

PAY — OR — STAY

The High Cost of Jailing Texans for Fines & Fees



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01 INTRODUCTION

ACROSS TEXAS, LOCAL AND STATE LEADERS ARE REALIZING THAT THE USE OF JAIL TIME FOR FINE-ONLY OFFENSES IS COSTLY, COUNTERPRODUCTIVE, A THREAT TO PUBLIC SAFETY AND A VIOLATION OF TEXANS' FUNDAMENTAL LEGAL RIGHTS.

For low-income Texans, a ticket for a minor offense like speeding, jaywalking, or having a broken headlight can lead to devastating consequences for the individual, as well as that person's family and community. If someone is unable to pay a ticket right away, the cost compounds over time, often resulting in more tickets, fines and fees. Failing to pay or to appear in court can lead to an arrest warrant and jail time.

Current practices often result in the suspension of, and inability to renew, driver's licenses, as well as the inability to register vehicles. They also result in millions of arrest warrants being issued annually. When people are picked up on a warrant for failure to pay tickets, fines and fees, they are often booked into jail and made to pay off their debt with jail credit, usually at a rate of \$50 to \$100 a day.¹ These practices are widespread – over 230,000 Texans are unable to renew expired licenses until their fines and fees are paid off,² and about 1 in 8 fine-only misdemeanor cases are paid off in whole or in part with jail credit.³

Low-income Texans are being set up to fail by the way fines and fees are handled, and they are often driven deeper into poverty. Suspending a person's driver's license makes it illegal to drive to work; issuing an arrest warrant can make it nearly impossible for to find employment; and sending that person to jail can lead to the loss of a job and housing. The public's safety is harmed when low-risk people languish in jail. This system hurts Texas families and drains our public resources at great expense to taxpayers.

In many cases, the current system also violates state and federal law. The United States Supreme Court has held that incarcerating somebody because of unpaid fines or fees without a hearing to determine if they are actually able to pay the fines and fees violates the Equal Protection and Due Process clauses of the 14th Amendment.⁴ Texas state statute also makes clear that a person cannot be jailed for unpaid fines when the nonpayment was due to indigence.⁵

1 TEX. CODE OF CRIM. PROC. ANN. art. 45.048(2) (West 2015).

2 Email from Pamela Harden, Tex. Dep't. of Pub. Safety, to Sushma Smith, Chief of Staff, Office of Tex. Senator José Rodríguez, (Nov. 9, 2016) (on file with authors).

3 OFFICE OF COURT ADMINISTRATION, ANNUAL STATISTICAL REPORT FOR THE TEXAS JUDICIARY: FY 2015 at Detail-45,48 (2016) (hereinafter Annual Statistical Report) available at <http://www.txcourts.gov/media/1308021/2015-ar-statistical-print.pdf>.

4 See *Tate v. Short*, 401 U.S. 395 (1971); *Bearden v. Georgia*, 461 U.S. 660 (1982).

5 TEX. CODE OF CRIM. PROC. ANN. art. 45.046(a) (West 2015).

While some courts feel intense pressure to attempt to increase collection rates by threatening people with incarceration, others have been successful without using jail time as a punishment for failure to pay. Most notably, the San Antonio Municipal Court stopped ordering people to lay out fines in jail in 2007. It found that court revenue did not decrease as a result, nor was there a noticeable change in driver behavior in the city.⁶

Many low-income Texans are never able to escape the cycle of debt caused by our municipal and justice courts' ticketing systems and will spend years accumulating fines that force them in and out of jail. This report offers recommendations for ending the practice of jailing people for fine-only offenses and creating a better system that holds people accountable while saving money, increasing public safety and treating all Texans fairly.

WHAT ARE FINE-ONLY OFFENSES?

Texas' 928 municipal courts and 807 justice courts (sometimes called Justice of the Peace or JP courts)⁷ handle more than 7 million new criminal cases each year.⁸

The criminal cases in these courts are the lowest level of misdemeanors under Texas law, by statute punishable by a fine alone and no jail sentence.⁹ These include most traffic offenses, city ordinance violations, other Class C misdemeanors, and criminal parking violations.¹⁰

- **Traffic offenses** include moving violations such as speeding, running a red light, or failure to yield. They also include other violations like driving with an invalid license or without a license, driving with defective equipment, failure to maintain financial responsibility (*i.e.*, no insurance), or having an expired registration.
- **Non-traffic Class C misdemeanors** are violations of state law that are punishable by a fine up to \$500, such as public intoxication, theft of something valued less than \$100, disorderly conduct, and parent contributing to nonattendance (truancy).

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6 Jazmine Ulloa, *The Price They Pay*, AUSTIN AMERICAN-STATESMAN (May 20, 2016) ("Contrary to fears, there were no spikes in traffic crimes, and the city did not lose revenue," [San Antonio Municipal Court Presiding Judge John] Bull said.).

7 ANNUAL STATISTICAL REPORT, *supra* note 3, at vi.

8 *Id.* at Detail-45, 48.

9 *Id.* at vi.

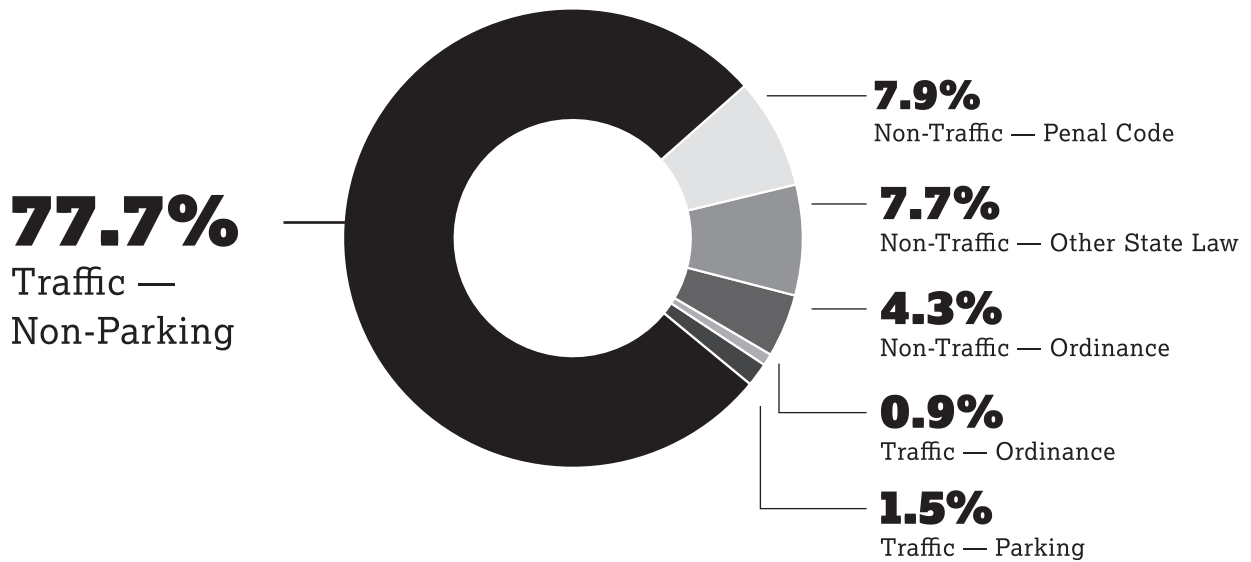
10 Class C misdemeanors are defined as violations punished by a fine of no more than \$500, or as any offense punishable by a fine alone. Certain traffic offenses are fine-only misdemeanors, and are punished by a fine of no greater than \$200. Parking violations are often different, in that most parking tickets (but not all) are civil rather than criminal violations, similar to red light camera violations. TEX. GOV'T CODE ANN. § 29.003 (West 2015); See, e.g., College Station, Tex., Traffic Code Sec. 10-4 C.2(b)(ii) (2016).

- **City ordinance** violations include all sorts of regulations on conduct within city limits, including animal-related violations (e.g., leash laws); health and safety ordinances (e.g., no running water in a residence, food safety regulations at a restaurant); and ordinances typically targeting the homeless population (e.g., no camping in the city limits, no sitting or lying down, and no solicitation or panhandling).

For purposes of this report, we will use the term “fine-only offense” to include all criminal offenses punishable by a fine alone over which the municipal and justice courts have jurisdiction.

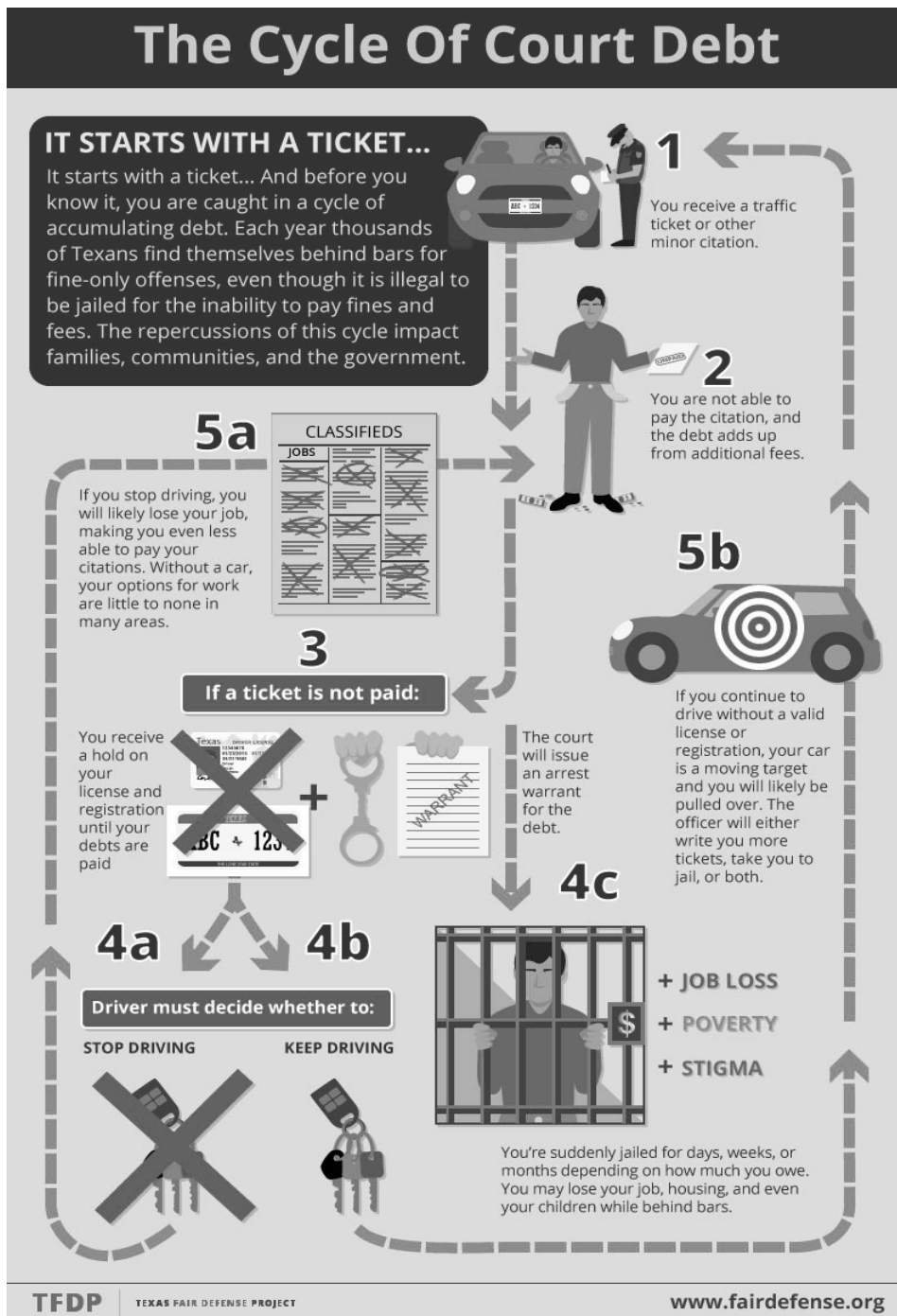
The following chart demonstrates the breakdown of the types of criminal cases handled by Texas municipal and justice courts.¹¹ More than three-fourths of these are traffic violations.

TYPES OF CASES HANDLED BY MUNICIPAL AND JUSTICE COURTS



02 AN INESCAPABLE CYCLE OF DEBT AND JAIL

A. HOW DOES ONE TICKET LEAD TO MORE TICKETS, FINES AND FEES?



When low-income people receive a traffic ticket, the initial fine amount for that ticket is only a portion of what they may ultimately owe. There are also court costs in addition to the fine that courts automatically assess in every case, which typically range from \$60 to \$110.¹²

Courts assess more fees for people who fail to pay their tickets immediately. For example, if a person is placed on a payment plan, there will be a \$25 payment plan fee for each ticket, in addition to transaction fees that many courts charge each time a payment is made.¹³ People are also charged \$30 when a hold is placed on their licenses and \$20 when a hold is placed on their registration due to unpaid fines.¹⁴ To release those holds, people must pay the fees on each ticket that led to a hold.

Failure to appear in court or pay a ticket often leads a court to issue an arrest warrant, which adds a \$50 warrant fee to the original ticket.¹⁵ In addition, local governments sometimes contract with private collection agencies or law firms to collect outstanding balances, and these agencies charge another fee of up to 30 percent of the amount owed when collecting the debt.¹⁶

For a person who fails to appear in court or cannot pay off their ticket when it is due, this means that a single ticket with a fine amount of \$100 can easily more than quadruple when court costs and fees are attached.

Fine (e.g., failure to maintain a single lane)	\$ 100.00
Court Costs	\$ 103.00
Check Return Fee	\$ 30.00
Payment Plan Fee	\$ 25.00
License Renewal Suspension Fee	\$ 30.00
Capias Pro Fine Warrant Fee	\$ 50.00
Scofflaw Registration Renewal Fee	\$ 20.00
Collection Fee (30%)	X 1.30
TOTAL	\$ 465.40

12 *Filing Fees and Court Costs*, TEX. JUDICIAL BRANCH, <http://www.txcourts.gov/publications-training/publications/filing-fees-courts-costs/> (last visited Sept. 9, 2016).

13 TEX. LOC. GOV'T CODE ANN. § 133.103(2) (West 2015).

14 TEX. TRANSP. CODE ANN. § 706.006 (West 2015); § 502.010(f).

15 TEX. GOV'T CODE ANN. § 102.021(3)(B).

16 TEX. CODE CRIM. PROC. ANN. art. 103.0031(3)(b).

In addition to extra fees, lower income people tend to receive more tickets due to their poverty and inability to pay. Most jurisdictions put holds on delinquent persons' licenses and car registrations until they can clear their tickets. Also, nearly 1.4 million Texans have license suspensions resulting from unpaid Driver Responsibility Program surcharges, many if not most of which stem from low-level traffic offenses.¹⁷ When people with license holds or suspensions lose their ability to register their vehicle, the car becomes a moving target for more stops and tickets. Once these drivers are pulled over, they will most likely receive at least three tickets for that one stop: one for not having a valid license, one for expired registration, and one for driving without insurance (since it is very difficult to get insurance if you do not have a valid license).

This vicious cycle of more frequent stops resulting in multiple tickets may be amplified if the driver misses a court date. If someone fails to appear in court, many jurisdictions enter a Failure to Appear charge (an additional Class C offense) for each existing ticket, turning three tickets from a single stop into six tickets. This is especially likely to happen when people already have warrants for prior unpaid tickets and are afraid that they will be arrested if they appear in court for the new tickets.

When the number of tickets someone has multiplies, so do the associated fees. A person who needs a payment plan for six tickets will owe an additional \$150 in payment plan fees instead of \$25, and if that same person misses a payment, there will be a \$50 warrant fee per ticket, totaling an extra \$300. Each unpaid ticket will also put an additional hold on the person's license and registration, with a \$30 fee per license hold (\$180 total) and a \$20 fee per registration hold (\$120 total). **It is easy to see how debt accumulates quickly from just one traffic stop, trapping people in a cycle of debt they cannot escape.**

B. HOW DO FINE-ONLY OFFENSES LEAD TO ARREST WARRANTS?

Fine-only offenses can lead to arrest warrants in two situations: first, when a person fails to show up for a court date; and second, when a person fails to satisfy fines or fees.

1) FAILURE TO APPEAR WARRANTS

The first kind of warrant that can lead to arrest for fines and fees is a warrant for Failure to Appear. Most often, people are charged with a fine-only offense when they receive a ticket written by a law enforcement officer. The ticket instructs them to pay the fine and court costs, or alternatively, to appear in court on or by a certain date. Only people who cannot pay immediately or want to contest the ticket must show up in court.

There are several compelling reasons low-income Texans do not show up for their court dates:

- **Lack of transportation:** Many people lack adequate transportation to get to court. They may also have received the ticket while traveling and cannot afford to travel back to that jurisdiction to appear in court.
- **Employment:** Low-income Texans often work in jobs that lack the flexibility to allow them to take time off during the workday to appear at the court at a specific time for their hearing.
- **Lack of understanding of the court system:** People who lose their original ticket also lose the instructions for when and where to appear. They often lack the understanding to navigate a complicated court system. With no central statewide database to look up traffic tickets, people may not be able to determine which local court to call to find out when and where to appear.
- **Fear of arrest:** People with warrants for old unpaid tickets are understandably afraid to appear in court because they might be arrested on the spot, knowing a jail stay would cause them to lose their job or ability to care for their children. Even many of those without warrants may fear coming to court for an initial appearance, believing that their inability to pay the ticket will lead to their being jailed.¹⁸

“ALMOST EVERYONE I SEE IN JAIL TELLS ME THAT THEY ARE IN THE JAIL DUE TO FEAR OF COMING TO COURT. THEY FEAR AN APPROACHING POLICE OFFICER AT THE DOOR READY TO ARREST THEM BECAUSE THEY EITHER DO NOT HAVE THE MONEY TO PAY A FINE OR THEY FAILED TO APPEAR ON A CHARGE.”

– Hon. Ed Spillane, Presiding Judge, College Station Municipal Court and Past President, Texas Municipal Courts Association¹⁹

The failure to appear in court is a separate crime,²⁰ so it often leads to another fine-only charge for which a person will owe additional fines and court costs. When charging an individual with a Failure to Appear offense, the court typically issues a warrant for the person’s arrest.

18 Based on dozens of interviews by authors with individuals who failed to appear for court in fine-only cases.

19 Hon. Ed Spillane, Op-Ed., *Courts as a Safe Haven: A Positive ‘Ferguson Effect,’* AUSTIN AMERICAN-STATESMAN (Sep. 16, 2016).

20 TEX. PENAL CODE ANN. § 38.10 (West 2015).

In 2015, Texas municipal courts issued about 1.74 million warrants in fine-only misdemeanor cases, most commonly for failure to appear in court.²¹ Texas justice courts issued approximately 411,000 such warrants.²² This does not include *capias pro fine* warrants issued specifically for failure to pay fines.

People who are the subject of a Failure to Appear warrant are at risk of being arrested in some courts if they voluntarily appear in court to take care of their tickets. Other courts may not arrest people who come in, but they may still refuse to clear the warrant or set a hearing with a judge until the person pays some sum of money.²³ This means that people are not even able to see a judge to negotiate alternative sentences since they cannot afford the amount of money required to clear the warrant.

2) CAPIAS PRO FINE WARRANTS

The second type of warrant that leads to arrest and jail time in these cases is called a *capias pro fine* warrant (commonly called *capias* warrants) – a specific type of warrant issued for people who have not paid a fine by its due date.²⁴ Most people do make their initial court date, but when people plead guilty or are found guilty, a judge is not required to ask if they can afford the fine and court costs being imposed.²⁵ Low-income people often leave court owing amounts they can never pay, and not knowing what their options are if they cannot pay. Alternatively, the judge may tell them to talk to the court staff if they cannot pay immediately, only to have the court staff put them on a payment plan they still cannot afford.²⁶

When a person fails to pay fines, in full or according to payment plan terms, or if a person fails to complete community service in the time ordered, the court typically orders a *capias pro fine* warrant. In 2015, Texas municipal courts issued approximately 688,000 *capias pro fine* warrants in fine-only misdemeanor cases. The justice courts issued approximately 66,000 *capias pro fine* warrants.²⁷

Both *capias* and Failure to Appear warrants show up on background checks. Anyone with such a warrant who gets stopped by law enforcement can be immediately taken to jail and booked while waiting to see a judge. Given the millions of warrants that are issued by municipal and justice courts annually, hundreds of thousands of Texans are living with an active warrant for their arrest and are subject to being booked in jail at any time for fine-only offenses.

21 ANNUAL STATISTICAL REPORT, *supra* note 3, at Detail-48, 45.

22 *Id.*

23 See, e.g., *Municipal Court and Traffic Ticket Information*, CITY OF PASADENA, TEXAS, <http://www.ci.pasadena.tx.us/default.aspx?name=courts> (last visited Sept. 8, 2016) (outlining the requirement that persons against whom warrants have been issued and “wishing to plead not guilty will be required to post a bond to secure a trial date.”).

24 TEX. CODE CRIM. PROC. ANN. art. 45.045.

25 *Id.* at art. 45.041.

26 Based on authors’ interviews and court observations.

27 ANNUAL STATISTICAL REPORT, *supra* note 3, at Detail-48, 45.

**WARRANTS ISSUED BY MUNICIPAL AND JUSTICE COURTS
IN FINE-ONLY MISDEMEANOR CASES, 2015**

	Fine-Only Misdemeanor Warrants	Capias Pro Fine Warrants in Fine-Only Cases	Total Warrants in Fine-Only Cases
Municipal Courts	1,738,385	688,328	2,426,713
Justice Courts	411,273	65,718	476,991
Total	2,149,658	754,046	2,903,704

Texas municipal and justice courts issued more than 2.9 million warrants in fine-only cases in 2015. By contrast, the total number of warrants issued for Class A and B misdemeanors and felonies during the same time period was approximately 129,000. **This means more than 95 percent of all arrest warrants issued in the state last year were for fine-only misdemeanor offenses.**

One reason for the huge number of capias warrants is the underutilization of alternative sentences. If a court determines that a defendant is unable to pay, it is required by law to consider alternatives to immediate full payment, such as:

- Deferral of full payment.
- A payment plan.
- Community service.
- Full or partial waivers of fines and costs.²⁸

Unfortunately, despite the legal requirements, many courts do not offer these alternatives.²⁹ In addition, courts that do offer payment plans or community service often make those options inaccessible to many people, and very few courts waive a significant amount of fines and costs (as described below). Courts also make it difficult or impossible for people without proper

28 TEX. CODE CRIM. PROC. ANN. art. 45.0491; *Tate v. Short*, 401 U.S. 395 (1971).

29 See, e.g., *Payment Plans*, CARROLLTON MUNICIPAL COURT, <http://www.cityofcarrollton.com/departments/departments-g-p/municipal-court/payment-plans> (last visited Sept. 13, 2016) ("Carrollton Municipal Court does not provide payment plans for paying judgments (fines). Judgments must be paid on or before the due date. Non-payment or insufficient payment will result in a warrant being issued for your arrest."); *Payment Plan Application*, WOOD COUNTY, <http://www.mywoodcounty.com/users/0012/docs/Payment%20Plan.pdf> (last visited Sept. 13, 2016) ("You will have ONE MONTH from the date of the application to pay the remainder due on your fine. There will be NO EXTENSION OF TIME GRANTED. Don't ask for one.") (emphasis in original).

identification or adequate information about their income and expenses to qualify.³⁰ Many courts also condition entering a payment plan on a large down payment.³¹ For example, the Dallas Municipal Court requires a 30 percent down payment up front, while the Burleson Municipal Court requires a payment of “\$125 or 20 percent, whichever is greater, for the initial payment at the time of the request.”³²

The monthly payments ordered with payment plans may not be affordable either. In addition to the various fees already covered, some courts require minimum payments of \$100 or more a month.³³ The Kyle Municipal Court and Dallas Municipal Court both require complete payment of the assessed amount within three months, even on a payment plan.³⁴ Wood County offers only 30 days for payment and warns individuals not to call the court to ask for more time.³⁵

Courts vastly underutilize community service as an alternative to payment as well. For example, the El Paso Municipal Court did not start offering community service options to adults until after an exposé on the court’s illegal practices was published by BuzzFeed News.³⁶ Likewise, the Amarillo Municipal Court only offers community service to juveniles.³⁷ Many other sizable cities – including Richardson, Allen, Longview, Duncanville and Sherman – self-reported to the Office of Court Administration that community service credit was not used to satisfy fines in a single case

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- 30 See, e.g., *Time Payment Plans*, CITY OF BURLESON, TEXAS, <https://burlesontx.com/555/Time-Payment-Plans> (last visited Sept. 13, 2016) (allowing only state-issued driver’s licenses and identification cards); Judge Wayne L. Mack, Montgomery County Justice Court Indigency Application, available at http://www.mctx.org/courts/justices_of_the_peace/justice_of_the_peace_pct_1/docs/Online_Payment_Plan_Docs.pdf (last visited Sept. 13, 2016) (allowing state-issued driver’s licenses and identification cards, school identification cards, and birth certificates); *Extension to Pay Fine*, CITY OF KEENE, available at <https://keenetx.com/departments/municipal-court> (last visited Sept. 13, 2016) (allowing only state-issued driver’s licenses and identification cards).
- 31 See, e.g., *Time Payment Plans*, *supra* note 30 (noting that people applying for payment plans must “[p]ay \$125 or 20%, whichever is greater, for the initial payment at the time of request”); *FAQ for Extensions and Payment Plans*, WISE COUNTY, http://www.co.wise.tx.us/jp1/payment_options.htm (last visited Sept. 13, 2016) (requiring a “significant payment” before entering into a payment plan); *Payment Plan Application*, WOOD COUNTY, *supra* note 29 (dictating that defendants must pay all court costs at time of application); *Extension to Pay Fine*, PLANO MUNICIPAL COURT, <https://www.plano.gov/367/Extension-to-Pay-Fine> (last visited Sept. 13, 2016) (screenshot on file, requiring \$100 down for each ticket).
- 32 *Time Payment Plans*, *supra* note 31; *Court and Detention Services*, CITY OF DALLAS, <http://dallascityhall.com/departments/courtdetentionservices/pages/payment-plan.aspx> (last visited Sept. 8, 2016).
- 33 *Payment Information*, GRAND PRAIRIE MUNICIPAL COURT, <http://www.gptx.org/city-government/city-departments/municipal-court/payment-information> (last visited Sept. 13, 2016) (listing minimum monthly payment amounts that increase as the total amount owed increases); *Payment Options*, CITY OF IRVING, <http://cityofirving.org/329/Payment-Options> (last visited Sept. 13, 2016) (requiring a minimum monthly payment of \$100).
- 34 *Payment Plan*, CITY OF DALLAS, <http://dallascityhall.com/departments/courtdetentionservices/pages/payment-plan.aspx> (last visited Sept. 14, 2016) (allowing a maximum of 90 days to make all payments); *Fines/Court Costs*, CITY OF KYLE, <http://www.cityofkyle.com/municipalcourt/fines-court-costs> (last visited Sept. 14, 2016) (allowing a maximum of three months to make all payments).
- 35 *Plea and Personal Data Form for Affidavit of Indigency and/or Application for Payment of Courts Costs, Fines & Fees*, WOOD COUNTY JUSTICE OF THE PEACE COURT COMPLIANCE AND COLLECTIONS, available at <http://www.mywoodcounty.com/users/0012/docs/Payment%20Plan.pdf>.
- 36 Kendall Taggart & Alex Campbell, *Their Crime: Being Poor. Their Sentence: Jail.*, BUZZFEED (Oct. 7, 2015), available at <https://www.buzzfeed.com/kendalltaggart/in-texas-its-a-crime-to-be-poor?>.
- 37 Second Amended Class Action Complaint at 7, *McKee v. Amarillo*, No. 2:16-cv-00009-J, page 7 (N.D. Tex. Apr. 4, 2016).

in 2015.³⁸ In fact, approximately 2 out of 5 Texas municipal courts reported zero cases resolved through community service in 2015.³⁹ Another quarter of all municipal courts reported 10 or fewer total cases resolved through community service during the entire year.⁴⁰ **Statewide, community service was only used to resolve fines and costs in 1.3 percent of all municipal and justice court criminal cases in which fines or costs are typically assessed.**⁴¹

Courts that do offer community service options rarely publicize that on their websites or notices, and the community service that is offered can be too onerous to complete.⁴² People who are offered community service are required by statute to be given at least \$6.25 per hour credit, though in some places \$12.50 per hour credit is typical. Because of the low credit rate and high amounts owed, people are often ordered to perform hundreds of hours of community service to resolve their fines and costs. For many single parents and homeless people who accumulate tickets, performing these hours can be a near-impossible task.⁴³

Courts' final option – waiver or reduction of fines due to indigency – is rarely used. **Fines were waived and reduced in less than 1 percent of all cases statewide in 2015.** About 3 in 5 municipal courts (*i.e.*, 594 courts) reported zero waivers in 2015, meaning they did not elect to waive or reduce fines or costs for indigency a single time over the course of a year.

38 Annual Statistical Detail Reports, Municipal Courts, Additional Activity by City, Office of Court Administration, FY 2015, available at <http://www.txcourts.gov/statistics/annual-statistical-reports/2015/>.

39 *Id.*

40 *Id.*

41 *Id.* See also OFFICE OF COURT ADMINISTRATION, ANNUAL STATISTICAL DETAIL REPORTS, JUSTICE COURTS, ADDITIONAL ACTIVITY BY COUNTY, FY 2015, available at <http://www.txcourts.gov/statistics/annual-statistical-reports/2015/>.

42 See, e.g., *Citation Disposition Options*, CITY OF LAREDO MUNICIPAL COURT, http://www.cityoflaredo.com/Municipal_Court/Citation_Disposition.htm (last visited Sept. 14, 2016). Also, the City of Austin regularly offers community service. However, when it issues a warrant for failure to pay, the warrant does not mention community service as an option. Instead, it simply states that the person must pay what is owed to clear the warrant and lists different ways the ticket can be paid.

43 Complaint at 9, *Harris v. City of Austin*, No. A-15-CA-956-SS, 2016 U.S. Dist. LEXIS 33694 (W.D. Tex. 2016).

ENFORCEMENT PROGRAMS

When someone has not paid a ticket, courts often try to enforce payment through one of the following programs.

DPS FAILURE TO APPEAR/FAILURE TO PAY PROGRAM

One common enforcement mechanism that municipal and justice courts utilize prohibits people from renewing their driver's licenses until fines are paid in full. Under the statutory "Failure to Appear/Failure to Pay" Program administered by the Department of Public Safety (DPS), if a person misses a court date or a scheduled payment, the court may suspend license renewal indefinitely until all fines and costs are paid.⁴⁴ Once people are referred to the Failure to Appear/Pay Program, they must resolve the total amount owed before the hold is lifted, meaning that their license remains suspended even if they begin to successfully make payments according to a payment plan. Over 230,000 Texans are currently unable to drive legally under the program and will not be able to renew their licenses until they satisfy their tickets.⁴⁵

DRIVER RESPONSIBILITY PROGRAM

In addition to the Failure to Appear/Pay Program, the Texas Legislature created the Driver Responsibility Program (DRP) in 2003 in an effort to generate additional revenue for the state from certain traffic offenses.⁴⁶ This program allows DPS to charge additional surcharges to individuals for certain traffic offenses, independent of fines and fees imposed by the court. When drivers fail to pay the surcharges, their licenses are automatically suspended.⁴⁷

Surcharges can be assessed in two ways: through a points system and through a convictions system.⁴⁸ Under the DRP points-based system, drivers receive two points for a traffic violation and three points for a traffic violation involving a crash. Once a driver receives six points (*i.e.*, usually two or three tickets) in a three-year period, DPS will assess a \$100 surcharge annually for three years and an additional \$25 for each additional point.⁴⁹ Under the conviction-based system, surcharges apply automatically upon conviction of certain offenses. Some of these offenses involve driving while intoxicated, but by far the most common offenses under this system are actually driving with an invalid license, driving without a license and driving without insurance.⁵⁰ Surcharges for these low-level offenses range from \$100 to \$250 annually.⁵¹

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44 TEX. TRANSP. CODE ANN. § 521.201(7)(8).

45 Email from Pamela Harden, *supra* note 2.

46 TEX. TRANSP. CODE ANN. § 708.

47 *Id.* at § 708.152.

48 *Id.* at § 708.053.

49 *Id.* at § 708.054.

50 Email from Pamela Harden, *supra* note 2. See also Email from Pamela Harden, Tex. Dep't. of Pub. Safety, to Jessica Schleifer, Legislative Director, Office of Tex. Senator Rodney Ellis (July 21, 2015).

51 TEX. TRANSP. CODE ANN. §§ 708.104, 708.103.

Unlike the Failure to Appear/Pay Program, the DRP does have an indigency program that grants relief to drivers at or below 125 percent of the poverty guidelines.⁵² But the application process is difficult to navigate and not widely advertised, so most people do not know about it. Because nearly 1.4 million people have lost their licenses under the DRP,⁵³ the DRP has come under scrutiny in recent years.⁵⁴ However, funds collected from the program are directed toward trauma centers, making it politically challenging to amend or discontinue it.

SCOFFLAW PROGRAM

Counties and municipalities can also choose to participate in the “Scofflaw Program.” This program, outlined in the Transportation Code, allows a municipal or justice court to deny people the ability to apply for or renew motor vehicle registrations with the county if they miss a court date or a scheduled payment.⁵⁵ As of September 2015, there were 370,197 holds on vehicle registrations due to the Scofflaw Program. Like the Failure to Appear/Pay Program, the holds generally will not be lifted until *all* fines and costs are paid in full.

These enforcement mechanisms are particularly harmful for people who still need to drive. Without valid registration, their vehicles are moving targets for police officers, and they are more likely to get pulled over, perpetuating the cycle of debt.

C. WHAT ARE THE CONSEQUENCES OF LIVING WITH A WARRANT?

Individuals living with warrants are often fearful of going to court. They may also be reluctant to call the police during an emergency or report a more serious crime out of fear of being arrested.

In addition, many employers will not hire somebody with an active warrant, even if it is for a minor ticket such as a moving violation. One Houston mother the authors spoke with was making \$9 per hour at a call center, but had the opportunity to obtain a job at a big-box retailer earning \$14 per hour – a raise that would have helped her family tremendously. The potential employer only required that she clear the fine-only arrest warrant related to nonpayment of fines for a Parent Contributing to Nonattendance ticket that appeared during a background check. She could not afford to clear the warrant, so she lost the better employment opportunity. As a result, she also lost her housing, forcing her and her children to move in with a family member.

52 Tex. TRANSP. CODE ANN. § 708.158.

53 Email from Pamela Harden, *supra* note 2.

54 See, e.g., Eva Hershaw, *Lawmakers Call for End to Controversial Driver Responsibility Program*, TEX. TRIBUNE (Apr. 30, 2015).

55 TEX. TRANSP. CODE ANN. §§ 502.010, 502.011, 702.003; SCOFFLAW CENTRALIZED COLLECTIONS, <https://texasscofflaw.com/> (last visited Sept. 8, 2016).

Furthermore, people with arrest warrants who do not have identification cards, which are necessary for many job applications, cannot go to the DPS to apply for one because of the imminent risk of being arrested. These problems are exacerbated by the fact that people with active warrants in fine-only cases are more likely to lose their jobs. They cannot drive to work without running the risk of being arrested, and most low-income Texans do not live within a reasonable public transit commute distance from local employers.⁵⁶ During warrant roundups, jurisdictions publicize efforts to arrest people with warrants in fine-only cases. This includes arresting individuals at their place of employment.⁵⁷

D. HOW DO TICKETS LEAD TO JAIL?

Every year, thousands of Texans are jailed because they are unable to pay fine-only misdemeanor tickets. How is it that crimes that are only punishable by a fine lead to jail time?

When people are arrested on a warrant for a fine-only offense, they are typically booked into the local county or city jail. After booking, the law requires that they be brought before a judge. In Texas' biggest cities, the amount of time waiting to see a judge can be as short as a few hours; in some rural parts of the state, the wait may be as long as two days.⁵⁸

Upon seeing a judge, a number of things may happen. A judge can discuss the reasons for nonpayment and release an individual, generally after revising their payment plan terms or ordering that they complete an alternative sentence, like community service. However, some judges will ask people how much money they have on them; if it is a significant amount, they will tell the person to pay that amount as a "bond" and appear at a later court date.

Judges may also order people to stay in jail as a way to pay their remaining fines and costs, often referred to "laying out" or "sitting out" fines. People who are sentenced, or "committed," to jail to lay out fines and costs must be given credit towards the amount owed at a rate of \$50 per night, though judges in some courts routinely grant more dollar credit than this. **By law, judges must**

56 Texas generally lacks an adequate public transportation infrastructure, even in its densely populated urban areas. In major cities like Houston, Austin and San Antonio, fewer than 35 percent of residents live within a 90-minute public transportation ride of most jobs. As a result, many low-income Texans who lose their licenses for failing to pay their fines or fees must continue to drive in order to work. See Adie Tomer, *Where the Jobs Are: Employer Access to Labor by Transit*, THE BROOKINGS INSTITUTE 9 (2012), available at <https://www.brookings.edu/wp-content/uploads/2016/06/11-transit-labor-tomer-full-paper.pdf>. In rural areas, public transportation is even less available.

57 *E.g., Warrant Roundup*, THE CITY OF GREENVILLE, TX, <http://www.ci.greenville.tx.us/581/Warrant-Round-Up> (last visited Sept. 8, 2016).

58 TEX. CODE. CRIM. PROC. ANN. art. 45.045. In the case of a capias warrant, the person must be brought before a judge who issued the warrant or a judge in the same court by the first business day following defendant's arrest, though some courts conflate this with a typical magistration pursuant to Tex. Code of Crim. Proc. Ann. art. 15.17. Length of waiting time cited is also based on the authors' interviews with individuals who were jailed for fine-only offenses.

determine that nonpayment was willful, meaning it was *not* due to inability to pay, before committing people to more jail time. But in reality, this determination rarely happens.⁵⁹

Sometimes, by either local policy or mistake, people do not see a judge at all after they are arrested. Instead, they are simply detained on the capias warrant until the fines and costs are paid off with jail credit. In these cases, the capias warrant functions as a commitment order, even though the law does not allow this.⁶⁰

Whether people are sentenced by a judge to lay out their fines or booked on a capias warrant without ever seeing a judge, they often do not know how long they will be held in jail and must rely on correctional officers to look up their release date on the jail's computer system. This even occurs when people are arrested on both fine-only offense warrants and on higher-level misdemeanor charges. Defendants usually receive court-appointed defense attorneys for those higher-level charges. But the defense attorneys often do not understand that their clients are also being held on fine-only misdemeanor tickets. After a few days in jail, defense attorneys may advise their clients to take a plea deal for time-served on the higher offense, assuring them that they can get out that same day. Individuals will then call a friend or family member to come pick them up, only to be told by a correctional officer hours later that they will in fact be held for days, weeks, or months longer on their Class C fines.⁶¹

1) HOW MANY PEOPLE GO TO JAIL FOR FINE-ONLY OFFENSES?

Based on data courts report annually to the Texas Office of Court Administration, fines in over 677,000 cases were satisfied through jail credit in 2015: 547,244 municipal court cases and 129,938 justice court cases.⁶² This means that **1 in 8 municipal and justice court cases in which fines or costs are typically assessed were resolved through jail credit. In comparison, less than 1 in 100 of these cases are resolved through full or partial waiver of fines or costs.**⁶³

However, jail credit numbers only tell part of the story of jailing practices for municipal and justice courts.⁶⁴ We were able to collect data from a geographically diverse sample of seven populous

59 The authors have represented and interviewed many defendants jailed for fine-only offenses across the state, all of whom were jailed without an ability to pay hearing.

60 One of the authors has interviewed people detained for days without seeing a judge for tickets out of Bastrop Municipal Court, Jefferson County Justice Court and Beaumont Municipal Court. One of those people told the author that he had already turned himself in the previous month to sit out his tickets; because he did not see a judge when he was arrested the second time, he could not explain that he had already satisfied his ticket debts in the previous month.

61 Based on authors' interviews and court observations.

62 ANNUAL STATISTICAL REPORT, *supra* note 3, at Detail 45, 48.

63 *Id.*

64 *Id.* First, numbers represent the number of cases resolved through jail credit, not the number of individuals who satisfied fines through jail credit. Additionally, when individuals are arrested, they are booked in jail based on all outstanding offenses. So an individual who is arrested for a more serious offense (like a Class A or B misdemeanor, or even a felony) may get jail credit for any existing fine-only warrants while in jail for the more serious charges. Finally, the jail credit numbers do not distinguish between cases in which people were given jail credit for the time they waited to see a judge, and those who were actually sentenced by a judge to jail for not paying their fines.

counties and to identify individuals booked in jail in those counties for fine-only offenses alone.⁶⁵ The results are an undercount of the individuals detained in these counties on fine-only offenses, because they do not include those held on fine-only offenses who also had more serious charges. Still, it is a helpful snapshot of the population of people detained on fine-only offenses in Texas.

County	Population	Total Fine-Only Jail Bookings	Fine-Only Bookings Per 1000 Citizens
El Paso	833,487	5,756	6.9
Hidalgo	831,073	922	1.1
Jefferson	252,235	5,399	21.4
Lubbock	293,974	365*	1.2
McLennan	243,441	2,924	12.0
Travis	1,151,145	7,170	6.2
Williamson	489,250	1,716	3.5
Total	4,094,605	24,252	5.9

* LUBBOCK COUNTY'S TOTAL JAIL BOOKINGS ONLY ACCOUNT FOR THOSE INDIVIDUALS WHO WERE CATEGORIZED AS "LAYING OUT MUNICIPAL FINE" (I.E., SENTENCED TO JAIL BY THE MUNICIPAL COURT), SO NOT ALL INDIVIDUALS WHO WERE BOOKED ON A FINE-ONLY WARRANT OR WARRANTLESS CLASS C ARREST ARE NECESSARILY INCLUDED IN THIS NUMBER.

For 2014, the most recent year for which we have complete data, **there were 24,252 individuals booked into county jail in seven of Texas' largest counties for fine-only offenses alone.** These counties represented 4.1 million people, about 15 percent of the total state population. Bookings for fine-only offenses alone constituted anywhere from 2 percent to 50 percent of all jail bookings, differing dramatically based on the jurisdiction.

65 The seven counties were selected because of their population as well as their ability to provide high-quality, electronic data from which the authors could readily identify those individuals booked into jail for fine-only offenses.

66 All of the data analysis completed for this report is on Texas Appleseed's website, *available at* www.texasappleseed.org/pay-or-stay.

MUNICIPAL JAILS

The county-level jail booking data does not include people held in city jails. In many counties, city police departments operate jails that are completely separate from the county jail. These city jails house people booked only on fine-only warrants from the city's municipal court, as well as people charged with more serious offenses who are awaiting transport to the county jail. Because city jails have no statewide oversight, it is difficult to identify all of them.

We were, however, able to identify a number of city jails in Texas' largest counties and request their booking records for 2012 through mid-2015. For example, **in 2013, there were 26,313 individuals held in the City of Houston Jail and another 2,045 held in the McAllen City Jail for fine-only offenses alone.** The existence of the McAllen City Jail, located in Hidalgo County, to house people for fine-only offenses also helps to explain why Hidalgo County's jail bookings are lower than counties of similar size in the data we analyzed.

Other city jails to which we sent open records requests did not provide electronic data. For those jails, we have estimates based on a manual count of individuals booked in a single month.⁶⁷

Jail	July Snapshot of Fine-Only Bookings	Annual Estimate of Fine-Only Bookings
Arlington City Jail	316	3,792 (2015)
Harlingen City Jail	59	708 (2014)
Eules City Jail	222	2,664 (2014)
North Richland Hills City Jail	86	1,032 (2014)
Total	683	8,196

These numbers suggest that in a single year, roughly 8,000 additional people were booked in these four city jails for fine-only offenses, along with the roughly 28,000 booked in the Houston and McAllen city jails. **Ultimately, there are tens of thousands of people who are booked in city jails for fine-only offenses and not accounted for in the county jail data.**

67 For these city jails, the authors reviewed the paper or electronic records for July 2014 or 2015 (depending on which year city law enforcement was able to provide) and identified those individuals during the month of July who were booked on fine-only offenses alone. In several county jails, July was the month when an average number of offenders were booked, which is why we chose that month. The authors then multiplied the July count by 12 for a rough estimate of the number of people that particular city jail was booking on fine-only offenses alone annually.

2) HOW LONG DO PEOPLE STAY IN JAIL?

How long people stay in jail depends on the jurisdiction, as well as whether they are booked and released after seeing a judge or sentenced by a judge to lay out their fines. The data show that a majority of people who were booked in these seven county jails on a fine-only offense were released within a day or less, meaning they were likely released after seeing a judge.⁶⁸ Nonetheless, there are thousands of people in these counties who remained in jail for much longer than a day. In 2014, the most recent year for which we have complete data, **there were 3,974 fine-only jail bookings lasting longer than two days across these seven counties alone.**

BOOKINGS INTO JAIL FOR FINE-ONLY OFFENSES LASTING > 2 DAYS, 2014		
	Number of Individuals In Jail > 2 Days	Percent of Fine-Only Jail Bookings >2 Days
El Paso	845	13.4%
Hidalgo	447	24.9%
Jefferson	1,759	25.8%
Lubbock	39	10.5%
McLennan	239	6.3%
Travis	221	2.3%
Williamson	424	23.5%
Total	3,974	11.4%

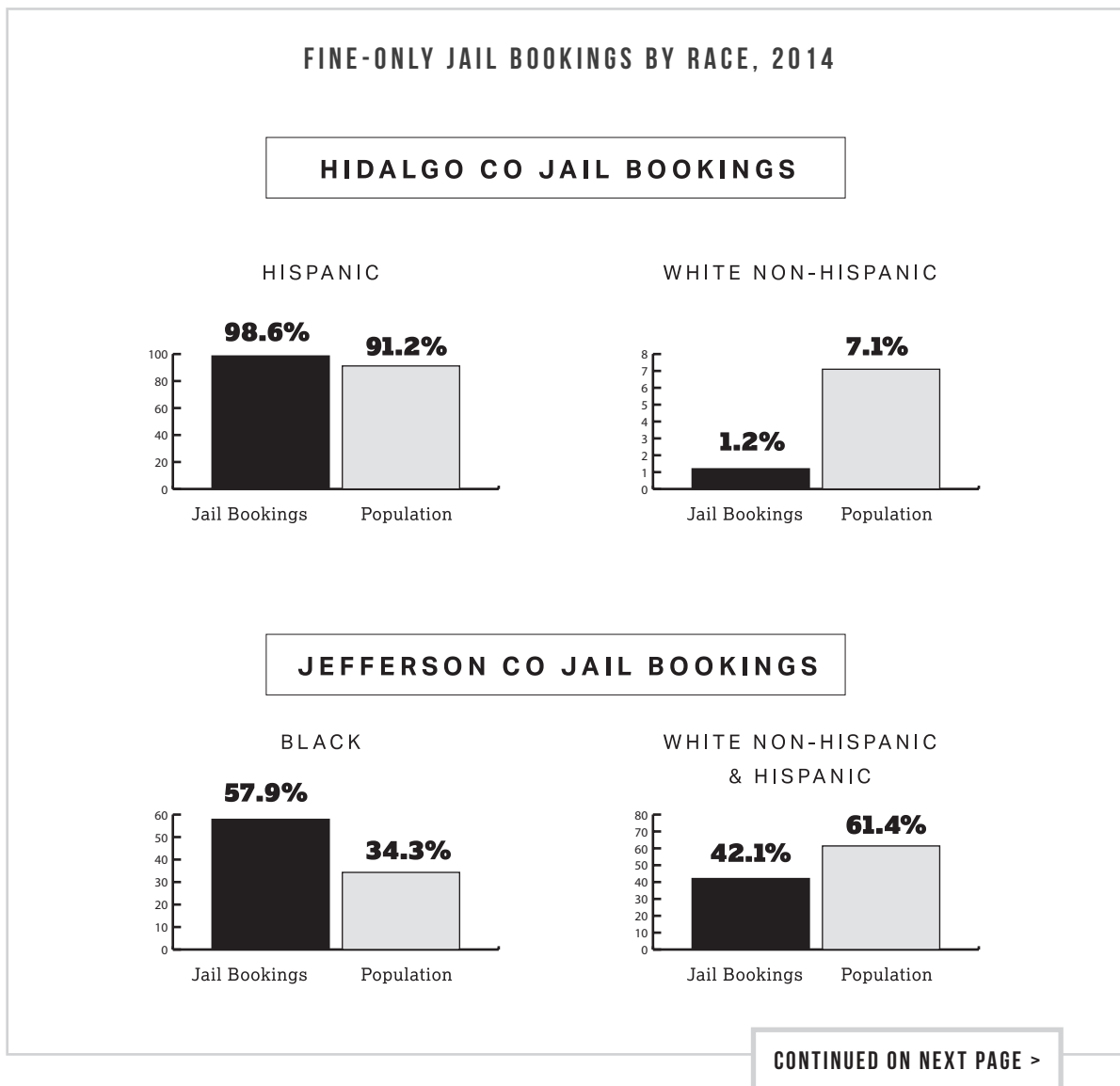
In addition, hundreds of people stayed for much lengthier periods of time for fine-only offenses. **For example, in 2014, there were 638 jail bookings in these seven counties lasting more than 10 continuous days in jail for fine-only offenses.**

68 See additional data available at www.texasappleseed.org/pay-or-stay.

3) WHO GOES TO JAIL FOR FAILING TO PAY TICKETS?

It is often vulnerable people – including single parents with few economic resources, homeless people, and people with unstable housing – who go to jail for fine-only offenses. In addition, a disproportionate number of African Americans and a significant number of women, juveniles and elderly individuals are jailed for fine-only offenses.

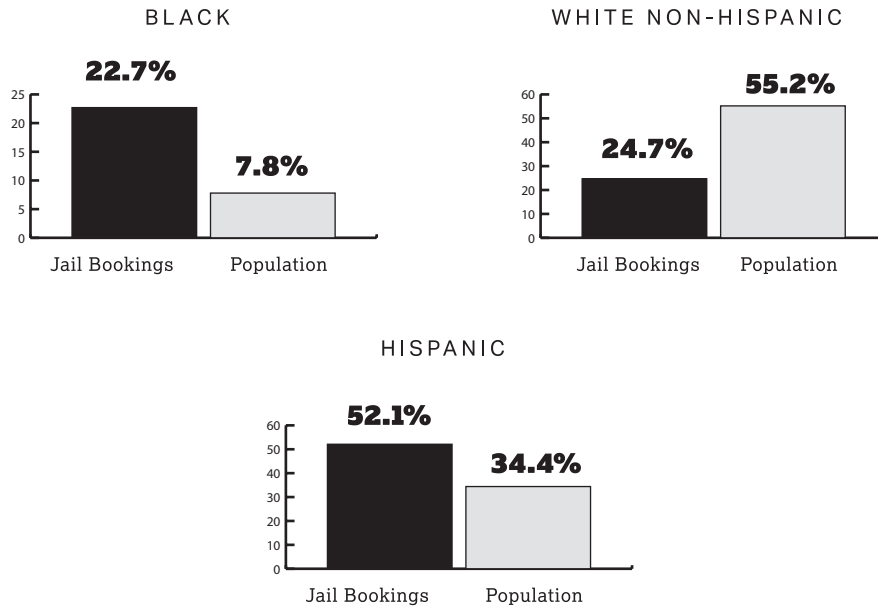
African Americans are notably overrepresented in the fine-only jail bookings compared to their representation in the general population. The following chart shows the percentage of people of various races booked in 2014 in five counties that provided data on the race of individuals booked for fine-only offenses, followed in parentheses by the percentage of that race represented in the county's general population.⁶⁹



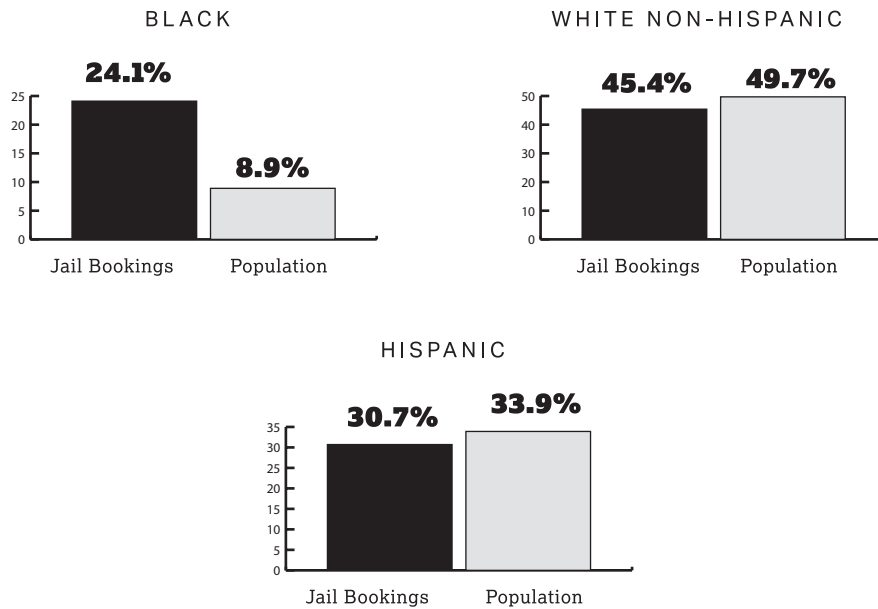
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Note that race was not recorded for every offender in each county. The following percentages are based on individuals for whom race was reported. Two of the seven counties provided no data on the race of individuals booked.

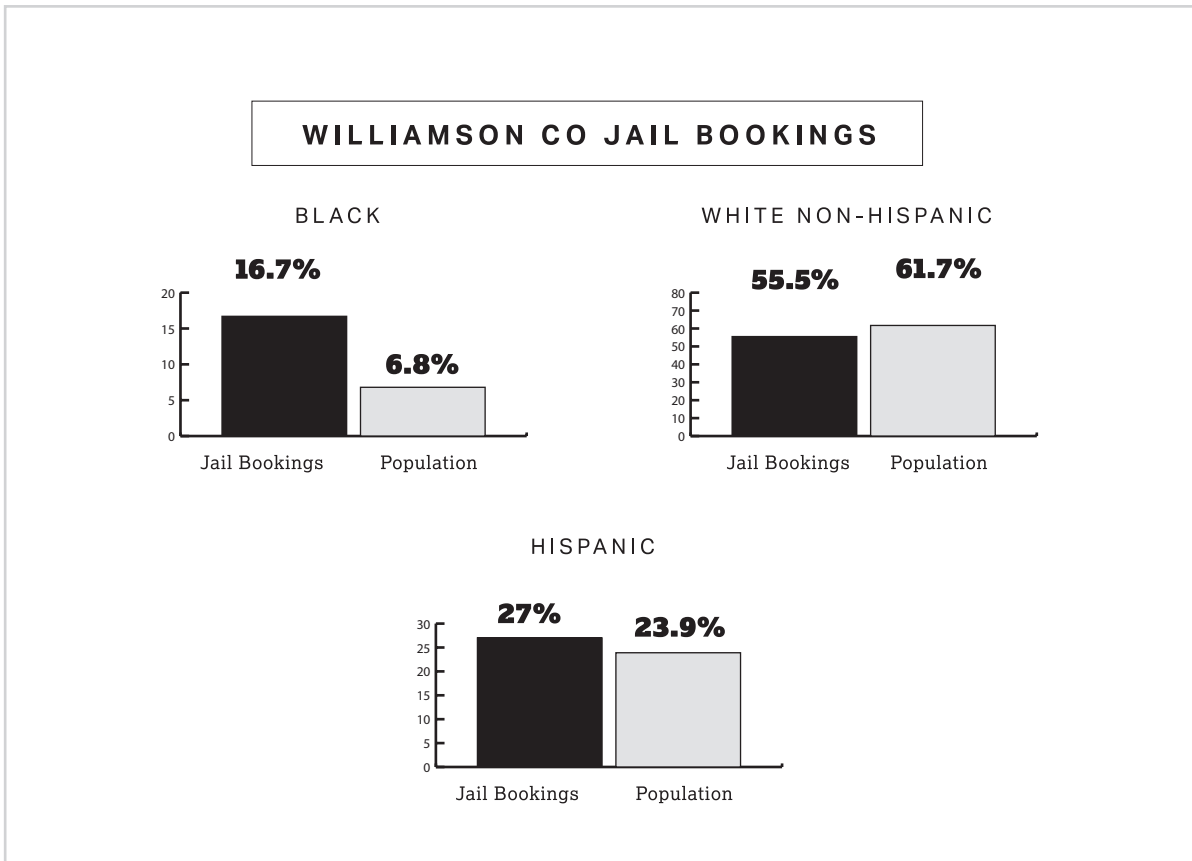
LUBBOCK CO JAIL BOOKINGS



TRAVIS CO JAIL BOOKINGS



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In the six of seven counties that provided data on gender, the people booked for fine-only charges were more likely to be male than female, yet each county still jailed a significant percentage of women for these charges. This is consistent with national data showing a large increase in the jailing of women in recent years for non-violent offenses.⁷⁰

FINE-ONLY JAIL BOOKINGS BY GENDER, 2014

	Male	Female
El Paso	75.8%	24.2%
Hidalgo	85.7%	14.3%
Jefferson	72.5%	27.5%
Lubbock	60.0%	40.0%
Travis	78.1%	21.9%
Williamson	72.7%	27.3%

70 Elizabeth Swavola, Kristine Riley & Ram Subramanian, *Overlooked: Women and Jails in an Era of Reform*, VERA INSTITUTE OF JUSTICE, 6 (2016), available at https://storage.googleapis.com/vera-web-assets/downloads/Publications/overlooked-women-and-jails-report/legacy_downloads/overlooked-women-in-jails-report-web.pdf.

ASHLEY WILLIS, AUSTIN

Willis was a 26-year-old single mother of a 6-year-old girl and a 4-month-old boy. Even though she worked full time, she and her children lived below the poverty line and received food stamps.

In July of 2015, she was arrested for unpaid tickets while washing her car at the park. She had been making sporadic payments on her tickets when she could. Even though she had not been able to complete the community service she had been given, she was not aware she had warrants. She was frantic with worry about leaving her children, but the arresting officers told her she would probably be released within 24 hours. They let her make calls to set up temporary child care arrangements and tell her boss she would be missing a day of work.

They then took her to the Travis County Jail, where she saw a magistrate judge. Though she begged the judge to release her on a payment plan so she could care for her children, he jailed her for 21 days for failing to complete community service. Willis explained that her only option had been making payments when she could, because caring for her children prevented her from doing community service.

Willis was then transferred to another Travis County facility in Del Valle. She was not given an opportunity to make any calls, so she was unable to tell her boss she would be gone longer than expected or tell her landlord she would be late with rent. She could not even find out where her children were. Luckily, the Texas Fair Defense Project was able to secure her release after only a week. If she had been kept the full 21 days, she would have lost her job, her housing and possibly even her children.

Approximately two-thirds of jail bookings for fine-only offenses in the six counties that provided age or date of birth data are individuals ranging in age from 18 to 35. Still, a wide range of ages is represented. **More than 200 individuals booked in adult county jails on fine-only offenses in these seven counties in 2014 were 17 years old.** This is particularly concerning given what the research says about the dangers of 17-year-olds being held in adult jails, in terms of physical assault, sexual assault and suicide risk.⁷¹ These 17-year-olds are supposed to be housed separately from older inmates, pursuant to the federal Prison Rape Elimination Act, but some Texas jails have failed to comply with this law.⁷² Additionally, **almost 5 percent of individuals booked for fine-only offenses (i.e., 1,146 individuals) were over age 55.** This elderly population is also particularly vulnerable to victimization by other inmates and more prone to suicide in jail.⁷³

71 See Michele Deitch, *et.al*, *Seventeen, Going on Eighteen: An Operational Fiscal Analysis of a Proposal to Raise the Age of Juvenile Jurisdiction in Texas*, AM. J. CRIM. L., Vol. 40:1 at 13-14 (2012), available at <http://ajclonline.org/wp-content/uploads/2013/03/40-1-Deitch.pdf>.

72 See St. John Banned-Smith, *Stuck in Limbo: Feds Say Jails Need Separate Housing for Youngest Inmates*, HOUSTON CHRONICLE (Jul. 1, 2016).

73 See Robynn Kuhlmann & Rick Ruddell, *Elderly Jail Inmates: Problems, Prevalence, and Public Health*, CAL. J. OF HEALTH PROMOTION, Vol. 3:2 at 56-57 (2005) available at http://cjhp.fullerton.edu/Volume3_2005/Issue2/49-60-kuhlmann.pdf.

2014 FINE-ONLY JAIL BOOKINGS – BY AGE

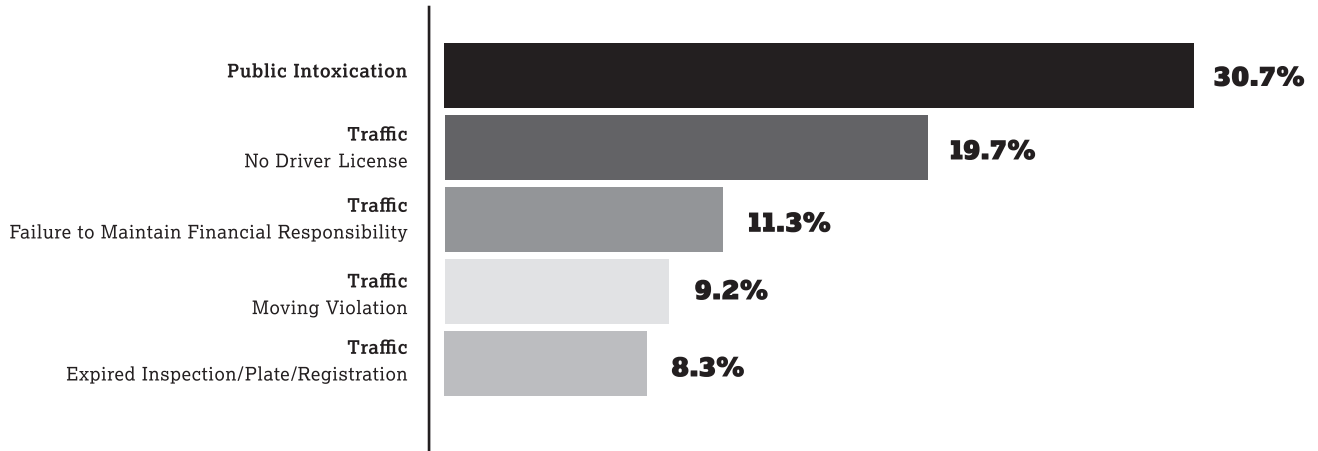
	<18	18-25	26-35	36-45	46-55	56-64	65+
El Paso	53	2,320	1,865	877	444	173	35
Percent of bookings	0.9%	40.3%	32.4%	15.2%	7.7%	3.0%	0.6%
Jefferson	91	1,556	1,933	887	645	294	35
Percent of bookings	1.7%	28.6%	35.5%	16.3%	11.9%	5.4%	0.6%
Lubbock	1	140	105	61	39	18	1
Percent of bookings	0.3%	38.4%	28.8%	16.7%	10.7%	4.9%	0.3%
McLennan	12	968	997	555	309	90	17
Percent of bookings	0.4%	32.8%	33.8%	18.8%	10.5%	3.1%	0.6%
Travis	17	2,269	2,270	1,257	971	372	56
Percent of bookings	0.2%	31.6%	31.7%	17.5%	13.5%	5.2%	0.8%
Williamson	30	682	557	293	152	44	10
Percent of bookings	1.7%	36.8%	32.4%	17.1%	8.8%	2.6%	0.6%
Total	204	7,885	7,727	3,930	2,560	991	154
Percent Total	0.9%	33.6%	32.9%	16.8%	10.9%	4.2%	0.7%

By reviewing the offenses that most often lead to jail booking, we find further evidence that low-income Texans are those most often jailed for fine-only offenses. In Hidalgo, Jefferson, Lubbock, McLennan and Williamson Counties, over 25 percent of arrests for fine-only offenses involved poverty-related traffic offenses, like driving on a suspended license or having an expired inspection sticker. As discussed previously, lower income drivers commonly accumulate such tickets after their inability to pay fines for a prior ticket causes them to receive holds on their licenses and registrations. In Jefferson, McLennan, Lubbock and Williamson Counties, another large percentage of people were arrested for missing their court date on a previous fine-only ticket. **The fact that these crimes are driving jail bookings is compelling evidence that people are being booked in jail who are unable to pay fines.**

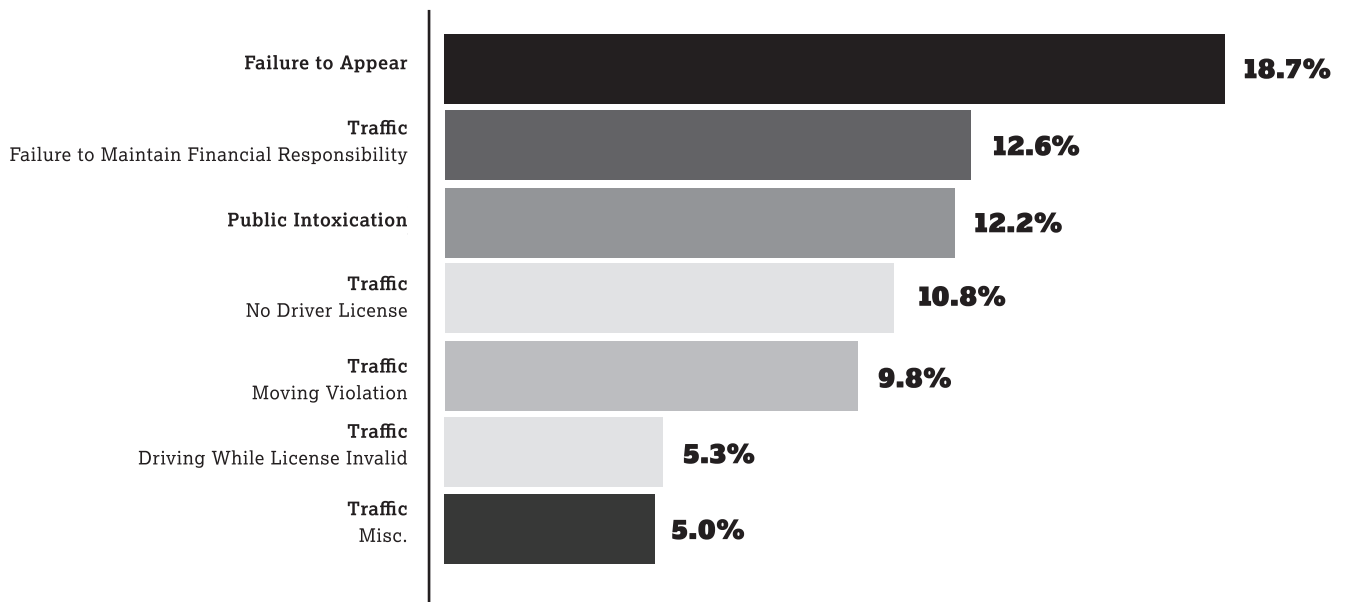
Furthermore, those booked in jail for fine-only offenses are not usually chronic scofflaws who have accumulated large numbers of tickets. On average, people who were arrested and booked into jail in the six counties that provided data did not have more than two fine-only charges pending against them when they were booked.

CHARGES REPRESENTED IN CLASS C JAIL BOOKINGS, 2014

HIDALGO COUNTY

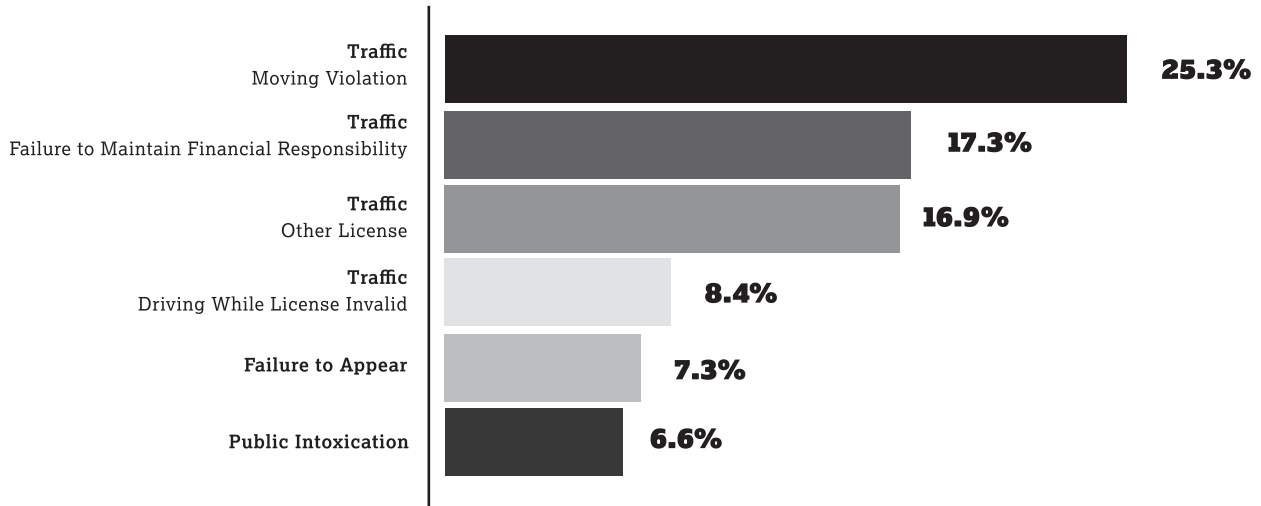


JEFFERSON COUNTY

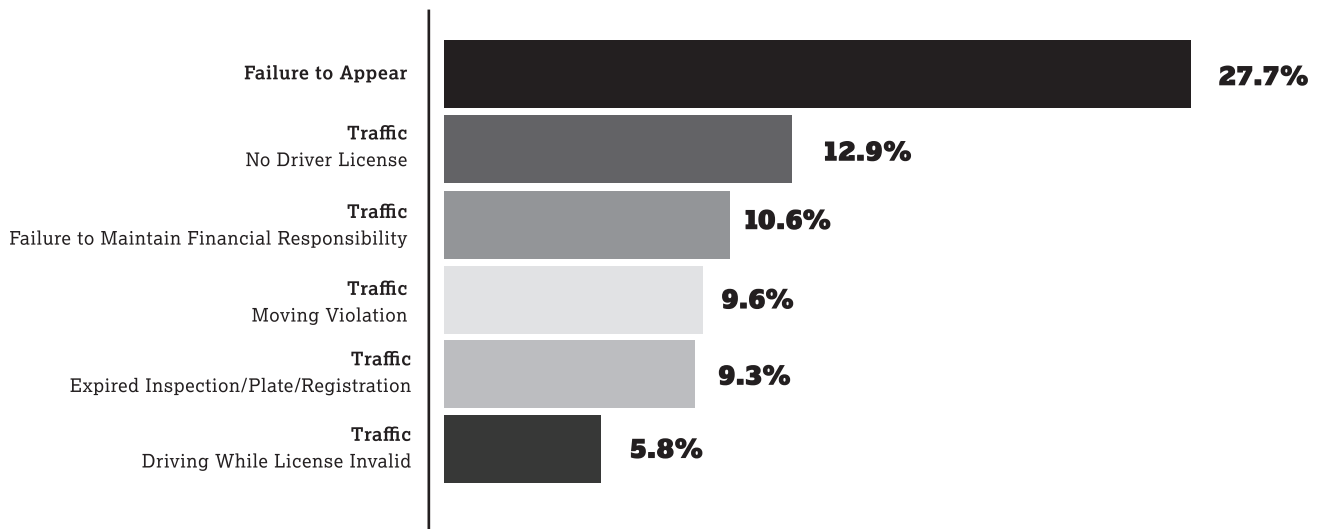


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LUBBOCK COUNTY

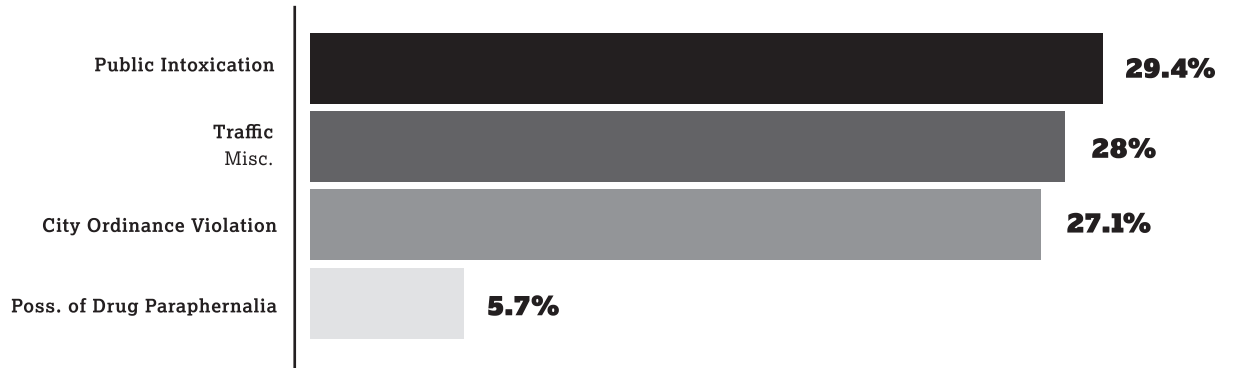


MCLENNAN COUNTY



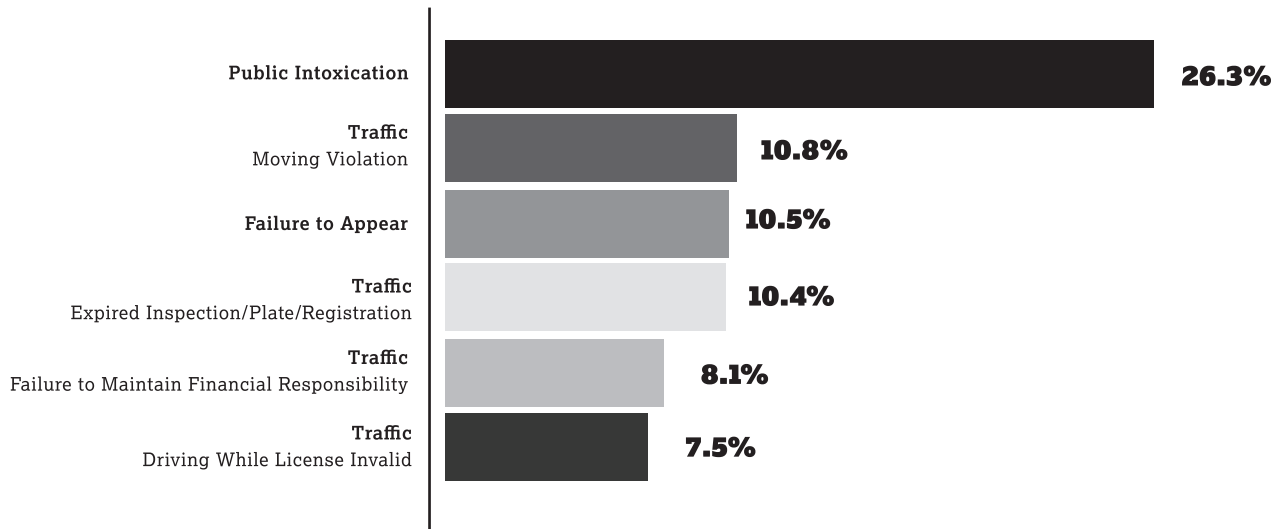
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TRAVIS COUNTY



*TRAVIS COUNTY'S DATA COMBINES DRIVING WITH AN INVALID LICENSE, NO DRIVER LICENSE, FAILURE TO MAINTAIN FINANCIAL RESPONSIBILITY, MOVING VIOLATIONS, ETC. TOGETHER AS "TRAFFIC."

WILLIAMSON COUNTY



E. WHAT ARE THE CONSEQUENCES OF JAIL TIME?

Even when people are jailed for only a day or two, their lives can be completely upended. Arrest and booking often occur unexpectedly because of a traffic stop, so people are not able to tell their employers that they need to take time off. As a result, many lose their jobs while in jail, seriously hindering their ability to earn a living. People's cars are often impounded when they are arrested during a traffic stop, requiring them to pay several hundred dollars to get their cars back; those who cannot pay may lose their transportation. People in jail at the beginning of the month may miss rent payments and face eviction by the time they are released. And the impact on children can be profound when their primary caretaker is taken away for even a brief period. In some cases, children of single parents may end up in foster care.

Jail stays also present health and safety concerns for people who are incarcerated. People jailed for fine-only offenses may be housed alongside people who were arrested for more serious, violent offenses; cases of violence against fellow inmates in jails are well documented.⁷⁴ Further, even short jail stays can cause existing physical health conditions to worsen, particularly when people do not have access to previously prescribed medications, and can exacerbate mental health issues. All of these consequences point to the fact that jail should be reserved for those individuals who pose a threat to public safety – not those whose only offense is failing to pay a fine.

LIONEL S. EDWARDS, GALVESTON

Lionel S. Edwards was arrested on Feb. 6, 2008, on warrants for three unpaid traffic tickets. He owed a total of \$1,209. During the booking process at the Galveston County Jail, he was found asleep on a cell floor. Jail staff noted that Edwards seemed to have had a seizure. Their response was to provide him a mattress “to avoid any injury should there be a recurrence of the seizure.” In the next hour and a half, an officer saw Edwards pacing, moaning and moving from the mattress to the floor. Eventually, the officer noticed that he was not moving, and asked an EMT to go into his cell to check on him. When the EMT got to the cell, Edwards had no pulse and was not breathing. Jail staff called 911, but efforts to revive him were unsuccessful. Edwards was 23 years old.⁷⁵

74 James Pinkerton & Anita Hassan, *Inmate dies after Harris County jailhouse beating*, HOUSTON CHRONICLE (Apr. 13, 2016).

75 Texas Justice Initiative, Jail Custody Death Data Set, *available at* <http://texasjusticeinitiative.org/jail-custody/> (last visited Jan. 9, 2017).

DANIEL MCDONALD, BEAUMONT

Daniel McDonald (name altered for privacy) is a 23-year-old plumber from Beaumont who lived with his girlfriend and their two daughters, a 4-year-old and a 3-month-old. McDonald had received several traffic tickets, including many for driving without a license, which he could not obtain due to financial holds. When McDonald went to court to take care of his tickets, the judge refused to give him community service even though McDonald lived below the poverty line. Instead, the judge put him on a payment plan for \$50 a month.

McDonald managed to keep up with the payment plan for only three months before he fell behind. Capias warrants were issued, and on Aug. 12, 2015, Williams was arrested. He was booked into the Jefferson County Jail but did not see a judge. Nobody told him how long he would be in jail. His 4-year-old daughter's very first day of school was on Aug. 24, and he had promised he would walk her to class. Williams was not released until Aug. 27. His home was robbed while he was in jail, and he blamed himself for being gone.

MARK CONWAY, WACO

Mark Conway (name altered for privacy) started getting tickets when he was around 15 years old despite the fact that he did not yet have a license, because he often drove his father around to prevent him from drinking and driving. Conway is now 41. But because of his unpaid tickets for driving without a license, he is still unable to get a driver's license.

Conway received five traffic tickets from Waco over a decade ago and has been to jail more than 20 times for those tickets. He still owes thousands of dollars due to all the fines and fees that have compounded over time. One ticket for driving without a license was set at \$200 in 2003. It has since ballooned to over \$700.

In September 2016, Conway found himself sitting in a holding cell for 36 hours before a judge informed him via video that he would remain in jail for another month because of the unpaid tickets. The judge did not give Conway a chance to speak. As a result, he could not tell the judge that he had gone to court to take care of his tickets several times, only to be turned away because he could not make the required down payment of \$200 per ticket to get on a payment plan. Conway also had not been offered a chance to perform community service. At the time of his arrest, his monthly income was less than \$400, and he was still making back payments on child support for his daughter, who has passed away.

Conway served 11 days in jail before attorneys from TFDP found him and secured his release. He lost his job while he was in jail and is still looking for work.

03 COSTS OF THE CURRENT SYSTEM

A. Public Safety Implications

There is no public safety value in putting people in jail because they cannot afford to pay their tickets. They are low-risk defendants whose underlying crime was intended to be punished by only a fine.

In fact, jail time for low-risk individuals may actually increase the likelihood that they commit future crimes. A study funded by the Houston-based Laura & John Arnold Foundation examined outcomes of individuals held for short periods before trial in Kentucky jails. The study found that low-risk defendants who were held at least two to three days were almost 40 percent more likely to commit a new crime before trial than low-risk defendants held no more than twenty-four hours.⁷⁶ The longer low-risk defendants were held, the more likely they were to reoffend.⁷⁷ One possible explanation for this effect is the negative influence of being housed in close quarters with higher-risk offenders. Another explanation is the stress and alienation of losing housing, employment and community ties through prolonged detention. Whatever the reason, **research demonstrates that jailing people for nothing more than failing to pay fines and fees actually harms public safety.**⁷⁸

Additionally, in most places, when a police officer makes an arrest, the officer must transport the individual to the jail, wait while the individual is booked, and then travel back to the officer's patrol area – a process that can take several hours. Every hour that it takes for a police officer to stop, arrest and book a person due to warrants for unpaid fines is time that officer is not devoting to more serious public safety concerns. While traffic law enforcement is vitally important to public safety, debt collection is not.

76 Christopher T. Lowenkamp, Ph.D. *et al.*, *The Hidden Cost of Pretrial Detention*, LJAF 3 (2013), available at http://www.arnoldfoundation.org/wp-content/uploads/2014/02/LJAF_Report_hidden-costs_FNL.pdf.

77 *Id.*

78 *Id.*

B. Fiscal Implications

1) REVENUE FROM FINES AND FEES

Texas' busiest criminal courts play a complicated role in the system, having been delegated two inconsistent jobs. While they are tasked with keeping our streets safe, they also collect revenue for state and local governments. The tension in the system does not go unnoticed by judges, local administrators and law enforcement. People in these positions are often frustrated by the expectation that they act as debt collectors.

Municipal and justice courts raise almost a billion dollars a year from the collection of fines and court costs in fine-only cases. Data from the Office of Court Administration shows that Texas municipal courts collected \$696.5 million in fines and court costs in FY 2015. Of that, they remitted \$236 million to the state government.⁷⁹ Justice courts raise less revenue than municipal courts, but they still raised \$302.6 million in fines and court costs, remitting \$96.8 million to the state.⁸⁰

Texas law prohibits any local government from requiring or suggesting to a justice or municipal court judge that the judge is expected to collect a certain amount of money in a specific time frame.⁸¹ Nonetheless, many judges do feel pressure, whether direct or indirect, to raise revenue. A presiding judge from a large Texas city who wished to remain anonymous indicated that she faces this pressure. One city council member repeatedly threatened to replace her if she did not meet projected revenue goals. In a widely reported story, a municipal court judge in the small town of Calvert resigned over similar pressure. He publicly objected to the constant pressure from city officials to collect on speeding tickets, calling the city's municipal court a "cash cow."⁸² A recent presentation by the Dallas assistant city manager to the Dallas City Council expressed concerns about the Dallas Municipal Court's "low collection rates." The presentation highlighted Dallas' "low revenue per case average" as compared to other similarly sized and neighboring cities.⁸³ Likewise, a report to the Fort Worth City Council by city auditors expressed concern that the city was not "maximizing revenue potential" through its municipal court.⁸⁴ These presentations were void of any discussion about the impact of court fines and costs on people who are unable to pay and the goal of equal justice for all residents. They send a clear message that some city officials care most about the bottom line.

79 ANNUAL STATISTICAL REPORT, *supra* note 3, at Detail-48.

80 *Id.* at Detail-45.

81 TEX. TRANSP. CODE ANN. § 720.002.

82 Byron Harris, *Judge Says He Quit Over Speeding Ticket Quota*, WFAA (June 3, 2015, 2:28 AM), available at <http://legacy.wfaa.com/story/news/local/investigates/2015/06/02/former-judge-says-he-quit-because-of-speeding-ticket-quota/28367771/>.

83 Memorandum from the City of Dallas on The Dallas Municipal Court System: An Overview 59 (July 27, 2012), available at http://www3.dallascityhall.com/council_Briefings/Briefings0812/DallasMunicipalCourtSystemOverview_080112.pdf.

84 *City of Fort Worth Department of Internal Audit, Municipal Court Cash Collections and Non-Cash Ticket Dispositions Audit* (2014), available at http://fortworthtexas.gov/uploadedFiles/Internal_Audit/141219-municipalcourtaudit.pdf.

Additional pressure to generate revenue comes from state government. The State of Texas received \$333 million in court costs stemming from fine-only offenses in 2015. **Though in theory these costs go to reimburse the government for the cost of prosecuting the tickets, “court administrators speculate that 1 in every 3 dollars gets diverted towards projects that have nothing to do with the court system.”**⁸⁵ Nearly every legislative session, state representatives add or try to add additional court costs to fund various programs.

When the goal of raising revenue becomes a court’s priority, justice suffers. **Courts that prioritize generating revenue have little incentive to order community service or other alternatives that provide no money to the government, and may avoid waiving or reducing fines and costs in appropriate cases.** On the other hand, they do have an incentive to impose additional fees on defendants and to encourage the filing of additional charges when defendants fail to appear so that more fines are collected. Courts may also see the threat of jail as a useful tool to encourage payment.

2) COSTS TO TAXPAYERS

Any financial benefit of current practices must be weighed against the costs those practices impose, both on governments and individuals. Right now, the collection of fines places a hefty burden on local police departments and sheriffs’ departments to use their resources to locate, arrest and jail those who do not – and in many cases cannot – pay fines. This shift of law enforcement resources away from more serious crimes can have a negative effect on public safety, while taxpayers foot the bill for unnecessary jail stays.

Additionally, the proliferation of arrest warrants and tens of thousands of jail stays leads to a loss of employment and employment opportunities, which both stunts the economy and drives more people to rely on public benefits to survive.

85 Eric Dexheimer, *Hard-up Defendants Pay as State Siphons Court Fees for Unrelated Uses*, AUSTIN-AM. STATESMAN (Mar. 3, 2012).

C. A Better, More Cost-Effective Way

The City of San Antonio's decade-long experiment with ending jail commitments for nonpayment demonstrates that jail commitments are not necessary to collect revenue. In 2007, Bexar County faced a major overcrowding problem in its jail. San Antonio's Presiding Municipal Court Judge John Bull, along with county and city officials, decided that the San Antonio Municipal Court would stop sentencing people to sit out their unpaid fines in jail for fine-only offenses in order to address the overcrowding problem.⁸⁶ Almost a decade later, the San Antonio Municipal Court continues to follow this policy.⁸⁷

Not only has San Antonio's approach saved money through the avoided jail stays, it has not reduced the court's revenue – a strong indicator of compliance with its judgments. Rather, as shown in the chart on the next page, the city's greatest *increase* in revenue occurred in the years immediately following the decision to end jail commitments. Four years after ending jail commitments, San Antonio Municipal Court revenue was up 74 percent. This increase partly tracks a statewide trend of increasing revenue and increasing amounts collected per case due to escalating court costs. But statewide revenue did not increase nearly as much during the period; it went up only 10 percent in that time. Asked about the increase, Judge Bull hypothesized that taking away jail as a sentencing option encouraged judges to work more closely with defendants to develop individualized sentences that they were able to complete.

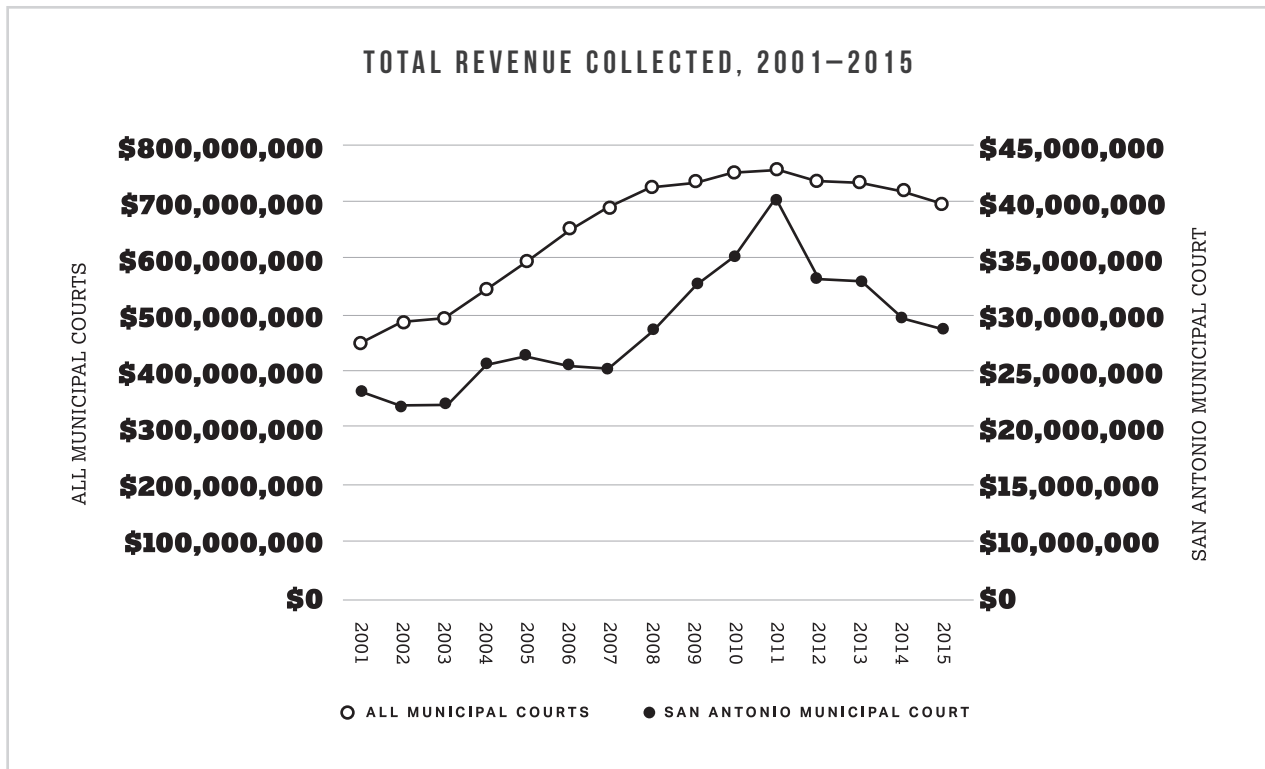
"BEFORE 2007, JAIL HAD BEEN AN EASY, EVEN IF COUNTERPRODUCTIVE, ALTERNATIVE FOR JUDGES WHO WERE DEALING WITH DEFENDANTS WHO STRUGGLED TO PAY THEIR FINES. WHEN JAIL WAS NO LONGER AN OPTION, MORE JUDGES BEGAN MAKING A CONCERTED EFFORT TO USE THE ALTERNATIVE SENTENCES AVAILABLE TO THEM TO RESOLVE CASES – ALTERNATIVES LIKE PAYMENT PLANS, PARTIAL PAYMENT AND COMMUNITY SERVICE. AND AT LEAST PARTLY AS A RESULT OF THIS, REVENUE SHOT UP."⁸⁸

– Hon. John Bull, Presiding Judge, San Antonio Municipal Court

86 Ulloa, *supra* note 6.

87 See Municipal Court Briefing on the U.S. Department of Justice's Letter to Courts, Presented by Hon. John Bull, Presiding Judge, to the Criminal Justice, Public Safety and Services Committee of the San Antonio City Council, File No. 16-2898 (May 4, 2016), *available at* <https://sanantonio.legistar.com/Calendar.aspx>.

88 Interview with Honorable John Bull, Presiding Judge, San Antonio Municipal Court, Jul. 1, 2016.



D. Legal Costs & Implications

Although the U.S. Supreme Court held over 40 years ago that jailing a person for inability to pay a misdemeanor fine is unconstitutional, courts throughout Texas continue to jail people who are unable to pay the fines and accumulated fees. So long as Texas courts continue to violate the clear, long-standing constitutional rights of defendants, the local governments, local officials and judges will continue to face the threat of litigation and all the costs associated with it.

In 1970, the Supreme Court held in *Williams v. Illinois* that an individual's prison sentence could not be extended as payment for the fine that is owed.⁸⁹ The court reasoned that incarcerating people who cannot afford to pay fines and fees "exposes only indigent defendants to the risk of imprisonment beyond the statutory maximum," amounting to "an impermissible discrimination" against poor people.⁹⁰

One year later, in *Tate v. Short*,⁹¹ the Court heard a case in which an indigent man owed money to the Houston Municipal Court for traffic tickets. Unable to pay the tickets, Preston Tate had been confined to a municipal prison farm and made to work off his traffic fines at a rate of \$5 a day.

89 *Williams v. Ill.*, 399 U.S. 235, 239 (1970).

90 *Williams*, 399 U.S. at 242.

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

Relying on its reasoning in *Williams*, the court held that Tate’s “imprisonment for nonpayment constitutes precisely the same unconstitutional discrimination since, like Williams, [Tate] was subjected to imprisonment solely because of his indigency.”⁹² The court made it clear that indigent people must be offered alternatives to payment in full or imprisonment, such as payment plans, community service, and the reduction of fines and fees.⁹³

In 1983, the Court held in *Bearden v. Georgia* that courts could not revoke probation or parole solely because a person could not afford to pay fines and costs.⁹⁴ The court clarified that due process required that the court inquire into a person’s reasons for not paying the fine or fee before any imprisonment.⁹⁵

While *Tate* was pending at the U.S. Supreme Court, the Texas Legislature made changes to state law so that when the case was remanded back to state court, Texas statute would comply with the requirements of the U.S. Constitution.⁹⁶ The Texas Code of Criminal Procedure now allows municipal and justice courts to jail people who fail to pay fines and costs, but only after the judge holds a hearing and makes a written determination that either:

- The person is not indigent and failed to make a good faith effort to discharge the fines and costs.
- The person is indigent, failed to complete community service, and was able to perform the ordered community service without undue hardship.⁹⁷

Despite the clear Supreme Court precedent and unequivocal state law requirement that a written determination be made, some courts are not following the law. For example, the authors reviewed the case files of 50 individuals who had been committed to jail by the Houston Municipal Court and did not find a single written determination that any individual was able to pay their fines prior to jail commitment. **At least half of these individuals had addresses listed as “homeless” in court records – compelling evidence that they should have been found unable to pay their fines had an ability to pay hearing actually been conducted.** Similarly, reporters from BuzzFeed reviewed 100 case files from the El Paso Municipal Court and did not find a written determination in any of

92 *Id.* at 397-98.

93 *Id.* at 399-400.

94 *Bearden v. Georgia*, 461 U.S. 660, 661 (1982).

95 *Id.* at 668. See also Letter from Vanita Gupta, Principal Deputy Assistant Att’y Gen., Civil Rights Division & Lisa Foster, Director, Office for Access to Justice, U.S. Dept. of Justice, Mar. 14, 2016, available at <https://www.justice.gov/crt/file/832461/download> (explaining that “to comply with [*Bearden*’s] constitutional guarantee, state and local courts must inquire as to a person’s ability to pay prior to imposing incarceration for nonpayment”) [hereinafter “DOJ Dear Colleague Letter”].

96 TEX. CODE OF CRIM. PROC. art. 45.046, as amended by Acts 1971, 62nd Leg., p. 2991, ch. 987, Sec. 7, eff. June 15, 1971.

97 TEX. CODE CRIM. PROC. ANN. art. 45.046(a).

them.⁹⁸ In fact, in their review of files in 20 Texas municipal and justice courts, the reporters found that nine courts lacked documentation of ability to pay hearings.⁹⁹

Texas courts' current practice of jailing people for failure to pay fines in fine-only cases violates another constitutional right as well – the right to counsel pursuant to the Sixth and 14th Amendments of the U.S. Constitution. Although municipal and justice courts in Texas do jail people for failure to pay fines and costs, these courts do not provide defendants with the opportunity to request appointment of defense counsel in fine-only cases. In fact, the authors of this report know of no court in Texas that provides appointed counsel to individuals in fine-only cases. Yet, **in *Argersinger v. Hamlin*, the U.S. Supreme Court ruled that indigent defendants cannot be imprisoned for any criminal offense unless they have been provided with the opportunity to have counsel appointed at the trial stage of their case.**¹⁰⁰ If Texas courts are going to jail individuals, the Constitution requires that counsel be appointed to defendants who cannot afford to hire their own.

In order to avoid violating the constitutional rights of Texans, the practices of Texas courts must change. Courts must provide counsel to defendants if they continue to use jail time to satisfy fines, and they must ensure that no person is jailed when their reason for nonpayment was indigence. So long as courts continue to violate these constitutional rights, local governments, officials and judges face liability for such violations and are forced to spend considerable amounts of time and money defending against the litigation and paying resulting judgments.

98 Taggart & Campbell, *supra* note 36.

99 *Id.*

100 *Argersinger v. Hamlin*, 407 U.S. 25, 33 (1972). See also DOJ Dear Colleague Letter (“The Sixth Amendment requires that a defendant be provided the right to counsel in any criminal proceeding resulting in incarceration”).

04 RECOMMENDATIONS

The good news is that the Texas Legislature and municipal and justice courts can fix the problems associated with fine-only cases. Modest changes to state law would make huge strides toward justice for all in fine-only criminal cases. These recommendations have very little, if any, cost to state or local governments, and in some cases would present significant cost savings. They would also empower courts to hold individuals accountable, allowing them to resolve the fines and costs they owe quickly and without the unnecessary use of arrest warrants or jail sentences.

1. End the use of jail commitments for fine-only offenses.

Ordering defendants to jail to pay off fines and fees is an unnecessarily harsh, counterproductive punishment that wastes taxpayer dollars and unfairly discriminates against those without the means to pay. Additionally, jailing individuals without the appointment of counsel violates their constitutional rights, exposing city and county officials to liability.

How to Accomplish This: The legislature should amend Article 45 of the Code of Criminal Procedure, which governs municipal and justice courts, to remove the authority of judges to sentence defendants to jail for nonpayment of fines or not completing community service. Until the law is changed, city councils should end jail commitments through ordinances governing their municipal courts, a policy that not only promotes justice but also has the added benefit of limiting their liability for constitutional violations.

2. Require judges at sentencing to determine a person's ability to pay and to immediately consider alternatives to full payment.

Currently, state law does not require judges to inquire about a person's ability to pay fines and fees until they are considering committing someone to jail. If judges determined defendants' ability to pay fines and costs at sentencing and used that knowledge to tailor the defendants' sentences, defendants would not leave court with a fine amount they had no hope of paying. Instead, defendants could receive individualized sentences that they could complete.

Additionally, judges should have guidance for determining who has no ability or a limited ability to pay fines and court costs. The Texas Judicial Council has adopted guidelines for the Collection

Improvement Program (CIP), a state-run collections program. According to those guidelines, CIP staff must refer a case back to the judge to consider alternative sentencing if:

- A person's income is at or below 125 percent of the federal poverty guidelines;
- A person receives income-based government assistance (e.g., food stamps, WIC, Medicaid, etc.); or
- A person is legally mandated to attend school full-time due to age.

The same standard would be appropriate for municipal and justice court judges to use at sentencing to determine who should be presumed unable to pay fines and costs.

How to Accomplish This: The legislature should further amend Article 45 of the Code of Criminal Procedure to require judges to make an ability to pay inquiry at sentencing and implement standards for determining ability to pay. State law should also require judges to consider at sentencing alternatives for people who do not have the ability to pay in full or in part. Until the law is changed, justices of the peace and the presiding judge of each municipal court should establish internal policies stating that they will conduct ability to pay inquiries at the beginning of each case, immediately consider alternatives in appropriate cases, and offer affordable payment plans.

3. Expand the ability of courts to resolve fines and costs through community service.

Community service should be made more widely available to any defendant who wishes to complete it. Judges should be required to ask at sentencing if defendants want to resolve their fines and fees through community service, and should allow anyone to select this option.

Judges should also have broader discretion to order community service anywhere they determine it is appropriate, including local schools, neighborhood-based organizations that are not formal nonprofits, and religious institutions – not just governmental entities and nonprofits, as is currently provided by law. This change would empower judges to allow parents to work at their child's school or work from home, for example, to fulfill their community service obligations.

Finally, people should be given dollar credit for community service at a rate that sets them up for success rather than failure. Right now, judges are only required to give credit at \$6.25 per hour. A rate of \$20 per hour would be more appropriate, since that is the approximate median hourly income in Texas.

How to Accomplish This: The legislature should amend Article 45 of the Code of Criminal Procedure to allow community service in any case in which the defendant elects it. The Code should also be amended to allow more options for community service and to provide a higher rate of credit. Meanwhile, judges should grant a more reasonable credit rate for community service when they do order it, since they already have the authority to grant credit at any rate above \$6.25 per hour.

4. Expand the use of waivers and ticket reductions.

Indigency waivers are drastically underused in municipal and justice courts. While 1 in 8 cases are satisfied each year by jail credit, less than 1 percent of cases involve a full or partial waiver of fines and costs.

Texas law currently allows the waiver of fines and costs only *after* the defendant defaults in payment. This is a waste of time and resources for the courts, forcing low-income defendants to fail to satisfy the court's initial orders and receive warrants for nonpayment before they can receive sentences that are truly tailored to their circumstances.

Furthermore, costs and fees stemming from fine-only offenses should be waived for all indigent defendants. Unlike fines, costs and fees are nonpunitive in nature, and it does not make sense to assess them against indigent people who must take out predatory loans or forgo paying their utilities in order to pay them.

How to Accomplish This: The legislature should amend Article 45 of the Code of Criminal Procedure to allow courts to waive and reduce fines and costs at any point in the process. There should also be a mandatory waiver of costs and fees, which are nonpunitive in nature, for all indigent defendants.

5. Reduce reliance on arrest warrants.

Unless a justice or municipal court has already documented an individual's ability to pay, the court should be required to order the person to appear for a hearing before issuing a *capias pro fine* warrant. The notice of the hearing should contain information about available alternatives if the defendant is unable to pay. This additional step, called a show cause hearing, would require that individuals appear before the judge, giving them an opportunity to explain why they haven't paid. This hearing would also give the judge an opportunity to develop an alternative sentence, thereby reducing the number of *capias* warrants issued.

Additionally, changes in procedure could reduce the number of Failure to Appear warrants. Information should accompany a ticket or summons for a fine-only offense that explains in plain language a person's options if he is unable to pay the fine in full. Also, before issuing a warrant for a defendant's failure to appear in court on a fine-only criminal charge, the court should provide notice to the defendant of information such as:

- A future date at which she can speak with a judge.
- The court's name and location.
- The availability of alternative sentences for defendants unable to pay the amount owed.

Courts should also be safe havens so that people are not afraid to come to court to resolve warrants and unpaid fines. People should be allowed to come to court at any point in a case to speak to a judge, revise payment plan terms, or otherwise attempt to resolve their unpaid fines and fees without any threat of arrest or jail on a fine-only charge.

Finally, people who contact the court to resolve their warrants and unpaid fines should be allowed to set a hearing without paying any money. Requiring a defendant to pay before they can see a judge makes it unnecessarily difficult for a person who is trying to comply with the law. Similarly, those people arrested and booked on a fine-only offense who are waiting to see a judge should be released on a personal recognizance bond if they will not see a judge within eight hours. Holding people who pose no public safety risk for long periods of time is a waste of jail resources and a threat to public safety.

How to Accomplish This: The legislature should amend the Code of Criminal Procedure to require a show cause hearing before a capias warrant is issued and a notice of hearing and alternative sentences before a Failure to Appear warrant is issued; make courts safe havens by prohibiting arrest on a fine-only charge of someone who voluntarily showed up to court; prohibit requiring payment of money to set a hearing; and providing for jail release within eight hours for any fine-only booking.

In the meantime, judges should make it a policy to set a show cause hearing before issuing a capias warrant. They should also make an attempt to contact the defendant before issuing a Failure to Appear warrant. Courts should establish walk-in dockets at convenient times and locations for anyone to come discuss problems they are having with making payments. Finally, courts should post notices online and in written materials stating that people will not be arrested on fine-only warrants for coming to court to resolve their cases.

6. Eliminate unfair fees.

Current law should be clarified to give judges the discretion to waive or reduce fines or fees for anyone who cannot pay the total amount owed at any point in the life of a case. Additionally, the multiple fees now allowed by law should only be applied once per defendant rather than to every ticket, while other fees need to be eliminated entirely.

- The time payment fee of \$25, charged only to people who need more than 30 days to pay their fines, should be eliminated entirely, along with the transaction fees that people pay for every payment during a payment plan.
- The Failure to Appear/Pay fee (\$30) and Scofflaw fee (\$20) should only be charged by one court to one defendant a single time, even if the defendant has multiple cases.
- The \$50 warrant fee should only be charged when a defendant is actually arrested, and only one warrant fee should be allowed per arrest (rather than \$50 for each warrant).

None of these fees should be charged to people who have been determined unable to pay, and judges should have the authority to waive any of them in the interest of justice.

How to Accomplish This: The legislature should amend the Code of Criminal Procedure to grant judges the power to waive or reduce fines, costs, and fees at any time and amend the Code of Criminal Procedure, Local Government Code and Transportation Code to eliminate certain fees and make other fees inapplicable to people who are unable to pay.

7. Reduce the number of unlicensed drivers.

State law should be changed to reduce the number of people who have invalid licenses and expired registrations. They often accumulate crippling debt because they must drive to work and complete other tasks necessary to survival.

- People who have been determined unable to pay fines and costs should not be placed in the county's Scofflaw Program (prohibiting renewal of car registration) or the DPS's Failure to Appear/Pay Program (prohibiting driver's license renewal).
- People who have been prohibited from renewing their licenses or registrations for more than two years should be granted amnesty and removed from these programs.
- Municipal judges should have the authority to grant occupational driver's licenses, which allow people to drive to work while their licenses are suspended.
- Finally, the Driver Responsibility Program (DRP) should be eliminated entirely. It perpetuates the cycle of debt and serves no valid purpose. Until the program is eliminated, courts should be required to notify DPS within five days when a person has been determined unable to pay fines and costs in a case where surcharges apply so that surcharges can be waived.

How to Accomplish This: The legislature should amend the Transportation Code to modify these programs accordingly and eliminate the DRP entirely. In the meantime, cities and counties should modify the interlocal agreements related to the Scofflaw Program to exempt certain defendants who are unable to pay fines and fees. In addition, courts should forward any determination that a defendant meets the DRP indigency standard to DPS in a case where surcharges apply.

8. Limit private collection agencies.

Private collection agencies are currently permitted to collect fines and fees in fine-only cases even when people have not yet seen a judge or even entered a plea. This denies individuals due process protections they should have in any criminal prosecution. The law should be changed to prevent the collection of any amount in cases where an individual has not yet appeared before a judge.

Cases should only be referred to private collection agencies after the court's collection efforts have been exhausted. Private collection agencies should also be prohibited from charging fees of more than 5 percent of the total amount of debt owed to the court, and should be required to end collection efforts after a certain period of time (*e.g.*, two years).

In addition, courts should be prohibited from sharing with private collection agencies the information of people who have no ability to pay. Finally, if a person notifies a collection agency that he is unable to pay the amount owed, the collection agency should be required to end collection attempts and to notify the court.

How to Accomplish This: The legislature should amend the Local Government Code that governs activities of private collection agencies. In the meantime, cities and counties should modify their agreements with private collection agencies to ensure that no cases involving people who are unable to pay are referred to the agency. The agreements should also be modified to require an agency to refer cases back to the court when an individual cannot pay.

