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Testimony Before the House Committee on Criminal Jurisprudence
Regarding Interim Charge # 7 on Fines & Fees

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Chairman Moody and Members of the Committee:

During the 85th legislative session, the Texas legislature wisely passed two important bills designed to improve procedures in criminal cases when defendants are unable to pay fines, court costs, and fees. Both Senate Bill 1913 and House Bill 351, which were substantively very similar with the exception of some minor differences, were based upon recommendations from the Texas Judicial Council led by Chief Justice Nathan Hecht. The two bills were signed by Governor Abbott on June 15, 2017, and took effect on September 1, 2017.

The legislation made a number of meaningful improvements to state law to help ensure all defendants were treated fairly in the criminal courts regardless of their ability to pay fines, costs and fees. Among the key changes made by the legislation are the following.

- In all criminal cases in which a conviction is entered in open court, courts must inquire into an individual's ability to pay when imposing any fines or court costs.
- If an individual is unable to pay after being convicted in open court, the court must consider an alternative sentence at that time, including a payment plan, community service or a waiver or reduction of the amount owed.
- The types of activities that can qualify as community service have been expanded to include activities like educational classes, job training or drug treatment.
- The ability of judges to waive or reduce fines and fees is expanded.
- Citations and certain notices from the court are required to contain information about alternative sentences.
- Individuals are given notice and another opportunity to appear in court before a failure to appear warrant is issued in a Class C misdemeanor case.
- Individuals are given notice and opportunity for a hearing before a capias pro fine warrant is issued for their failure to pay fines.

- People arrested on warrants associated with Class C misdemeanor cases are to be released on personal bond, unless certain conditions are met.
- Fees associated with driver's license holds through the DPS Failure to Appear/Pay Program (also known as Omnibase) must be waived by the court when a person is indigent.

One year after taking effect, this legislation has significantly improved fairness in criminal courts across the state. Many judges that we have observed or heard reports about have taken steps to implement best practices in their own courtrooms, some even going beyond the minimum legal requirements established by the new law. The improvements and positive practices are discussed below. Moreover, the number of warrants and number of jail sentences appears to be declining, a positive indicator of the impact of this legislation.

However, several issues that S.B. 1913 and H.B. 351 were intended to address persist in many courts. Recently, Texas Appleseed and Texas Fair Defense Project (TFDP) managed a statewide court-watching project beginning in the spring of 2017. We have also interviewed several attorneys who represent indigent clients and regularly appear in municipal and justice courts, where the vast majority of cases involving fines and fees are adjudicated. TFDP also has attorneys on staff who practice in justice and municipal courts across the state. The persistent problems that we have observed are summarized below as well. Among the problems that we continue to see are:

- Alternative sentences, including community service and waiver, are still underused.
- People who do not plead in open court are not entitled to consideration of alternative sentences, even if they notify the court that they are unable to afford the fines and costs.
- Hundreds of thousands of people are unable to renew their licenses until their fines and costs are completely paid off under the DPS Failure to Appear/Pay Program.
- Many courts refuse to allow people who have previously failed to appear to come to court to talk to a judge or prosecutor unless they pay a monetary bond.
- Many courts refuse to withdraw warrants when someone voluntarily appears in court, resulting in people with warrants for unpaid fines and fees being scared to go to court to take care of their citations due to the threat of arrest at the courthouse.
- Deferred disposition deals are often only offered to people able to pay a deferral fee.

Legislation to clarify the intent of the original bill and clean up language that has caused confusion would solve many of these problems. Recommendations about how the statutory language should be clarified and improved follows.

Improved Justice Around Fines and Fees: What's Going Well

I. Arrest warrants are down statewide.

One of the biggest impacts of the legislation passed last session has been a reduction in the number of arrest warrants issued related to fines and fees. A huge number of warrants were issued by municipal and justice courts in the years leading up to passage of the legislation; 2.4 million were issued by the municipal courts and 477,000 issued by the justice courts in 2015. Included in this number are capias warrants, which are issued when someone fails to pay their fines as ordered by the court, and traditional Class C misdemeanor arrest warrants, which are typically issued when an individual fails to appear in court.

Arrest warrants can have tremendous negative consequences on individuals, preventing them obtaining employment. They also mean that people live in fear of being arrested and booked in jail at any time, which can reduce the likelihood that they will report more serious crime to law enforcement. And when an individual is arrested on one of these warrants, they may lose current employment when they don't show up for work, and their families and children may suffer as well.

S.B. 1913 and H.B. 351 attempted to drive down these arrest warrants so that they were not used as the default method of enforcement, particularly when the cause of nonpayment was lack of financial resources, or the cause of failure to appear was fear of coming to court when one lacked the ability to pay. The legislation required courts to give people notice of their court dates and another opportunity to appear before issuing a failure to appear warrant. It also required tickets and certain notices from the court to provide information about alternative sentences to reduce people's fear of coming to court. The legislation also required courts to order a show cause hearing before issuing a capias warrant, in which defendant would have the opportunity to explain why they did not pay and the court would have the opportunity to alter their sentence if appropriate.

Preliminary data pulled from the Office of Court Administration (OCA) Court Activity Reporting and Directory online database shows a drop in the number of arrest warrants in both justice and municipal courts since the law took effect. Overall warrants have gone down 15% in justice courts and 16% in municipal courts, when comparing the first six months of 2017 to the first six months of 2018. The warrants for failure to appear have dropped more significantly than capias warrants. Failure to appear warrants have fallen 17%, and capias warrants about 10%. This data is preliminary and may change as more courts submit data to OCA.

II. Jail sentences are down in some courts.

S.B. 1913 and H.B. 351 did not change courts' authority to jail people who do not pay fines. Just like before the legislation passed, municipal courts and justice courts have the authority to

sentence someone to jail when they willfully refuse to pay fines or to complete community service. The court must make a written finding that the person had the ability to pay the fines or the ability to complete community service without undue hardship. The only change that the legislation made regarding jail commitments was to require that people get $100 credit per night in jail, up from $50 per night in jail before the legislation took effect.

Still, the legislation should reduce jail sentences for unpaid fines and costs by encouraging judges to consider alternative sentences. Unfortunately, statewide data on the number of people sentenced to jail for nonpayment of fines and costs is not collected. OCA does collect the number of cases in which fines are satisfied through "jail credit", but this is not the same thing. Jail credit is often given when people are booked into jail on a separate, higher-level offense, or when they are arrested on a warrant and spend time in jail before seeing a judge.

However, we have been able to obtain data on jail commitments from a handful of municipal courts, and the jail sentences in these courts are trending downward, with precipitous drops in a few courts. Between calendar years 2015 and 2017, jail sentences dropped 96% in the Austin Municipal Court, 85% in the Houston Municipal Court, and 65% in the Fort Worth Municipal Court. In municipal courts in mid-sized cities that provided data, including McKinney Municipal Court, the Irving Municipal Court, and the San Angelo Municipal Court, the number of jail sentences is down anywhere between 30% and 45%.

Fewer people in jail for unpaid fines should have a positive impact on Texans' safety. A growing body of academic research has demonstrated the harms directly associated with jailing people who are not dangerous, like people whose only offense is not paying a fines. The loss of employment, loss of housing, family trauma, worsening of medical conditions, and deterioration of mental health that are often associated with jail stays—even brief ones—can cause long-term negative consequences for Texas families and worsen their financial stability and self-sufficiency. Even short jail stays for low-risk individuals are associated with an *increase* in recidivism, meaning that if you keep a low-risk person in jail they are more likely to commit a new crime. Instead, low-risk people who are not dangerous should be diverted from jail entirely or released as soon as possible after booking on a personal recognizance (PR) bond, ordered to appear in court at a later date.

III. Alternative sentences are being used more often.

A primary goal of S.B. 1913 and H.B. 351 was to create court procedures that would prevent defendants being sentenced to pay fines and costs that they were completely unable to pay, and thus avoiding the arrest warrants, jail time and suspended driver's licenses that often result from nonpayment. The legislation not only requires judges to ask about ability to pay for individuals who are sentenced in open court, but to sentence defendants to alternatives when they are unable to pay. These alternatives can include community service, payment plans and a waiver or reduction of the amount owed.

Though most defendants are not sentenced in open court, S.B. 1913 and H.B. 351 also encouraged judges to use alternative sentencing more frequently for all indigent defendants by expanding the types of activities that could be considered "community service" to include things like GED courses, job training programs, and drug and alcohol treatments.

Our court observations revealed that some courts have implemented some very positive practices related to alternative sentences. Several had presentations before defendants entered the courtroom explaining the types of alternatives that were available to them if they were not able to pay that day. Some of the judges observed were very thorough in explaining to defendants these alternatives and worked with each defendant to develop individualized sentences that the defendants believed they could complete. While there continue to be problems in many courts, discussed in more detail below, there were also many improvements observed.

The preliminary data shows that courts are using these alternative sentences more often. Comparing January through June of 2017 versus 2018, community service sentences are up in both municipal and justice courts by 19% and 11%, respectively. Sentences in which courts waived or reduced fines have increased as well, jumping 35% in municipal courts and almost doubling in justice courts.

While these numbers are trending in the right direction, they still represent a tiny fraction of all cases disposed. Even after the legislative changes, only 1 in 100 criminal cases disposed in justice courts involves a community service sentence; only about 1 in 50 municipal court disposed in justice courts involves a community service sentence. And fewer than 1 in 100 individuals gets their fines or costs waived in either court. Given that 15 percent of Texans live in poverty according to the U.S. Census Bureau, it is clear that the need for alternative sentences is much higher than the amount they are currently being used. Reasons that these sentences are still not being widely used and how to encourage their use more are discussed below.

Notably, the revenue per case after implementation of the new legislation has increased slightly in both the justice and municipal courts. Any previous concerns about the legislation leading to reduced revenue appear to be unfounded. While it is true that total overall revenue collected in the justice and municipal courts is down, that is a function of the decreasing caseloads due to a reduced number of tickets being written. This is likely because the vast majority of defendants are eager to take care of their fines and costs but have been discouraged from taking action due to unrealistic sentences. Increasing the use of alternative sentences and encouraging people to come to court will almost certainly result not only in increased compliance but in increased revenue as well.

IV. Other innovative practices have been implemented.

There are other promising practices in municipal and justice courts that we want to highlight. For example, the Austin Municipal Court has held three driver's license restoration clinics, partnering with the Texas Fair Defense Project and the Mithoff Pro Bono Program at the University of Texas Law School to provide people with free legal guidance on the steps they need to take to get their driver's licenses back. The demand for the clinics has been overwhelming—evidence that problems associated with suspended and invalid driver's licenses are extraordinarily common and must be addressed by the legislature. Additional clinics are planned for each quarter of the fiscal year. Other municipal courts that are located close to a law school or legal aid office should consider partnerships with those organizations to develop similar clinical programs.

Other courts have established dockets specifically for people who are indigent, or people who are experiencing homelessness. During indigency dockets, people who are struggling to pay their fines or comply with court community service orders, have an opportunity to discuss the problem with a judge, so that the sentence can be modified into one with which the person can comply. Similarly, homeless dockets are specifically for people in the community experiencing homelessness and have been established by courts like the Houston Municipal Court and the Lubbock Municipal Court. While city councils should reconsider city ordinances that drive these homeless dockets and focus on connecting people to services before they are ticketed, municipal courts can meanwhile ensure that the special needs of this population are being taken into account.

Persistent Problems & Recommendations

Despite the changes implemented a year ago, people who cannot pay their fines and costs still struggle for access to justice in many courts. A handful of the problems observed stem from a judge not following the new law. These are instances that do not require a legislative solution, but rather more judicial training or even the filing of a judicial complaint in egregious cases. But some of the problems people continue to face are a result of lack of clarity in the new statutory language. With some clarification of the statutory language, these problems could be addressed to realize the intent of the new law. Finally, there are problems that the legislation did not address, such as invalid driver's licenses as a result of unpaid fines and surcharges, that must be addressed by the legislature in order to achieve equal justice for all in Texas criminal courts.

I. Expanding Alternative Sentences

S.B. 1913 and H.B. 351 provided that judges must ask about defendant's ability to pay fines and court costs when sentencing a defendant in open court, regardless of whether the defendant raises the issue first. If the court finds that the defendant does not have the ability to pay the fines and costs, the judge must consider an alternative sentence, such as a payment plan,

community service, or a reduction or waiver of what is owed. Given this intent to expand alternative sentencing, it is surprising that there are relatively few alternative sentences being ordered.

The limited alternative sentences can be attributed in part to several factors:

1. Hearings on Alternative Sentences Not Required for Defendants Not Convicted in Open Court

S.B. 1913 and H.B. 351 only requires judges to consider a defendant's ability to pay fines and costs if the defendant is convicted and sentenced in open court. However, the vast majority of defendants in municipal and justice courts are not convicted in open court, and instead plead guilty or no contest remotely or at the clerk's window and are then assessed the full amount of the fine and costs. While the spirit of S.B. 1913 and H.B. 351 should allow defendants to request consideration of alternative sentencing after conviction, nothing requires courts to assess ability to pay and consider alternatives in the vast majority of class C misdemeanor cases.

While many courts that we have observed do make an effort to assess an appropriate sentence and consider alternatives to full payment for indigent defendants, some courts refuse to do so. For example, according to OCA data a small municipal court that we observed had not assigned community service or waived any amount of money in a single case since S.B. 1913 and H.B. 351 took effect in September 2017. When the judge was asked why he failed to offer reduced fines and costs or community service options, he replied that he was not required to consider those alternatives under S.B. 1913 or H.B. 351. While the law technically does not require consideration of alternative sentencing for anybody who is not convicted in open court, this thinking goes against the intention of S.B. 1913 and H.B. 351.

2. Problems with Ability to Pay Determinations

Many of the judges that we observed do inquire into defendants' ability to pay and make it relatively straightforward for defendants to prove indigency. However, there were issues in several courts observed, resulting in people who were not able to pay being effectively denied any alternative sentence.

For example, one judge was still requiring the defendant to raise the issue of ability to pay before considering it. This judge expressed frustration that defendants were not better informed (despite the fact that defendants in his court do not receive court-appointed counsel and generally have no specialized knowledge about how to navigate the legal system). This same judge also did not inform defendants that community service was available and would only allow it if defendant requested it. As a result, one defendant in his courtroom whose only income was disability benefits left with a payment plan, without ever knowing that community service or a reduced fine was possible.

Some judges also set impossibly high standards for finding someone unable to pay. For example, one judge stated that if a defendant has a pet or a smartphone, that defendant would not be allowed to do community service, since pets and smartphones are not necessities in her opinion. Another judge told a defendant that because she was wearing nice sneakers, she could not be indigent, despite the fact that the defendant was living at a homeless shelter at the time. Yet another judge asked a defendant "Did you pay rent? Groceries? Then, you can pay this." One judge told a defendant that because he had a credit card, he had the ability to pay immediately, telling the defendant that it was "better to be in debt to your credit card company than the court."

Additionally, at least two judges told defendants with old tickets that the defendants must prove that they did not have the ability to pay at the time that the ticket was initially issued many years ago. These defendants lacked the present ability to pay, but were not allowed to do community service unless they proved they were also indigent in the past.

There is confusion among judges about when ability to pay hearings are appropriate as well. Specifically, one judge told a defendant at a show cause hearing that it was too late to talk about indigency at that point. This was not the only court in which defendants were told that they were "too late" to raise their inability of pay or "too late" to enter into a payment plan, if they were coming to court to try to modify their sentence. Another court had a policy that people who had previously failed to appear were not eligible for community service. These are hurdles that can make it impossible for many to satisfy their legal obligations and resolve their cases.

3. Unreasonable Community Service & Payment Plan Requirements

The new law was intended to expand the community service options available to people. Yet, there are judges who continue to refuse to allow anything other than traditional volunteer hours for a nonprofit to count as community service. Attorneys reported difficulty getting community service credit for job training or GED programs, despite the fact that they now qualify as community service under the law.

Other judges make community service difficult to complete by ordering too many hours or ordering that it be completed in locations where defendants do not reside. One defendant observed was assigned to 205 hours of community service, to be completed at least 30 hours/month. That means that he has to spend one full work day per week doing community service, rather than paid work, for the next 6 months. He also had a suspended driver's license related to the tickets, which had caused him to lose his job and which meant he could not drive to his community service assignment.

Another judge ordered a person to complete more than 100 hours of community service within 60 days -- about 14 hours per week. This individual was experiencing homelessness, yet the judge (knowing defendant was homeless) ordered him to complete this community service in the community where the ticket was issued, not where he was currently residing. The community where the ticket was issued was a 45-minute drive from where he currently resided, and he did not have any form of transportation.

Other judges will not mention that community service is available unless the defendant asks about it, instead encouraging payment plans as the alternative sentence available to defendants who cannot pay. More than one court stated that they did not offer community service at all; the only alternative available in those courts was a payment plan.

Finally, some courts have strict guidelines for all payment plans instead of figuring out what will work on a case-by-case basis. For example, one judge informed a defendant that there were two options: (1) defer full payment for 60 days; (2) or pay in installments within 90 days. In fact, the judge has the liberty to assign the defendant any monthly amount that she is able to pay, and the amount owed does not have to be broken down into four equal installments.

4. Unwillingness of courts to use waiver

Waiver also continues to be uncommon. Some judges that we have observed will not waive or reduce fines unless defendant has a verifiable disability, expressing the opinion that a person should be able to complete community service without undue hardship unless they have a disability. This is not the standard set in statute, and other circumstances aside from disability can clearly make completion of community service an undue hardship. Another judge stated that he cannot reduce fines even if people are indigent, which is expressly contradicted in statute and a misunderstanding of the law.

Recommendations to Increase Alternative Sentencing

Some of these problems that we have observed are obvious misapplications of the current law. The Texas Municipal Court Education Center (TMCEC) and Justice Court Training Center (JCTC) train almost all municipal and justice court judges over the course of the year. Yet there are some judges who clearly do not understand the new law's requirements. Judicial training should be continued on this issue specifically to ensure that judges know that they should consider ability to pay, that community service should be offered in all courts, that a wide range of activities now qualifies as community service, and that the judge has broad discretion in how they fashion payment plans and in using their authority to waive or reduce what is owed.

Other issues may have resulted because the new statutory language is unclear and leaves room for multiple interpretations. In these cases, the language should be shored up to ensure that justice is achieved.

- The law should be clarified that judges are required to consider present ability to pay, not past ability to pay.
- The statute as written only requires judges to consider ability to pay at the time of sentencing in open court. The majority of courts that we have observed will consider ability to pay at any point in time after sentencing, and will modify defendant's sentence accordingly. So if a defendant is ordered to pay a fine, but loses his job, most courts will allow that defendant to return to court and consider an alternative sentence. But because some judges refused to consider ability to pay after sentencing, the law should require judges to consider appropriate alternative sentencing whenever they determine that the defendant is indigent.
- Additionally, it would benefit people who want to complete community service to satisfy their obligations if the law always allowed them to complete the community service in their county of residence. Most judges will already allow this, but some have required it be completed in the jurisdiction the case was filed.
- Finally, the law should be clarified to provide guidance on the types of situations or conditions that could make community service an undue hardship on a person, empowering more judges to waive or reduce what is owed when that is in the interest of justice.

II. Ensuring Deferred Disposition is Available to All

Deferred disposition can be particularly beneficial for individuals in that if the deferral is successfully completed, the ticket will be dismissed. Dismissal is important because convictions of some offenses can trigger additional driver's license suspension periods, Driver Responsibility Program Surcharges and other collateral consequences. Additionally, if dismissed, an individual may be eligible to expunge the offense from one's record later.

Current law allows for a court to charge a fee to a defendant who wishes to receive a deferred disposition. Often, the fee assessed is equal to the amount of fines and court costs that the defendant would have owed had he been convicted and sentenced to pay a fine. While the amount of a deferral fee is entirely within the judge's discretion, and judges could reduce it for people who couldn't pay it, they are not required to reduce these fees to allow low income defendants to enter deferred disposition. In some courts ability to pay a deferral fee is treated a condition of the deferral, and thus, deferred disposition is only an option to people with the money for the fee.

Ultimately, this means that low-income individuals are less likely to receive a deferred disposition and more likely to have criminal records as a result of low-level misdemeanors. This is particularly problematic because traffic convictions generally drive up the cost of one's auto insurance. So having a conviction makes it more difficult to pay auto insurance for someone already experiencing financial difficulties.

Recommendation: In order to encourage low-income people to continue paying their insurance and reduce the number of uninsured drivers on the road, the law should ensure they have the same access to deferred adjudication as wealthier defendants. The law should clarify that a defendant has the same options to pay a deferred disposition fee as he would have to pay fines and costs, *i.e.*, payment plan, community service, or reduction/waiver of the fee.

III. Expanding Access to Courts

There are municipal and justice courts across the state that are still charging appearance bonds to set a hearing when a defendant has previously failed to appear. These courts will not allow defendants who have previously failed to appear to lift a warrant or set a hearing with the court unless the defendant pays a bond equivalent to twice the amount of fines and costs that would be charged if defendant is convicted.

For example, in one municipal court in a large city, a defendant had previously failed to appear on a ticket for no insurance. When he later appeared before the court and wanted to plead not guilty to the ticket (claiming he did in fact have insurance but just not proof at the time of the stop), the court said that he would either have to hire an attorney or pay an appearance bond given his previous failure to appear. Alternatively, he could plead guilty or no contest that day and enter a payment plan. The same thing was told to several other defendants in the court. This led to indigent defendants who planned to plead not guilty to instead plead no contest and enter payment plans, since they lacked the money for an appearance bond and it was the only option available to them to have their warrants lifted immediately.

Other courts will not guarantee that people will not be arrested if they voluntarily come to court. The legislation that was passed provides that a warrant for failure to appear must be recalled if a person voluntarily appears in court to resolve what is owed and makes a "good faith" effort to do so. However, a capias warrant is only required to be recalled if a defendant voluntarily appears and actually does resolve what is owed. A person without the money to pay a fine does not know when they go to court whether they will be able to resolve what is owed, so is not guaranteed that their warrant will be withdrawn. Many judges see the absurdity of threatening someone with arrest if they voluntarily come to court, realizing that doing so actually decreases the likelihood that the case can be disposed. But a handful insist that they will not lift the warrant if a person does not fully resolve the amount owed.

Recommendation: People should have access to courts regardless of their ability to pay an appearance bond. The law clearly states that municipal and justice courts cannot require defendants to pay a monetary bond in order to appear in court for a class C misdemeanor unless the judge has determined the person can afford to pay bond. Additional judicial training should be able to address some courts' illegal practice of requiring monetary appearance bonds in order to plead not guilty.

Additionally, the law should be changed to ensure that people who are trying to take care of tickets are not arrested on Class C warrants while doing so. Ultimately, making courts truly safe harbors will lead to more people willingly coming to court and courts being able to dispose of a greater percentage of their pending cases.

IV. Problems Related to Invalid Driver's Licenses and Expired Vehicle Registrations

One of the most burdensome consequences of not being able to pay fines, costs and fees is the impact that it has on one's driving privileges. The DPS Failure to Appear/Pay Program (also known as the Omnibase Program after the vendor that administers it) allows judges to prevent people who have not paid their fines or fees from renewing their driver's license. If they cannot pay those fines and fees before their license expires, their license becomes invalid. However, driving is a necessity in much of Texas to get to work as well as to accomplish other essential tasks. But every time someone with an invalid license drives, they risk additional criminal charges and even arrests and jail time for Driving While License is Invalid (DWLI).

The DPS Failure to Appear/Pay Program needs to be overhauled so that people who lack the ability to pay are not funneled into the Program due to their indigency, and so that people who do not have a valid license because of the Program are provided with a navigable path towards license restoration. Unfortunately, the legislation last session did not make any substantive changes the DPS Failure to Appear/Pay Program, except that it allowed judges to waive the $30 Omnibase fee that is charged to people when their license is reinstated. That provision was not retroactive and many judges do not waive Omnibase fees for license holds that began prior to September 1, 2017, even when individuals are indigent. One judge explained that in his opinion, he can waive the fines and court costs, but not the Omnibase fee.

Relatedly, courts have historically been able to submit names to the county of people who had not paid their fines. Through the so-called Scofflaw Program, counties would in turn prevent people from renewing their vehicle registration until the court lifted the hold, generally when a person paid their fines in full. Similar to the DPS Failure to Appear Pay Program, the Scofflaw Program led to people who were unable to pay their fines driving in an unregistered vehicle in order to get to work, take their children to childcare or school, or buy groceries, and every time that they drove, risking additional tickets and fines and a seemingly never ending cycle of accumulating debt and criminal justice system involvement.

The legislation passed last limited the holds on vehicle registrations to a time period of two years, after which the hold would automatically expire. During this two-year period, people who had the money to pay would almost certainly pay to avoid more tickets and fines. But those who truly could not pay would be provided some relief by lifting the hold. However, this change only applied to the section of the code concerning vehicle registration holds placed by county courts, including justice courts (Transportation Code Chapter 502). A separate statutory

provision governs the Scofflaw Program for municipal courts (Transportation Code Chapter 702), but it was not similarly amended.

Recommendation: The Scofflaw Program should be consistent, regardless of whether the hold is placed by a justice or municipal court. The two-year limit should apply to both types of courts, providing relief to those who are trapped in the Program because they could not pay.

The DPS Failure to Appear/Pay Program requires a more thorough overhaul. The following changes would take significant steps towards protecting people from license suspensions due to inability to pay:

- Require an ability to pay hearing before the court submits someone to Omnibase for failure to pay a fine. This would allow the court the opportunity to identify people whose nonpayment was due to a lack of financial resources.
- Limit holds to one hold per court, rather than one hold per case. This would make it easier for courts to lift the holds, as well as prevent people from paying the $30 fee on numerous cases.
- Require a court to lift a hold as soon as someone begins a payment plan or community service, rather than waiting months until the sentence is completed.
- Limit the amount of time that a person can have an invalid license as a result of the Program, making the hold automatically expire after that time period.

Over the past few years, we have spoken with numerous individuals who have lost employment because of driver's license issues. Others live in constant fear of more tickets and arrest, because they have decided they must continue driving to support their families. This is an issue requiring the attention of the Texas legislature given its enormous impact on the daily lives of millions of Texans.

Conclusion

Many judges have demonstrated great compassion for those individuals in their courtrooms and their communities who are struggling financially. We have witnessed this in the actions of excellent judges who truly seek to follow not just the letter but also the spirit of the law when dealing with defendants unable to pay their fines and fees, and in developing procedures to ensure equal justice in their courtrooms. Our observers identified certain judges who were particularly thorough and patient in providing defendants with information about all their options if they were unable to pay and working with them to find an option that was truly manageable for them, urging them to come back if they found the sentence impossible to complete. Still other judges were leaders in pushing for the passage of the legislation last session, some of whom had already implemented best practices in their courtrooms before the law was changed. We also commend the JCTC and TMCEC for the training that they have done

surrounding the new law and their openness to hearing about issues that we have encountered since the law took effect.

However, we have also witnessed a number of judges demonstrate a true lack of empathy for low-income and working-class Texans in their courtrooms. The interactions of these judges with defendants who cannot pay are imbued with a general sense of annoyance at or blame for the defendants' financial circumstances, as well as a suspicion that they are somehow trying to game the system in order to avoid punishment. These judges have created unnecessary hurdles for defendants to prove they are unable to pay and imposed sentences that virtually guarantee failure for defendants from the outset.

Judicial demeanor cannot be legislated, so the law must make it explicitly clear what the baseline procedures are that every judge must follow to ensure that all individuals, regardless of their financial circumstances, can access justice in Texas' criminal courts. The legislation last session took critical steps to improving those baseline procedures. Further clarifications and minor modifications to the code would help to bring about the changes that last session's legislation sought to make and improve fairness in Texas courts. The legislature should also address the issue of invalid driver's licenses related to unpaid fines and surcharges, so that people who lack the ability to pay fines are not funneled into these programs and the resulting cycle of debt and criminal justice system involvement. We greatly appreciate your attention to these important issues.

Respectfully submitted,

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