Given the steep amounts people have to pay to resolve their fines and fees, and the infrequent use of sentencing alternatives like community service and debt reductions (both used in less than 1% of cases by area courts overall<sup>3</sup>), many people lose hope of ever getting their driver's licenses reinstated. They end up continuing to drive, and then getting more tickets for driving without a license and more holds for not paying those tickets—trapping them in an endless cycle of debt. Meanwhile, obtaining meaningful employment, securing housing, acquiring basic necessities for themselves and their families, and otherwise carrying on with their lives becomes much more difficult without a driver's license. **Removing this barrier to employment is particularly urgent given the economic crisis recently brought on by the COVID-19 pandemic, with unemployment in Houston rising to historic highs.**<sup>4</sup>

In the wake of Michael Brown's fatal shooting by police in Ferguson, Missouri, the subsequent investigation by the United States Department of Justice (DOJ) of the Ferguson Police Department, revealed how low-level municipal court violations in Ferguson were leading to "multiple arrests, jail time, and payments that exceed the cost of the original ticket many times over" as well as suspension of people's driver's licenses in many cases—all stemming from a person not paying fines.<sup>5</sup> The report led to renewed attention to the problem of fines and fees, in particular enforcement mechanisms like jail time for nonpayment that were common in states across the country and how these practices disproportionately harmed Black communities. While the Texas legislature as well as Houston-area courts took steps to improve court procedures in an effort to reduce arrest warrants and jail time for nonpayment of fines following the Ferguson report, we have yet to witness the sort of full-scale reform that would end punishment for poverty. Instead, Houston and Harris County, like almost every other Texas jurisdiction, still rely heavily on driver's license suspensions, warrants, arrests and jail time when fines go unpaid. The result is a system in which police act as debt collectors, frequently arresting mostly Black Houston residents when they do not pay fines—most often because they simply cannot afford them.

**Both the City of Houston and Harris County have the ability to solve this problem through relatively simple solutions:**

1. Stop participating in the OmniBase Program, ending the practice of placing holds on driver's licenses for court debt and lifting all existing holds; and
2. Help all residents resolve their fines and costs through sentences tailored to their ability to pay, like reasonable community service and debt reduction; ending the use of warrants and jail time for nonpayment of fines; and forgiving unpaid debt from old cases.

By implementing these changes, local leaders would remove a major obstacle for tens of thousands of residents struggling to support themselves and their families in the wake of an unprecedented public health crisis and resulting economic crash. They would also help to create a more equitable city and to promote economic resilience across all races and ethnicities and in all neighborhoods.

## HOW DRIVER'S LICENSE SUSPENSIONS & CRIMINAL JUSTICE DEBT CREATE A CYCLE OF DEBT

The City of Houston and Harris County, as well as many surrounding suburbs, have contracted with the Texas Department of Public Safety (DPS), which in turn contracts with a private vendor called OmniBase Services of Texas, to prevent renewal of driver's licenses for people who do not pay their fines in fine-only misdemeanor cases such as traffic offenses, Class C misdemeanors, and city ordinance violations.<sup>6</sup> Through the "OmniBase Program" (also referred to as the Failure to Appear/Pay Program), tens of thousands of new OmniBase holds are issued by area courts each year, preventing people from renewing or obtaining their licenses until the fines and fees are completely resolved.<sup>7</sup>

Not being able to legally drive is a major obstacle to economic stability in Harris County. Most people must drive to work in order to provide for themselves and their families.<sup>11</sup> Yet, by driving without a valid license, they risk receiving more tickets, compounding their debt and driving them deeper into poverty. **Even if someone can avoid commuting to work by car, the mere fact that a person does not have a valid driver's license makes finding and keeping employment and housing more difficult.** A valid driver's license is viewed by employers and others as a sign of stability and trustworthiness, and many employers require applicants to provide one with their applications, even for jobs where driving is not required.<sup>12</sup> Further, while the COVID-19 pandemic has led to job losses in many sectors, there has been an increase in jobs related to delivery service, for which a driver's license is required.<sup>13</sup> A valid license is also commonly required in fields such as construction, health care, manufacturing or office jobs—jobs that often pay above minimum wage and have the potential to help families escape poverty.<sup>14</sup>

Without a valid license, many people lose their jobs and are unable to find another one. A study of drivers with suspended licenses in New Jersey found that 42% lost their jobs when their license was suspended.<sup>15</sup> The impact was even greater on drivers with household incomes below \$30,000: 64% of these drivers lost their jobs when their license was suspended and 51% could not find another job.<sup>16</sup>

Houston is currently in the midst of an economic crisis in the wake of the COVID-19 pandemic, with unemployment reaching historic levels.<sup>17</sup> The pandemic has disproportionately hurt low-income individuals and communities of color in Houston<sup>18</sup>—the same people who are disproportionately denied renewal of their driver's licenses through the OmniBase Program. The OmniBase Program is worsening the job prospects of the thousands of residents desperate to find new jobs.

Additionally, unpaid tickets often lead to arrest warrants and jail stays. Warrants may be issued when people fail to appear—often because they know they cannot pay and are afraid of the consequences—as well as when people fail to pay. Arrest warrants also create barriers to employment, with many employers unwilling to hire people with any active warrants. Further, an active arrest warrant means that a person lives in constant fear of being arrested and is less likely to contact city authorities regarding any issue requiring redress, including serious threats to health and safety. Finally, an active arrest warrant is a bar to obtaining a valid driver's license.

Resolving unaffordable court debt is very difficult, and most people with invalid licenses have no idea where to begin. Even if they come to court and are able to work out an alternative sentence, most courts across Texas will not lift the OmniBase hold until every single dollar is paid or every single hour of community service completed. Because it is so easy to accumulate high amounts of debt, many low-income

### OmniBase versus the Driver Responsibility Program

– In 2019, the Texas Legislature eliminated the heavily criticized Driver Responsibility Program (DRP), through which people were assessed surcharges for certain traffic-related offenses and had their licenses suspended when they failed to pay.<sup>8</sup> Eliminating the DRP led to the lifting of nearly 1.4 million DRP suspensions.<sup>9</sup> However, many people with DRP suspensions had other enforcement actions preventing them from obtaining their licenses even after the repeal. The most frequent barrier people encountered was the OmniBase Program, which in some ways is more harmful than the DRP.<sup>10</sup> For example, the DRP had an indigency program, which gave relief to anyone who could show that they made under 125 percent of poverty guidelines. There is no equivalent relief for the OmniBase Program. Also unlike the DRP, the OmniBase Program does not lift holds once somebody begins making payments on the underlying debt, instead requiring people to complete all payments in full before the hold is lifted.

Texans are put on court-ordered payment plans and community service plans that last for many months or even years. This means that even people who show up in court, are in compliance with court orders, and are making good faith efforts to make payment plan installments or complete community service hours must wait months or years to get their licenses back. The inability to obtain a license while on a payment plan or community service plan makes it much harder to come up with the money for payments or travel to a community service site.

Unable to pay and unsure what to do, many people continue to drive with invalid licenses in order to work and to survive, which results in more tickets for driving without a valid license, along with additional costs and fees. As a result, each year thousands of Houston-area residents become trapped in an endless cycle of growing debt, warrants, and jail time for unpaid court debt. On top of everything else, a second Driving While License Invalid charge is a Class B misdemeanor in Texas, meaning a person will often be arrested and booked into jail instead of written a ticket. From 2015 to 2019, at least 2,176 people were arrested and booked into jail by the Houston Police Department for Driving While License Invalid and no more serious charge. **Approximately 5 in 10 of the people arrested for DWLI were Black; the odds of being arrested for DWLI are more than five times higher for Black individuals than White individuals in Houston.** While the Harris County District Attorney has wisely established a diversion program for people whose licenses were suspended due to nonpayment of fines<sup>19</sup>, the initial arrest and jail booking is harmful in and of itself, and for medically vulnerable people, it is a serious threat to their health given the increased risk of COVID-19 transmission in jails.

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**Navigating a Bureaucratic Maze to Reinstate a Driver's License** – The difficulties people experience with OmniBase holds are exacerbated by the lack of clear information about what is leading to their holds and how to resolve them. When people contact the Department of Public Safety to seek guidance for reinstating their driver's licenses, they usually cannot speak to a person, as DPS is not able to answer 4 out of 5 calls.<sup>20</sup> Information available online is difficult to understand. Obtaining information online about a person's existing holds is also impossible if they do not know their driver's license number, which they often do not if it has been invalid for a while and they no longer have the license. Nor is the information online always accurate.

The lack of information via phone or online leads people seeking to restore their licenses to visit the Department in person. The Department service centers are completely overwhelmed and understaffed, with people in the Houston area reporting wait times of up to two and a half hours just to renew a license.<sup>21</sup> With approximately 1,080,000 people with OmniBase holds statewide, people seeking information about resolving holds undoubtedly contribute to these wait times significantly.

Furthermore, administering the OmniBase Program is complicated and can be confusing for court clerks and people with tickets alike. Holds are not issued per person, but per case, meaning a single person can have multiple OmniBase holds from a single court or multiple courts. Many people have holds from multiple courts without realizing it, oftentimes from different jurisdictions all located within the same county; Harris County has 16 justice courts, each of which could have a separate hold or holds on one person's driver's license. People will finally pay off all their citations in one court only to later find out that they still have holds they were unaware of in other local justice courts or municipal courts.

Court clerks, too, can have difficulty determining which holds are active when somebody has multiple holds spanning many years, and it is not uncommon for clerks across Texas to forget to lift holds after a person pays off multiple citations. Because of the difficulty determining which courts and cases are preventing their license renewal, and the difficulty of obtaining and complying with an alternative sentence from each court in order to resolve the holds, many people eventually give up on the prospect of ever obtaining a valid driver's license.

## THE OMNIBASE PROGRAM IN HOUSTON AND HARRIS COUNTY

The OmniBase Program impacts people statewide, with 1,080,000 people in Texas unable to renew their driver's licenses on account of OmniBase holds.<sup>22</sup> But the Program is particularly burdensome to Houston residents because of the heavy reliance on the Program by the Houston Municipal Court. **The City of Houston's Municipal Court issued more new OmniBase holds than any other jurisdiction in Texas in 2018.**<sup>23</sup> The total number of unresolved OmniBase holds in the City of Houston is twice as high as in Dallas and nearly five times as high as in San Antonio.<sup>24</sup>

**In the Houston Municipal Court, there were nearly 500,000 cases with outstanding OmniBase holds preventing people from renewing their licenses because fines were owed as of January 2020.** Adding the Harris County justice courts and the municipal courts of the larger surrounding Houston suburbs within Harris County, that number grows to nearly 550,000 active cases with OmniBase holds. A total of more than \$89 million is owed to the respective courts to resolve these holds<sup>25</sup>, most of which will never be collected as the likelihood of collection drops significantly the more time that passes.<sup>26</sup> The median amount owed to the Houston Municipal Court in each case is \$296<sup>27</sup>, and on average, people have 3.8 unresolved tickets each statewide.<sup>28</sup> The odds of most people ever lifting these holds are slim given the amounts owed and the challenges in navigating the court system to resolve this debt.

Participation by courts in the OmniBase Program is completely voluntary. Cities and counties opt in and sign a contract with DPS enabling them to participate in the Program. Some cities have chosen not to participate, including Pasadena, the second largest city within Harris County, as well as larger cities like Fort Worth, Arlington, and Plano.<sup>29</sup> **Most recently, in May 2020, the City Council of Austin unanimously voted to end the Austin Municipal Court's participating in the Program.**<sup>30</sup> Even of the jurisdictions that have opted into OmniBase by entering a contract, most do not rely on the Program as heavily as the Houston Municipal Court (HMC). For example, the Harris County Justice Courts do not use the Program nearly as frequently as HMC. In fact, only 5 of the 16 Harris County Justice Courts issued any OmniBase holds in 2018. They only issued 3,200 new holds total in 2018 compared to the Houston Municipal Court's 65,000 new holds that same year.<sup>31</sup>

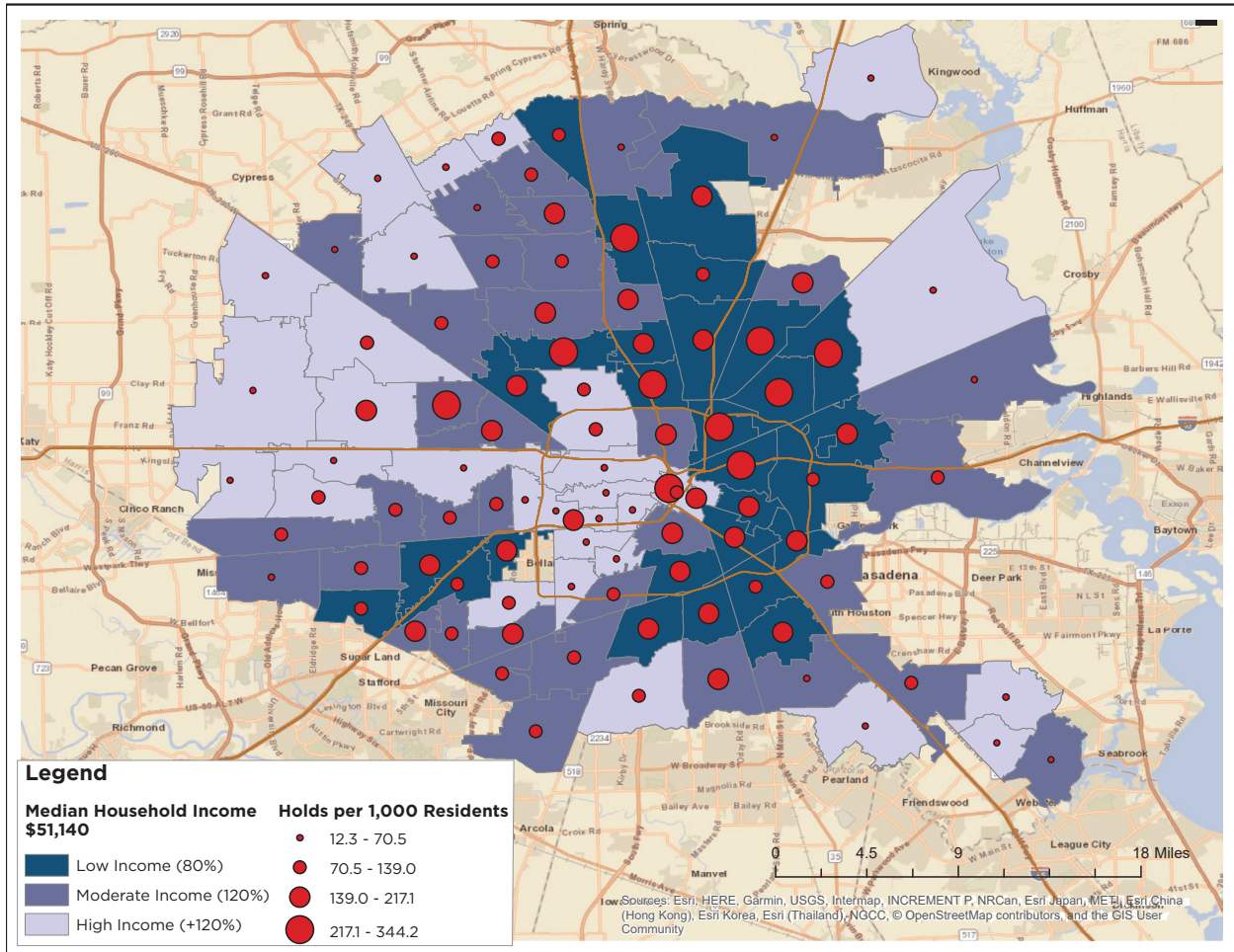
No positive relationship exists between the use of OmniBase holds and court collections. The Pasadena Municipal Court collects substantially more per case than the Houston Municipal Court but does not participate in the OmniBase Program at all. Courts in other large cities that did not participate in the OmniBase Program in 2018, like Plano and Arlington, have collection rates among the highest of municipal courts in Texas's largest cities. Perhaps most compelling, data from the Office of Court Administration shows that the Harris County Justice Courts that do not use the OmniBase Program collect more on average than those that do. The average amount collected for Harris County Justice Courts that did not issue OmniBase holds in 2018 was \$158 per case, while for courts that issued OmniBase holds, it was \$116 per case.<sup>32</sup> **Clearly, the Program is not a necessary tool for courts to collect fines and costs, and it may even be limiting the ability of people to pay fines and costs and therefore reducing collections.**

Nonetheless, many courts continue to participate, perhaps because participation ostensibly costs the cities and counties nothing save for some staff time to enter the information related to the holds. Instead of the court paying to participate, OmniBase Services of Texas, the private vendor that administers the Program, is compensated through fees charged to people who owe court debt. Courts collect a fee every time a hold is lifted, and part of this fee is remitted to OmniBase Services. Since 2011, the City of Houston has paid more than \$3 million in fees collected directly from drivers to OmniBase Services of Texas.<sup>33</sup> However, there are significant costs to the program, both human and fiscal. The OmniBase program is deeply unfair, targeting low-income and predominantly Black people and people of color, and it hurts the economy by creating steep barriers to employment.

**Policymakers in Houston and Harris County must recognize the damage that is being done to their residents by the OmniBase Program.** The Program hurts low-income residents the most, creating a major barrier to their achieving financial security. And it disproportionately impacts Black residents, making it more difficult to close the city's racial wealth gap and create a more equitable community.

**IMPACT ON LOW-INCOME HOUSTON NEIGHBORHOODS:** The following map shows a distribution of all outstanding OmniBase holds issued by the Houston Municipal Court to people whose residential zip code is within the City of Houston.<sup>34</sup> The map demonstrates what common sense dictates: OmniBase holds are concentrated in lower-income zip codes where people are less likely to be able to afford their fines. The highest income zip codes generally have very few holds. A correlation analysis revealed a significant negative relationship between holds and median income: **as zip code income increased, the number of holds decreased.**

## Map of Houston: Rate of OmniBase Holds and Median Income<sup>35</sup>



The zip code with the most holds per resident is 77026, an area in Northeast Houston covering the Kashmere Gardens neighborhood, with 344 holds per every 1,000 residents.<sup>36</sup> This zip code has more than one-third of its residents living below the poverty level and a majority of its residents (52%) are black.<sup>37</sup> The median income is over \$20,000 less than the citywide median income.<sup>38</sup> Profiles of other heavily affected zip codes are similar. The ten zip codes with the highest rates of holds all have people living in poverty at higher rates than the city's overall poverty rate and most have median incomes below the city's median income. Six of these ten zip codes have a population that is more than 50% people of color.

**SUSPENSIONS LASTING MANY YEARS:** Further evidence that the OmniBase Program punishes people for their poverty are the hundreds of thousands of people who have years-long or even decades-long holds on their licenses. As of 2018, the average length of time that expired licenses with OmniBase holds had been invalid statewide is five years and seven months.<sup>39</sup> In Houston, the time is even longer. **According to the Court's data, a majority of OmniBase holds issued by the Houston Municipal Court—57.5%—were issued more than 9 years ago, meaning the person's license has expired and is invalid.**<sup>40</sup> These are not people who are delaying payment until their license must be renewed. Rather, they are people who cannot drive legally and lack the money needed to resolve their court debt and reinstate their licenses.

Someone who has endured an invalid license and all of its attendant consequences for many years — including the threat of more tickets, arrests and the difficulty of finding employment and housing — has virtually no path to reinstating their license, or at least no path that they are able to navigate themselves. They do not have the money to hire an attorney to help them and do not have the money to pay the fines, costs and reinstatement fees required to get their license back. The court almost certainly will not be able to collect any money from them at this point given their lack of financial resources. In short, their holds serve no function other than to punish them for being poor.

**UNJUST RACIAL DISPARITIES:** Black people are much more likely to be impacted by OmniBase holds than White people, both statewide and in Houston. Black people are subject to at least 40% of OmniBase holds from the Houston Municipal Court despite the fact that they make up only about 22% of the city population.<sup>41</sup>

The racial disparities are likely driven by a number of factors. For one, Black individuals are disproportionately stopped by the Houston Police Department so are more likely to be ticketed and owe fines. A 2019 racial profiling report from the Houston Police Department revealed that Black people represented 36% of traffic stops.<sup>42</sup> Not only are Black drivers more likely to be stopped, they are less likely to be able to pay fines associated with tickets given the racial wealth gap in Houston. Before the recent economic crisis, the poverty rate of Black residents (19%) was more than twice as high as the poverty rate of White residents (7%).<sup>43</sup> This gap could widen even more given that Black people are being disproportionately impacted by the 2020 recession.<sup>44</sup> The additional economic barriers erected by OmniBase holds on Black drivers diminish the chances for ever closing the city's racial wealth gap.

## OTHER CONSEQUENCES OF CRIMINAL COURT DEBT IN HOUSTON AND HARRIS COUNTY

### **Warrants Issued by Justice and Municipal Court:**

Warrants for failure to appear are issued when a person does not pay the fine online or appear in court by the date on the ticket. People who fail to appear are not necessarily ignoring their ticket or refusing to comply. More often, they know they will not be able to pay the fine and believe that this will lead to their arrest, so are afraid to come to court. Or they may be afraid to be targeted for their immigration status. Low-income people in particular face significant logistical challenges to appearance, such as lack of transportation, lack of childcare, and inflexible work schedules. When the warrant issues, it compounds the fear of coming to court, making any future resolution outside of arrest less likely.

Warrants for failure to pay are called “capias pro fine” warrants. Under legislation passed in 2017, courts are required to hold a hearing before issuing a capias pro fine to allow people a chance to explain the reasons for nonpayment,<sup>49</sup> but people face the same fears and barriers related to these hearings and often do not appear. If the person does not appear for the hearing or the court at the hearing determines that the nonpayment was willful (meaning the person had the ability to pay but refused to do so), a capias warrant is issued.

ing their driver's license, and the existence of a warrant even in a fine-only case is often a barrier to getting hired for a job or securing housing. In short, warrants have the same negative impact on people's financial security that driver's license suspensions have.

Data from the Office of Court Administration shows nearly 300,000 warrants were issued by the Houston Municipal Court, Harris County Justice Courts, and surrounding municipal courts in 2019, all of which only adjudicate the lowest level criminal cases—not more serious misdemeanor or felony cases. The rates at

Fines and fees imposed by the criminal legal system punish people for being poor and keep people from escaping poverty.<sup>45</sup> Fines and fees for even the lowest level traffic offenses usually amount to several hundred dollars – an amount that research shows many Americans do not have the ability to pay.<sup>46</sup> When a person does not pay a fine and fee, they are subject to additional punishments beyond driver's license holds through the OmniBase Program – consequences like warrants, arrests, and additional fines and fees, all of which create significant barriers to obtaining and maintaining employment and to ever being able to pay off the original fine. In short, poor people get pulled deeper and deeper into the legal system due to fines and fees, while wealthier individuals walk away relatively unscathed.

Fines and fees disproportionately hurt Black people in the Houston area economically. Black people are more likely to be stopped by the police in Houston, and therefore more likely to receive a citation for an offense punishable by fines and fees.<sup>47</sup> They are less likely to be able to pay, given the racial wealth gap in Houston.<sup>48</sup> As a result, they are more likely to be arrested and jailed due to nonpayment of fines. Leaders in Houston and Harris County must reevaluate these punishments and enforcement mechanisms. **Establishing procedures that give people meaningful, reasonable opportunities to resolve what they owe and be free from criminal justice debt is a vital step towards ending poverty and closing the racial wealth gap in Houston.**

### **ARREST WARRANTS STEMMING FROM TICKETS:**

Courts in Houston and Harris County continue to rely on arrest warrants when people do not pay what they owe in fine-only misdemeanor cases. **While the offenses that lead to these warrants and driver's license suspensions were intended to be punished by fines alone, the outstanding warrants will still result in arrests and time spent in jail – and now, confinement in jail during a pandemic.** Further, warrants, just like OmniBase holds, prevent people from renew-



which area courts issue different types of warrants varies considerably, but an arrest warrant is issued in about 1 in every 4 newly filed fine-only cases in these courts combined.<sup>50</sup>

These warrants are disproportionately issued against Black people, who already live in greater fear of police interactions than White people given the pattern of disproportionate rates of search, arrest and brutality by police against Black individuals across the country. In 2017, more than half of warrants issued by the Houston Municipal Court were for the arrest of Black individuals, despite comprising less than a quarter of the City's population. **In 2019, the Houston Police Department arrested more than 6,000 people on Class C warrants and no more serious charge. Approximately 3 in 5 of those arrested were Black.**

If both the Houston Municipal Court and Harris County Justice Courts lifted all existing warrants and stopped issuing them moving forward, hundreds of thousands of citizens would no longer live in constant fear of arrest and would suddenly have access to employment formerly closed off to them, not to mention being able to renew their driver's licenses. Many would also have their fear of going to court lessened, making it more likely for them to voluntarily attend court to resolve their unpaid fines.

**AVAILABILITY OF ALTERNATIVE SENTENCES:** Equal justice in Houston courts requires that people not be punished more harshly on account of their income level. This means that courts must work to design individualized sentences that take into account each person's income and circumstances, and that people who are unable to pay fines are offered alternative sentences that are reasonable. Importantly, these alternatives should not be substantially more punitive than a fine is for someone who can pay.

First and foremost, the amounts that people are ordered to pay should be tailored to their income. Standard fine amounts are inappropriate, given that they are experienced so differently by individuals depending on their income. Data from the Houston Municipal Court shows that the median amount owed by people with OmniBase holds is \$296.40, an amount that is unaffordable for many.<sup>58</sup> People should only be ordered to pay what they can reasonably afford to pay without having to forego necessary expenses. If courts were to begin imposing lower default fine amounts for lower-income people and routinely waiving court costs, compliance would increase. Data from the Texas Office of Court Administration shows that legislation encouraging tailored sentences based on ability to pay actually increased collection rates.<sup>59</sup>

Many people have no income that is not already allocated to basic necessities so are unable to pay anything. Alternative sentences must be available to them. Their chances of actually restoring their license and getting back into the workforce is highest when courts are willing to waive what they owe, which some area courts are willing to do. In other circumstances, community service may be appropriate, though it must be a limited number of hours and something that they can realistically complete given their other obligations like work and childcare as well as barriers to completing the community service, like lack of transportation due to not having a license and lack of safe community service options during the present pandemic that do not present public health risks. Yet, all of these alternatives are underused, which is true not only for Houston-area courts but for most courts around the state as well. In the Houston Municipal Court, only 0.6% of cases were resolved through community service last year.<sup>60</sup> Even fewer cases were resolved through community service in the Harris County Justice Courts overall, though there is considerable variance court to court.<sup>61</sup> Waiver and debt reduction is used very infrequently as well.<sup>62</sup>

The Houston Municipal Court has taken some promising steps by establishing a docket for people experiencing homelessness as well as a docket for veterans. They have also made it easier to see a judge, encouraging people to walk into any of their annex locations if they are struggling to pay what they owe. More-

**Available Alternatives:** Because of the negative impact that fines and fees have on individuals, the state legislature has for the past two sessions passed legislation to improve court procedures so that people's ability to pay is taken into account.<sup>51</sup> Judges are now required by law to ask about ability to pay when sentencing anyone to pay fines,<sup>52</sup> and people who have already been sentenced to pay fines have a right to a hearing to evaluate their ability to pay.<sup>53</sup> For people who cannot pay, judges have several alternative sentencing options: payment plans, community service, or waiver or reduction of the amount owed.<sup>54</sup>

With a payment plan, a person can pay in monthly installments at an amount that they are able to afford. With community service, the person can work off what is owed at a rate of at least \$12.50 per hour (or at a higher rate in the judge's discretion).<sup>55</sup> With a change in state law effective January 1, 2020, courts can waive court costs for anyone who cannot afford them; only fines, not court costs, need to be considered for conversion into community service before waiver is allowed.<sup>56</sup> Waiver or reduction of fines is permissible when community service would create an undue hardship for the person due to factors such as a medical condition, a disability, a job schedule, lack of childcare, or other circumstances.<sup>57</sup>

over, the Harris County Justice Courts all operate independently and some are using community service and waiver in greater frequency than they previously did. Nonetheless, low numbers of community service and waiver persist, meaning they are not granted as often as they should be based on known poverty rates, and a renewed focus is needed to increase these numbers.

Compared to community service and waiver, jail credit is much more commonly used to resolve court debt in Houston. In 2019, nearly 1 in 10 fine-only cases in these Houston-area courts was resolved with jail credit.<sup>63</sup> “Jail credit” includes cases in which the person was jailed on a more serious offense and given credit towards their fines while they were in jail, which should be encouraged. However, many of these cases involve people who were arrested on a warrant and jailed while waiting to see a judge. This practice is harmful to individuals and costly to the County, with a single jail bed costing \$57 per day and much more than that if the person needs mental health services.<sup>64</sup>

## RECOMMENDATIONS TO END WEALTH-BASED PUNISHMENT AND RACIAL DISPARITIES RELATED TO CRIMINAL COURT DEBT & DRIVER’S LICENSE SUSPENSIONS IN HOUSTON AND HARRIS COUNTY

In order to treat Houston and Harris County residents who cannot afford to pay their fines, fees and costs more fairly, remove barriers to economic stability for families, and build more equitable communities, we make the following recommendations. In making these recommendations, we acknowledge that some courts may have already taken some meaningful steps towards the recommendations. However, the Houston Municipal Court and Harris County Justice Courts, as well as other Houston-area municipal courts, are all in need of improvement.

### THE CITY OF HOUSTON AND HARRIS COUNTY SHOULD IMMEDIATELY END THEIR CONTRACTS TO PARTICIPATE IN THE OMNIBASE PROGRAM.

Participation in OmniBase is completely voluntary, and jurisdictions can decide to discontinue participation at any time, meaning driver’s license holds will no longer be used by these courts. When opting out, both the City and County should clarify that all existing holds are to be lifted as well.

### THE CITY OF HOUSTON AND HARRIS COUNTY COURTS SHOULD TAKE ADDITIONAL STEPS TO ENSURE THE FAIR TREATMENT OF PEOPLE IN FINE-ONLY CASES.

- a. **Courts should stop issuing warrants in fine-only cases.** Instead, courts should focus on clear communication, implementing text message and phone reminders, and other means of collection that do not punish people on account of poverty. Courts should also establish express policies that people will never be jailed to “sit out” or “lay out” their fines. Courts can use summons in lieu of warrants if people fail to appear or fail to pay.

Along the same lines, local law enforcement agencies should adopt policies that they will not arrest people on fine-only warrants. Instead, if they encounter someone with such a warrant, they should issue a warning instructing the person to appear in court within the next 30 days. Agencies should publicize the fact that people who are victims of domestic violence or other violent crime will not be arrested on warrants related to unpaid fines if they contact the police for help.

- b. **Old court debt should be forgiven and the cases dismissed.** Prosecutors in the municipal and justice courts in the Houston area should dismiss all open cases that are more than five years old, and judges should administratively close any case that is more than 15 years old.
- c. **Make courts more accessible and transparent.** Courts must be accessible to all people, regardless of ability to pay. For example, courts should have walk-in dockets with convenient hours to enable people to resolve their tickets and court debt. Information about these dockets should reassure people that they will not be arrested or jailed for fine-only offenses if they come into courts. Ideally, county justice courts, which are spread out geographically throughout the county, would develop a single indigency docket through which people could resolve all Harris County cases, so that they did not have to travel court to court.

Courts should post clear information on their websites about how people can resolve tickets that they cannot pay, how they can clear warrants when they cannot pay, and how to lift OmniBase holds when they cannot pay. Courts should explain in these postings and in their mailed notices that fines and costs may be reduced based on inability to pay.

- d. Tailor fines and waive court costs more frequently.** By local rule, courts and jurisdictions should declare that all people below a certain income level, such as 200% of the federal poverty level,<sup>65</sup> are presumed to be unable to pay their fines and costs and are eligible for alternative sentences. Under state law, people unable to pay should automatically have the court cost portion of their debt waived, including deferral fees.<sup>66</sup> Only fines should be converted to community service or payment plans in appropriate cases. If the person cannot complete community service for the fine, the fine should be waived or reduced to an amount the person can pay at that moment without undue hardship, even if it is as little as \$10, \$5 or even \$1.

For anyone above this income threshold, courts should conduct an ability to pay inquiry. Courts must consider a person's net income after accounting for the necessary expenses in the person's household, as well as any unique circumstances impacting ability to pay. A cap of 10% of discretionary income should be placed on what the court can require a person to pay each month.

Payment plans should be limited to a period of three months. Any additional amount after a person has paid up to 10% of their discretionary income for three months should be waived.

- e. Make community service a realistic alternative.** Courts should provide easy access to community service, providing a broad range of options, some of which provide for flexible hours and work-from-home options. Courts should also ask questions of each individual to determine if something they are already doing in their lives could qualify as community service for the court as well. Community service hours should be capped at 8 hours for a single fine-only offense.

## ENDNOTES

1. Calculations based on data received from Texas Department of Public Safety (DPS) regarding total number of open cases (Dec. 2019) (hereinafter "2019 DPS Data") and from the Houston Municipal Court regarding all open cases (Jan. 2020) (hereinafter "2020 HMC Data"). Notably, there was a discrepancy in the number of open cases self-reported by the Houston Municipal Court and the number of cases Texas DPS reported. For this report, we used the number reported to us by the Houston Municipal Court. All data is on file with the authors.
2. HMC 2020 Data, *supra* note 1.
3. Data regarding total cases on courts' dockets, arrests warrants issued, community service sentences, debt reduction and waiver comes from the Texas Office of Court Administration's Annual Statistical Report Supplement (FY 2019) (hereinafter "OCA Annual Data"), available at <https://www.txcourts.gov/statistics/annual-statistical-reports/2019/>.
4. Dylan Sherman, *Greater Houston area sees record-breaking unemployment rate in April at 14.2%*, Community Impact Newspaper (May 22, 2020), available at <https://communityimpact.com/houston/tomball-magnolia/coronavirus/2020/05/22/greater-houston-area-sees-record-breaking-unemployment-rate-in-april-at-142/>.
5. United States Dep't of Justice, Investigation of the Ferguson Police Department (Mar. 2015), available at [https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson\\_police\\_department\\_report.pdf](https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf)
6. Tex. Transp. Code chapter 706, Denial of Renewal of License for Failure to Appear.
7. Data provided by DPS to Curtis Smith, Chief of Staff for Rep. Terry Canales (Oct. 2019) (hereinafter "2019 Smith Data"). Data on file with author.
8. See Texas Department of Public Safety, News Release: Driver Responsibility Program Repealed (Aug. 27, 2019), available at: [https://www.dps.texas.gov/director\\_staff/media\\_and\\_communications/pr/2019/0827a](https://www.dps.texas.gov/director_staff/media_and_communications/pr/2019/0827a).
9. *Id.*
10. See Texas Appleseed & Texas Fair Defense Project, *Driven by Debt: How Driver's License Suspensions for Unpaid Fines And Fees Hurt Texas Families* (2019), available at <http://stories.texasappleseed.org/driven-by-debt>.
11. Rice University Kinder Institute for Urban Research, Accessing Opportunity: Employment and Commuting Patterns among Low-, Medium- and High-Wage Workers in Houston (Oct. 2018), available at <https://kinder.rice.edu/sites/g/files/bxsl676/f/documents/FINAL%20KI%20Research%20Report-L.EHD%205.pdf>.
12. Alana Samuels, *No Driver's License, No Job*, The Atlantic (Jan. 15, 2016).
13. Taylor Dunn, *From Instacart to Amazon, here's who's hiring amid COVID-19*, ABC-13 (Jun. 3, 2020), available at <https://abc13.com/from-instacart-to-amazon-heres-whos-hiring-amid-covid-19/6226958/>.
14. Samuels, *No Driver's License, No Job*, *supra* note 12.
15. Alan M. Voorhees and New Jersey Motor Vehicle Commission, *Motor Vehicles Affordability and Fairness Task Force Final Report* (2006), available at [https://www.state.nj.us/mvc/pdf/about/AFTF\\_final\\_02.pdf](https://www.state.nj.us/mvc/pdf/about/AFTF_final_02.pdf).
16. *Id.*
17. Dylan Sherman, *Greater Houston area sees record-breaking unemployment rate in April at 14.2%*, Community Impact Newspaper (May 22, 2020), available at <https://communityimpact.com/houston/tomball-magnolia/coronavirus/2020/05/22/greater-houston-area-sees-record-breaking-unemployment-rate-in-april-at-142/>.
18. Marla Carter, *Why African Americans make up majority of COVID-19 deaths in Houston*, ABC-13 (May 9, 2020), available at <https://abc13.com/african-americans-make-up-majority-of-covid-19-deaths-in-houston-coronavirus-doctor-stephen-linder-mayor-sylvester-turner/6088393/>.
19. Office of Harris Co. District Attorney Kim Ogg, Programs & Diversion, <https://app.dao.hctx.net/about-hcdao/programs-diversion> (last visited Jun. 23, 2020).
20. Texas Dep't of Public Safety, Agency Strategic Plan Fiscal Years 2019 to 2023 (2019), available at <https://www.dps.texas.gov/dpsStrategicPlan/strategicPlan2019-2023.pdf>.
21. Gwendolyn Wu, *Here's how to spend less time at the DPS getting your driver license*, Houston Chronicle (Aug. 30, 2019), available at <https://www.houstonchronicle.com/business/houston-how-to/article/Want-to-spend-less-than-an-hour-at-the-DPS-14400039.php>.
22. 2019 Smith Data, *supra* note 7.
23. *Id.* 2018 is the most recent year for which the authors have data about new holds from all courts included in this report.
24. *Id.*
25. 2020 HMC Data, *supra* note 1.
26. Matthew Menendez *et al.*, *The Steep Costs of Criminal Justice Fees and Fines*, The Brennan Center for Justice (Nov. 2019), available at [https://www.brennancenter.org/sites/default/files/2019-11/2019\\_10\\_Fees%26Fines\\_Final5.pdf](https://www.brennancenter.org/sites/default/files/2019-11/2019_10_Fees%26Fines_Final5.pdf).
27. 2020 HMC Data, *supra* note 1.
28. 2019 Smith Data, *supra* note 7.
29. 2019 DPS Data, *supra* note 1.
30. Jo Clifton, *City to exit driver's license hold contract with DPS*, Austin Monitor (May 22, 2020), available at <https://www.austinmonitor.com/stories/2020/05/city-to-exit-drivers-license-hold-contract-with-dps/>.
31. 2019 Smith Data, *supra* note 7.
32. Calculations based on OCA Annual Data, *supra* note 3, and 2019 Smith Data, *supra* note 7.
33. City of Houston Office of the City Controller, Payment Records, <https://cohweb.houstontx.gov/ControllerDisbursement/> (last visited and searched 6/40/20).
34. 2020 HMC Data, *supra* note 1.
35. Based on 2020 HMC Data, *supra* note 1. Income data taken from U.S. Census Bureau American Community Survey 2012-2016 5-Year Estimates. Zip code shapefile taken from U.S. Census Bureau 2012-2016 American Community Survey 5-Year Estimates.
36. Note this does not necessary mean 344 people of every 1000 have a hold, since people often have more than one hold.
37. U.S. Census Bureau, American Fact Finder, Community Facts, available at [https://factfinder.census.gov/faces/nav/jsf/pages/community\\_facts.xhtml](https://factfinder.census.gov/faces/nav/jsf/pages/community_facts.xhtml).
38. *Id.*
39. 2018 DPS Data.
40. As of the date of our analysis in January 2020. Pursuant to a change in law during the 86<sup>th</sup> session, most driver's licenses expire on one's birthday following the eighth anniversary of the license application. Some licenses may expire sooner, but none are longer than this. Previously most license expired on one's birthday following the sixth anniversary of the license application.
41. 2020 HMC Data. It is possible that the number is even higher than 40%. When race of a person is not recorded for an OmniBase hold, the field defaults to white.
42. Houston Police Department, Racial Profiling Report (2019), available at [https://www.houstontx.gov/police/departments\\_reports/racial\\_profiling/2018\\_Annual\\_Racial\\_Profiling\\_TCOLE\\_Submission\\_and\\_Report\\_030419.pdf](https://www.houstontx.gov/police/departments_reports/racial_profiling/2018_Annual_Racial_Profiling_TCOLE_Submission_and_Report_030419.pdf).
43. Erin Douglas & Jordan Rubio, *Houston region's poverty rate increases in 2018 as household income flattens*, Houston Chronicle (Sep. 26, 2019).
44. See, e.g., Greg Rosalsky, *How the Crisis is Making Racial Inequality Worse*, NPR Planet Money (May 26, 2020).
45. See, e.g., Criminal Justice Policy Program at Harvard Law School, *Confronting Criminal Justice Debt: A Guide for Policy Reform* (2016), available at <http://cjjp.harvard.edu/assets/Confronting-Crim-Justice-Debt-Guide-to-Policy-Reform-FINAL.pdf>
46. Board of Governors of the Federal Reserve, *Report on the Economic Well-Being of U.S. Households in 2018* (2019) available at <https://www.federalreserve.gov/publications/files/2018-report-economic-well-being-us-households-201905.pdf> (About 40% of Americans do not have the cash to cover a \$400 emergency expense).
47. See Racial Profiling Report, *supra* note 42.
48. See *Houston region's poverty rate increases in 2018 as household income flattens*, *supra* note 43.
49. Texas Code of Crim. Pro. art. 45.045(a-2) as added by Acts 2017, 85th Leg., R.S., Ch. 1127 (S.B. 1913), Sec. 12.
50. 2019 OCA Data, *supra* note 3. See data appendix to this report for more detail.
51. S.B. 1913 and H.B. 351 were passed by the 85<sup>th</sup> legislature and took effect Sep. 1, 2017. S.B. 346 was passed by the 86<sup>th</sup> legislature and will take effect on January 1, 2020.
52. Texas Code of Crim. Pro. art. 45.041(a-1).
53. Senate Bill 346, 86th Leg., Reg. Session.
54. Texas Code of Crim. Pro. art. 45.041 (a-1).
55. Texas Code of Crim. Pro. art. 45.049(e).
56. Senate Bill 346, 86th Leg., Reg. Session.
57. Texas Code of Crim. Pro. art. 45.0491.
58. 2020 HMC Data, *supra* note 1.
59. Texas Office of Court Administration, *Indicators of Impact of Fines, Fees & Court Costs Legislation* (2018), available at <https://www.txcourts.gov/media/1442212/ff-indicators.pdf>
60. 2019 OCA Data, *supra* note 3.
61. *Id.*
62. *Id.*
63. *Id.*
64. Hanna Zedaker, *Harris Co. leaders target better jail diversion programs*, Community Impact Newspaper (Apr. 9, 2019), available at <https://communityimpact.com/spring-klein/city-county/2019/04/09/harris-county-leaders-target-better-jail-diversion-programs/>.
65. The City of Austin Municipal Code, for example, provides that "A judge may determine that a defendant is indigent" if the defendant's household income is below 200 percent of the federal poverty guidelines. Austin Municipal Code § 2-10-21.
66. Texas Code of Crim. Pro. art. 45.0491(d).

## DATA APPENDIX

### TOTAL ACTIVE OMNIBASE HOLDS IN HOUSTON-AREA COURTS, 2019

Court	Total Open Cases with Omni Holds	New Omni Holds, 2018	Total Amount Outstanding	New Criminal Cases Filed, 2018	Rate of New Omni Holds, 2018
Houston Municipal Court	493,743	65,349	\$70,666,389	545,072	12.0%
Pasadena Municipal Court	0	0	n/a	63,153	0.0%
Baytown Municipal Court	8,213	3,728	\$3,071,954	21,604	17.3%
LaPorte Municipal Court	5,273	2,391	\$2,019,122	16,805	14.2%
Deer Park Municipal Court	7	0	\$1,793	16,270	0.0%
Bellaire Municipal Court	4,011	752	\$1,278,817	7,131	10.5%
Humble Municipal Court	2,375	0	\$1,172,124	15,025	0.0%
West University Municipal Court	0	0	n/a	3,647	0.0%
Katy Municipal Court	5,078	1,660	\$1,707,194	9,729	17.1%
Seabrook Municipal Court	1,652	264	\$695,336	3,331	7.9%
Tomball Municipal Court	4,657	725	\$1,415,762	4,943	14.7%
Harris County Justice Courts	23,720	3,274	\$7,765,717	433,316	0.8%
<b>Total</b>	<b>548,729</b>	<b>78,143</b>	<b>\$89,794,209</b>	<b>1,140,026</b>	<b>6.9%</b>

### HOUSTON ZIP CODES WITH THE HIGHEST OMNIBASE HOLD RATES

Zip	Total Active Holds	Population	Holds Per 1,000 Residents	Median Household Income	Persons of Color (Not White Alone), 2018	Income Below Poverty Level (Poverty Status in last 12 Months), 2018
77026	7,703	22,380	344	\$29,393	60.6%	33.8%
77091	8,411	27,078	311	\$35,940	53.7%	26.6%
77060	13,784	44,828	307	\$30,342	25.9%	33.6%
77028	5,012	16,721	300	\$30,108	75.4%	27.1%
77002	3,768	13,571	278	\$67,043	45.1%	20.0%
77022	7,068	28,277	250	\$30,900	29.9%	31.2%
77020	6,388	25,749	248	\$30,187	42.8%	29.5%
77016	7,380	30,184	245	\$34,885	64.6%	26.9%
77078	3,739	15,411	243	\$37,356	65.5%	20.6%
77080	11,049	45,832	241	\$44,814	55.2%	25.5%

**COLLECTION RATES COMPARED TO OMNIBASE USAGE, HARRIS COUNTY JUSTICE COURTS AND HOUSTON MUNICIPAL COURT, 2018**

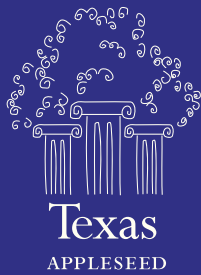
<b>Court</b>	<b>Criminal Cases Disposed</b>	<b>New Omni Holds</b>	<b>Hold Per Case Added</b>	<b>Amount Collected Per Case Disposed</b>
Harris Co JP Precinct 1 Place 1	41,674	1,228	2.72%	\$97.74
Harris Co JP Precinct 1 Place 2	15,956	0	0.00%	\$148.19
Harris Co JPPrecinct 2 Place 1	5,264	0	0.00%	\$181.42
Harris Co JP Precinct 2 Place 2	6,118	0	0.00%	\$197.94
Harris Co JP Precinct 3 Place 1	23,767	0	0.00%	\$103.84
Harris Co JP Precinct 3 Place 2	13,810	7	0.04%	\$110.33
Harris Co JP Precinct 4 Place 1	77,284	52	0.04%	\$104.05
Harris Co JP Precinct 4 Place 2	29,374	0	0.00%	\$148.82
Harris Co JP Precinct 5 Place 1	48,809	948	1.79%	\$142.86
Harris Co JP Precinct 5 Place 2	49,100	1,039	1.46%	\$125.02
Harris Co JP Precinct 6 Place 1	3,227	0	0.00%	\$166.84
Harris Co JP Precinct 6 Place 2	2,666	0	0.00%	\$192.16
Harris Co JP Precinct 7 Place 1	19,835	0	0.00%	\$132.86
Harris Co JP Precinct 7 Place 2	16,240	0	0.00%	\$145.55
Harris Co JP Precinct 8 Place 1	10,402	0	0.00%	\$163.71
Harris Co JP Precinct 8 Place 2	6,236	0	0.00%	\$162.53
Houston Municipal Court	468,059	65,349	12.80%	\$89.60

## NEW WARRANTS ISSUED BY HOUSTON-AREA COURTS, 2019

Court	New Criminal Cases Filed	Class C Warrants Issued	Rate of Warrants Per Case	Capias Pro Fines Issued	Rate of CPFs per Case
Harris County Justice Courts	359,794	124,148	34.5%	9,120	2.5%
Houston Municipal Court	507,479	79,574	15.7%	25,164	5.0%
Pasadena Municipal Court	60,650	12,043	19.9%	7,656	12.6%
Baytown Municipal Court	18,972	6,910	36.4%	4,194	22.1%
LaPorte Municipal Court	16,649	3,542	21.3%	1,498	9.0%
Deer Park Municipal Court	15,781	4,461	28.3%	2,497	15.8%
Katy Municipal Court	8,304	1,719	20.7%	878	10.6%
Bellaire Municipal Court	5,897	1,999	33.9%	469	8.0%
Humble Municipal Court	14,579	6,431	44.1%	1,633	11.2%
West University Municipal Court	4,169	1,835	44.0%	235	5.6%
Seabrook Municipal Court	3,811	578	15.2%	558	14.6%
Tomball Municipal Court	6,036	1,429	23.7%	322	5.3%
<b>Total</b>	<b>1,016,085</b>	<b>243,240</b>	<b>23.9%</b>	<b>53,902</b>	<b>5.3%</b>

## ALTERNATIVE SENTENCES IN HOUSTON-AREA COURTS, 2019

Court	Cases Disposed	Total Comm. Svc.	Comm. Svc. Rate	Total Waivers	Waiver Rate	Total Jail Credit	Jail Credit Rate
Harris County Justice Courts	403,853	387	0.1%	2,275	0.6%	30,575	7.6%
Houston Municipal Court	486,127	2,868	0.6%	2,641	0.5%	55,679	11.5%
Pasadena Municipal Court	51,421	1,961	3.8%	572	1.1%	1,795	3.5%
Baytown Municipal Court	21,919	783	3.6%	315	1.4%	2,176	9.9%
LaPorte Municipal Court	15,892	164	1.0%	86	0.5%	1,302	8.2%
Deer Park Municipal Court	14,612	24	0.2%	50	0.3%	2,715	18.6%
Katy Municipal Court	7,886	13	0.2%	21	0.3%	328	4.2%
Bellaire Municipal Court	5,360	59	1.1%	0	0.0%	349	6.5%
Humble Municipal Court	12,188	1	0.0%	111	0.9%	831	6.8%
West University Municipal Court	3,556	42	1.2%	1	0.0%	108	3.0%
Seabrook Municipal Court	3,395	52	1.5%	6	0.2%	165	4.9%
Tomball Municipal Court	5,206	51	1.0%	12	0.2%	175	3.4%
<b>Total</b>	<b>1,031,415</b>	<b>6,405</b>	<b>0.6%</b>	<b>6,090</b>	<b>0.6%</b>	<b>96,198</b>	<b>9.3%</b>



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