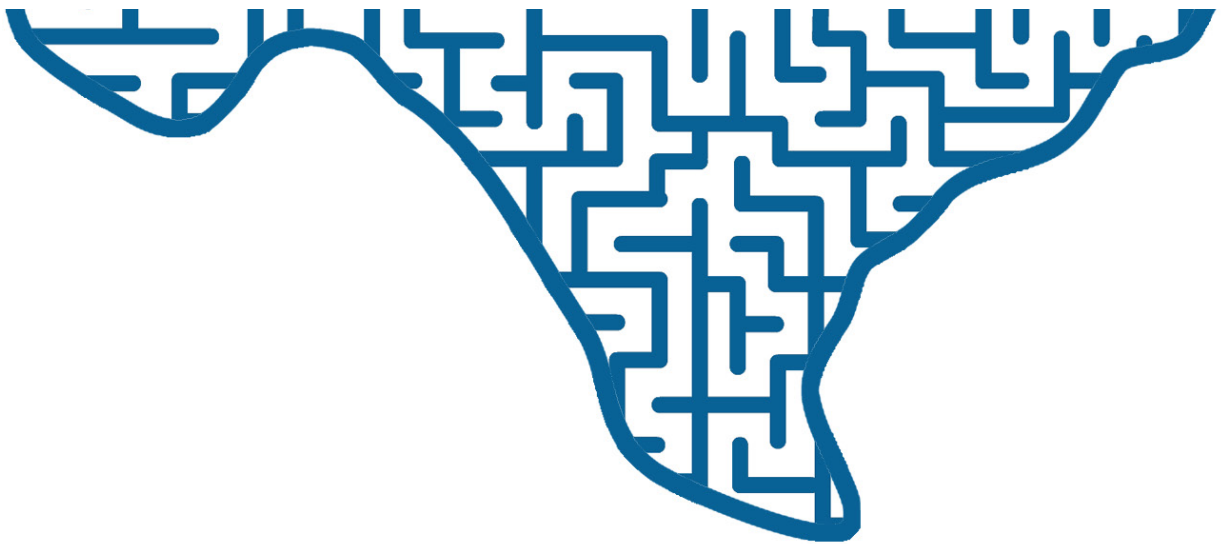


NO EXIT, TEXAS

Modern-Day Debtors' Prisons and the Poverty Trap



November 2016



No Exit, Texas:
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MODERN-DAY DEBTORS' PRISONS AND THE POVERTY TRAP

A traffic ticket should sting. The fine should be enough to make you think twice before doing something like speeding again. But a traffic ticket shouldn't derail your life—cost your job, make it impossible to pay your bills and feed your family, or deprive you of your freedom. Yet in Texas, for people too poor to write a check and move on with their lives, a simple traffic ticket leads to a cascade of unconstitutional and devastating consequences.

For people who can't afford their traffic tickets, Texas's criminal justice system is like a maze with dead ends at every turn. Unreasonable fees pile up and stop people from paying off their debt. Judges require payment for a hearing about inability to pay. Courts are incentivized to issue warrants for failure to pay. And many people who can't afford their fines are unconstitutionally jailed for what are legally defined as "non-jailable" offenses. The result is a two-tiered system of justice, in which the well-off get what amounts to a slap on the wrist, and the impoverished are stuck in a system where the only exit is debtors' prison.

This report discusses enforcement of Class C Misdemeanor fines and fees in Texas's hundreds of Municipal and Justice of the Peace Courts. Practices vary, but our study of these local courts has uncovered a pattern of local courts criminalizing poverty, and perpetuating racial injustice, through unconstitutional enforcement of low-level offenses. It's time for policymakers at every level of government to improve the fairness of sentencing for all Texans and put an end to these debtors' prisons.

UNAFFORDABLE AND ENDLESSLY GROWING DEBT

More than one in seven Texans lives in poverty.¹ People who live in poverty survive on an annual income of less than \$12,000 for a single person, or less than \$19,000 for a couple who have a baby.² Yet our local courts give anyone who walks through the door a one-size-fits-all fine. Local courts have criminal jurisdiction limited to Class C Misdemeanors, which are the least serious, fine-only offenses. When sentencing for more serious crimes, judges generally take the circumstances of a person's offense into account. But for these low-level, fine-only offenses, judges routinely ignore the defendant's ability to pay. And on top of the fine, our courts are required by law to charge a host of court costs and fees, which can exceed the cost of the fine itself.

The result is that people on low incomes get saddled with debts they cannot realistically pay. Judges have the authority to assess a fine as low as \$1 for most offenses, but in the vast majority of courts, judges do not use this authority to adjust a fine for someone living in poverty. And current law prohibits judges from waiving court costs and fees until after the ticket recipient has defaulted on her payments, putting her at risk of jail time. An unaffordable debt is just the beginning. Someone who cannot afford her ticket is likely to see her debt grow soon after the court enters judgment against her. Anyone who asks to pay her ticket in installments is subject to a \$25 fee for each outstanding charge. And anyone who fails to make her payments as ordered—even just a day late or a dollar short—can be subject to arrest under a “capias pro fine” warrant. Each time the court issues a warrant, the debt grows by \$50 for each outstanding charge. If a payment is more than sixty days overdue, the court can refer the debt to a third-party collection agency and assess a collection fee of 30%.

Growing debt is not the only consequence of an unaffordable ticket. A person who cannot afford her traffic ticket debt is put into a bureaucratic maze that virtually guarantees that she will receive even more tickets. Texas law authorizes local governments to contract with the Department of Public Safety to report late traffic ticket payments to the state, resulting in additional fees (\$30 per outstanding charge) and preventing anyone with an overdue payment from renewing her driver's license.³ Texas law also authorizes similar reporting contracts with the Department of Motor Vehicles, resulting in even more fees (\$20 per outstanding charge) and prohibiting anyone with an overdue payment from renewing her car registration.

A person in this situation is likely to lose her car insurance, because her premiums will become unaffordable (or her coverage will be dropped altogether) due to her expired driver's

¹ U.S. CENSUS BUREAU, 2015 AMERICAN COMMUNITY SURVEY 1-YEAR ESTIMATES, <http://factfinder.census.gov/faces/nav/jsf/pages/searchresults.xhtml> [search topic “Poverty” and state “Texas,” follow “Go” hyperlink, click dataset “S1701 Poverty Status in the Past Twelve Months”].

² Poverty is measured in different ways by different federal agencies. The levels listed here result from the poverty threshold calculation in the 2015 American Community Survey, for a person responding to the survey in July 2015. See U.S. CENSUS BUREAU, AMERICAN COMMUNITY SURVEY & PUERTO RICO COMMUNITY SURVEY 2015 SUBJECT DEFINITIONS 105 & App'x A, https://www2.census.gov/programs-surveys/acs/tech_docs/subject_definitions/2015_ACSSubjectDefinitions.pdf (last visited Oct. 24, 2016).

COSTS MANDATED OR AUTHORIZED BY TEXAS

Mandated Fine for Each Traffic Ticket ⁴		
Class C Misdemeanor Fine Tex. Penal Code § 12.23	Typically assessed without regard to defendant's ability to pay	\$1 - \$500
Mandated Surcharges for Select Traffic Tickets		
Conviction Surcharge Tex. Transp. Code Ch. 708	Applies for convictions such as driving while license invalid or no insurance; must pay \$250 per year for three year	\$750 over 3 years
Points Surcharge Tex. Transp. Code § 708.054	Applies for three moving violations within three years; must pay \$100 per year for three years	\$300 over 3 years
Mandated Minimum Court Costs and Fees for Each Traffic Ticket		
Consolidated Fees Tex. Local Gov't Code § 133.102(a)(3)	Applies regardless of offense; goes to 14 different state funds	\$40
State Traffic 'Fine' Tex. Transp. Code § 542.4031(a)	Applies regardless of traffic offense; goes to ERs, local & state general funds	\$30
Judicial Support Fee Tex. Local Gov't Code § 133.105(a)	Applies regardless of offense; 10% goes to local gov't general fund	\$6
Arrest/Citation Fee Tex. Code Crim. Proc. Art. 102.011(a)(1)	Applies if an officer writes a ticket or arrests the defendant without a warrant	\$5
Juror Reimbursement Fee Tex. Code Crim. Proc. Art. 102.0045(a)	Applies regardless of whether the defendant had a jury trial	\$4
Local Court Cost Tex. Transp. Code § 542.403(a)	Applies regardless of traffic offense; 100% goes to local gov't treasury	\$3
Truancy Prevention Fee Tex. Code Crim. Proc. Art. 102.015(b)	Applies regardless of whether the traffic ticket is related to truancy	\$2
Indigent Defense Fee Tex. Local Gov't Code § 133.107(a)	Applies even when the court fails to appoint counsel	\$2
Minimum total costs and fees for each traffic ticket		\$92

⁴ "Traffic ticket" throughout this chart describes a Class C Misdemeanor, "Rules of the Road" offense under Chapters 541-600 of the Texas Transportation Code.

Select Additional Fees (Mandated)		
Warrant Fee Tex. Code Crim. Proc. Art. 102.011(a)(2)	Applies each time the court issues a warrant for failure to appear or pay	\$50
Writ Fee Tex. Code Crim. Proc. Art. 102.011(a)(4)	Applies each time the court issues a summons for the defendant	\$35
Payment Plan Fee Tex. Local Gov't Code § 133.103(a)	Applies if a defendant takes longer than 30 days to pay; 50% goes to local gov't	\$25
School Offense Fee Tex. Code Crim. Proc. Art. 102.014(c)	Applies to traffic tickets in a school zone or for passing a school bus	\$25
Jail Fee Tex. Code Crim. Proc. Art. 102.011(a)(6)	Applies each time the defendant is booked into jail during her case	\$5
Mileage & Meals Fee Tex. Code Crim. Proc. Art. 102.011(b)(2)	Applies per mile, plus the cost of meals, for an officer transporting a defendant arrested out-of-county	29¢ /mile
Civil Justice Data Cost Tex. Code Crim. Proc. Art. 102.022	Applies to moving violations; funds law enforcement officer database	10¢
Select Additional Fees (Authorized)		
Third-Party Collection Fee Tex. Code Crim. Proc. Art. 103.0031	Applies in courts that contract with collection companies for fines, costs, and fees 60 days past due	30%
License Suspension Fee Tex. Transp. Code §§ 706.006-706.007	Applies in courts that contract with DPS to suspend renewal of driver's licenses for failure to appear or pay	\$30
'Special Expense' Fee Tex. Code Crim. Proc. Art. 45.203	Applies each time the court issues a warrant for failure to appear in courts that impose the fee by ordinance	\$25
Registration Suspension Fee Tex. Transp. Code § 702.003	Applies in courts that contract with DMV to suspend renewal of vehicle registrations for failure to appear or pay	\$20
Juvenile Case Manager Fee Tex. Code Crim. Proc. Art. 102.1074	Applies regardless of offense, in courts that impose the fee by ordinance	\$5
Muni. Ct. Technology Fee Tex. Code Crim. Proc. Art. 102.1072	Applies regardless of offense, in courts that impose the fee by ordinance	\$4
Muni. Ct. Bldg. Security Fee Tex. Code Crim. Proc. Art. 102.017	Applies regardless of offense, in courts that impose the fee by ordinance	\$3
Administrative Fee Tex. Code Crim. Proc. Art. 102.072	Applies in court's discretion for each payment made to a JP Court	\$2

Because the foregoing fines, fees, court costs, and surcharges are not codified in one place, it is difficult for lawmakers to monitor the overall financial burden resulting from a ticket.

license. At the end of the day, her expired car registration increases the likelihood of additional traffic stops, where officers write new tickets for the expired license, expired registration, and lapse in car insurance. Advocates refer to such charges as “poverty offenses.” Because of these offenses resulting from poverty, it is not uncommon for someone with a low income to accrue \$1000 or more in traffic tickets in a short period of time.

In addition to the fine, court costs, and fees for a ticket, traffic tickets can also carry surcharges under Texas’s Driver Responsibility Program. Texas assesses surcharges against any driver who accumulates six or more points (generally three moving violations in three years) and, what’s worse, for many of the poverty offenses described above. For a single conviction for driving with an invalid license, which often results from inability to afford traffic tickets, Texas imposes a \$250 surcharge every year for the following three years. Failure to pay a surcharge results in automatic license suspension. While there is a little-known indigency program for people who can’t afford these surcharges, the program is not advertised and is difficult to apply for. And the program reduces, rather than eliminates, surcharges—even for people whose incomes are below the poverty line.

In short, Texas law treats delay in payment as cause to impose additional penalties, rather than as a reason to inquire into ability to pay. Penalties might be appropriate for someone who simply refuses to pay, even though she can afford to do so. But penalties cannot elicit payments from someone who has no money. Instead, these penalties trap people on low incomes in an endless maze of tickets and debt.

Debtors’ Prison Snapshot: Texas City
Jail Commitment Orders for Failure to Pay
Based on five months of commitment records in Texas City

- Median debt owed: \$1,312.93
- Jailed for failure to pay, without findings on:
 - income, in 92.6% of cases
 - dependent children, in 98.6% of cases
 - ability to pay, in 92.8% of cases
- Jailed people after finding they:
 - had mental health issues
 - were unemployed
 - were on food stamps
 - were raising three children under the poverty line
- Jailed someone on Christmas Eve

³ Texas does offer an occupational driver’s license as a stopgap, but it is hardly an exit from the bureaucratic maze of paperwork and fees. An occupational license requires an occupational license fee of \$10, reinstatement fees up to \$100, and court filing fees that we have seen climb as high as \$252. Petitioning for an occupational license requires filing a certificate from the petitioner’s insurance company, proof that the petitioner needs to attend work or school, and, in many courts, a certified abstract of the complete driving record (which costs \$20) and a copy of the relevant court order or notice of license suspension from the Department of Public Safety.

Petitioners are generally required to appear in court for a hearing. Courts are required by statute to submit an approved petition to the Department of Public Safety, but not all do, putting the onus on the petitioner to pay for certified copies and submit her approved application and all relevant paperwork to the Department within 45 days.

Moreover, some circumstances completely disqualify people for an occupational license. For example, you cannot get an occupational license if your license is suspended for nonpayment of child support, if you’ve had two occupational licenses in the last ten years, or if you didn’t have a valid driver’s license to begin with.

SHAM LEGAL PROCEEDINGS AND UNCONSTITUTIONAL JAIL TERMS

Basic fairness in any legal proceeding has two core constitutional requirements: notice and the right to be heard. Notice is an advance warning about what will be discussed, and what is at stake, in the proceeding. The right to be heard is the ability to make arguments and present evidence to a decisionmaker. Without these basic protections, a legal proceeding doesn't really give a fair chance to both sides: it's just another dead end in a maze of tickets and fines.

In many of our local courts, low-income Texans aren't getting the benefit of basic fairness in legal proceedings. Texas law authorizes municipal courts to issue warrants for failure to make a payment without first giving people a chance to be heard. Many courts issue warrants for a missed court date or a missed payment without notice. The unfairness of this practice is compounded by unaffordable payment plans: many courts require \$100 down and \$100 per month for a payment plan, and refuse to hear arguments or evidence that a \$100 payment is unaffordable. The predictable result is that people on low incomes cannot make the \$100 payment, and the court issues a *capias pro fine* warrant without notice or a hearing.

Commendably, some courts do send a notice or schedule a show-cause hearing before issuing a *capias pro fine* warrant. But even these notices can be woefully deficient. Notices of overdue payment typically state a lump sum owed to the court, without disaggregating fines and fees or listing payments the court has already received. Notices almost never mention

"I didn't see a way out."

"I was unloading my car in downtown Houston when a police officer on a horse noticed my registration had expired and wrote me a ticket. Those were hard times. I was going through a divorce and trying to put myself through school. I had almost no income. It was a struggle to put gas in the car and feed myself and my son. Two of those things I had to pay for, so if I couldn't make the money and couldn't find anything to pawn, I didn't eat. Once I sold a DVD for a dollar so I could buy my boy a sandwich.

"But I went to court and paid the fine. I thought that would be the end of it. I didn't know about the surcharges until I went to renew my license.

"I tried to pay them. For five years I tried to pay them. But even after I made payments, the system kept tacking on more for years. I didn't see a way out. Times were so tough that I had to drop out of school. Every day was a struggle to decide between putting food on the table or paying down my surcharges. If I paid down the surcharges, we didn't eat.

"I'm in a better place now. I found a good job, and paid off all my charges just last month. But they still send me mail."

—D

the possibility of alternative sentencing, such as community service, or the fact that demonstrating ability to pay is the central issue at the show-cause hearing. Without this critical information, it is difficult for people to contest how much they owe or demonstrate why the court should adjust previously ordered payments.

Basic fairness is often lacking after a warrant has issued. Courts typically require people subject to a warrant to pay a money bond before seeing a judge, whether the warrant is an arrest warrant for missing a court date, or a *capias pro fine* warrant for failure to pay a fine. This money bond is commonly the total balance on each ticket. For someone who cannot afford to pay off her ticket, and cannot pay to be heard by a judge about clearing the warrant, the only other option is arrest. In courts that deny a hearing before or after issuing a *capias pro fine* warrant, an arrest is inevitable for someone who can't afford her payments. Our local courts are arresting people solely because they are poor.

Once a person is arrested for failure to pay, many Texas courts will send her to jail, contrary to constitutional requirements and Texas law. Our existing laws require judges to take decisions about jail terms seriously: judges must determine why the person arrested failed to comply with the court's order, assess an alternative sentence if the person was unable to comply due to poverty or other hardship, and issue written findings for anyone who the court sends to jail. Judges are also forbidden to jail anyone as a punishment for a criminal conviction unless she was represented by counsel. But our local courts simply don't follow the law. People who are jailed for failure to pay their fines are almost universally too poor to pay. They report hearings lasting no more than a

Debtor's Prison Snapshot: Houston Jail Commitment Orders for Failure to Pay Based on four months of jail commitment statistics

- Court lists "homeless" as home address for 26.9% of people
- Court lists "homeless," "n/a," "unknown," or blank home address for 30.7% of people
- Jailed people for failure to pay on Christmas Eve and Christmas Day

Offenses	
Poverty/Homelessness	25%
Solicitation Offenses (70), Sit/Lie on sidewalk (37), Possessions on sidewalk (27), Camping in city park (2)	
Traffic poverty	21%
License issues, e.g. suspended (49), No insurance (37), Broken car parts, e.g. headlights (10), No registration tag/expired plates (16)	
Substance	14%
Public Intoxication (42), Possess/consume alcohol in an improper place (24), Smoke in enclosed public place (3), Drug possession (2), Drug paraphernalia (2)	
Other Property	11%
Littering/improper disposal or maintenance of property (32), Theft/Theft of Services (20), Failure to pay fare for public transport (4), Criminal Mischief (2), Unlawful Occupancy (1)	
Failure to Appear in Court	9%
Other Traffic	7%
Failure to signal (9), Speeding (6), Failure to stop at red light/stop sign (6), Failure to notify DPS of address change (3), Improper left turn (2), Impeding speed limit (2), Other traffic offenses (8)	
Assault and Assault by Threat	7%
Other	7%
Walking on roadway/jaywalking (8), Disorderly conduct (8), Fighting in public (8), Obstruct roadway or sidewalk (4), Urinating in public (4), Loitering with intent to commit prostitution (3), Interfere with police service animal (1), Enter improper restroom (1)	
Percentages add to more than 100 due to rounding.	

minute or two, where they are not apprised of the questions at issue (failure to make payments and ability to pay) or the stakes of the hearing (a jail term). Judges fail to ask critical questions about ability to pay, such as a person's income and the number of dependents in her household. Judges have even told people that they don't want to hear their excuses. No local court that we have investigated appoints counsel under any circumstances. Courts also generally fail to consider the possibility of alternative sentences. In many courts, once a *capias pro fine* warrant has issued, alternative sentences like an adjusted fine, a payment plan, or community service are off the table. Instead, the only options for resolving the warrant are payment in full—many courts refuse partial payments—or jail. For a person who cannot afford her fine, the only way out is jail time.

Court records reveal the inadequacy of hearings that take place after arrest on a *capias pro fine* warrant. In most courts, there is no serious consideration of ability to pay or alternative sentencing. Judges fail to ask about income and financial dependents, the two questions most fundamental to ability to pay. The files for people committed to jail commonly indicate that they are unemployed or homeless.⁵ Rather than detailing the findings that justify incarceration, courts jail people using preprinted forms, without space to record the basis for their findings, and without even bothering to circle a determination of whether or not the person was able to pay. Some courts don't issue any written findings whatsoever. What's worse, some courts don't even see people before they are jailed, instead allowing the police to jail people for failure to pay without the

SELECT COURTS WEBSITES REFUSING TO SET HEARINGS ON CAPIAS PRO FINE WARRANTS

**Courts Require Payment in Full or Arrest/
Surrender/Jail Time**

- Addison Municipal Court
- Murphy Municipal Court
- Arlington Municipal Court
- Palestine Municipal Court
- Carrollton Municipal Court
- Richardson Municipal Court
- Frisco Municipal Court
- Richland Hills Municipal Court
- Huntsville Municipal Court
- Santa Fe Municipal Court
- La Marque Municipal Court
- Sunnyvale Municipal Court
- Laredo Municipal Court
- University Park Municipal Court
- McKinney Municipal Court
- Venus Municipal Court

pretense of a court appearance.

Statewide statistics also show that most municipal courts don't seriously consider ability to pay or alternative sentencing. While municipal courts are not required to report jail commitments for failure to pay, they do report data on *capias pro fine* warrants and alternative sentencing. The numbers are abysmal. Among courts that disposed of 100 or more Class C Misdemeanors over the last year, the median rate at which courts allowed people to perform community service was 0.2% of cases disposed. Over half of all active courts—435 municipal courts—refused to waive even one dollar of fines or fees for people living in poverty. The courts that do issue waivers don't use them regularly: in 98.7% of courts, fines and fees were adjusted in less than 5% of cases.

⁵ Court files indicate that some judges may be using the jail as a makeshift homeless shelter. A jail is not a homeless shelter. Judges who feel systemic pressure to fulfill an unmet housing need should be making noise about the need for affordable housing solutions at the local level, rather than quietly jailing vulnerable members of our communities in violation of their constitutional rights.

PERVERSE INCENTIVES

Local courts thus use limited court access, and the threat of arrest and jail, to coerce payments from even the poorest Texans. These harsh collection tactics are often fueled, in part, by treatment of local courts as revenue centers. Cities and counties are entitled to keep 100% of each fine, each fee for the services of a peace officer (such as the \$50 warrant fee), and a portion of other fees (such as the \$25 payment plan fee, half of which local governments may retain). Local governments include revenue from fines and fees as a line item in their budgets, and come to rely on this revenue to support court and law enforcement operating expenses. This reliance distorts the legitimate purpose of local courts—administering justice—and encourages court officials to view their mission as maximizing collection of revenue. Court reporting on monthly activity generally focuses on revenue gained or lost, rather than improvements in public safety. For example, the Galveston Municipal Court reports its monthly operations to the City Council in a “Production Report,” comparing annual revenues with previous years. Some cities even structure the municipal court as a subdivision of the finance department.

The revenue-driven approach to punishing Class C Misdemeanors is extremely popular, and it incentivizes courts to rely heavily on capias pro fine warrants. Over three hundred law enforcement agencies partner with their local court to participate in the Great Texas Warrant Roundup, an annual period of aggressive warrant enforcement throughout the state. The Warrant Roundup is timed to coerce people into handing over their tax refund checks, such as refunds resulting from the Earned Income Tax Credit, which is meant to provide tax relief for low- and

Select Capias Pro Fine Warrant Statistics

Self-Reported to the Office of Court Administration

Warrants issued as percentage of cases disposed

Pecos Municipal Court	135.7% of cases*
Waco Municipal Court	88.2% of cases
Harlingen Municipal Court	66.4% of cases
DeSoto Municipal Court	58.2% of cases
Fort Worth Municipal Court	40.5% of cases

*Pecos Municipal Court issued more warrants than cases it resolved.

Warrants issued as percentage of city residents

Penitas Municipal Court	69.2% of residents
Cockrell Hill Municipal Court	40.7% of residents
Magnolia Municipal Court	31.7% of residents
Alamo Municipal Court	22.6% of residents
Waco Municipal Court	18.4% of residents

SELECT COURTS OPERATED BY CITY FINANCE DEPARTMENTS

Court Staff Are Finance Department Employees

- Abilene Municipal Court
- Amarillo Municipal Court
- Beaumont Municipal Court
- Carrollton Municipal Court
- The Colony Municipal Court
- Denton Municipal Court
- Farmers Branch Municipal Court
- Huntsville Municipal Court
- Kingsville Municipal Court
- Mercedes Municipal Court
- Pampa Municipal Court
- Richardson Municipal Court
- Round Rock Municipal Court
- Sachse Municipal Court
- Tyler Municipal Court
- Watauga Municipal Court
- Wichita Falls Municipal Court

moderate-income working families. Of course, if a family needs to rely on their tax refund in order to make a payment, courts should be considering alternative sentencing for that family, rather than timing enforcement efforts to collect money before it goes to other bills. A few courts offer an “amnesty” period in advance of the Warrant Roundup, promising anyone who comes to court that they will not be arrested, and in some jurisdictions, that the judge will offer alternatives to payment in full. In a system designed to administer a just punishment, similar policies would apply year-round.

Statewide Municipal Court Statistics	
Courts disposing of at least 100 cases	766 courts
Median rate at which courts granted:	
Adjustment of fines/fees for poverty	0.0% of cases
Community service in lieu of payment	0.2% of cases
Texans Living in Poverty Less than \$12,000 /yr for a single person	15.9% of people
Self-Reported to the Office of Court Administration Courts disposing of at least 100 criminal cases, October 2015–September 2016	

Debtor’s Prison Snapshot: Galveston Jail Commitment Orders for Failure to Pay Based on three months of commitment records in Galveston

- Median debt owed is \$1,145.00
- Court records demonstrate person jailed:
 - was homeless in 47.8% of cases
 - was unemployed in 60.9% of cases
- Jail cost per person per day is \$69.43 plus value of City services performed for County

Large Cities’ Municipal Court Statistics			
	Adjusted fines/fees for poverty	Allowed community service for payment	People living in poverty
Houston P 2,267,844	0.7% of cases	0.3% of cases	21.2% of people
San Antonio P 1,447,438	2.8% of cases	0.4% of cases	17.8% of people
Dallas P 1,285,025	0.0% of cases	2.6% of cases	22.5% of people
Austin P 911,304	0.5% of cases	1.7% of cases	14.5% of people
Fort Worth P 820,448	2.3% of cases	1.6% of cases	16.3% of people
El Paso P 674,779	0.0% of cases	0.2% of cases	18.4% of people
Self-Reported to the Office of Court Administration Poverty data from 2015 American Community Survey One-Year Estimates Poverty is defined as less than \$12,000 /yr for a single person			

RACIAL DISPARITIES

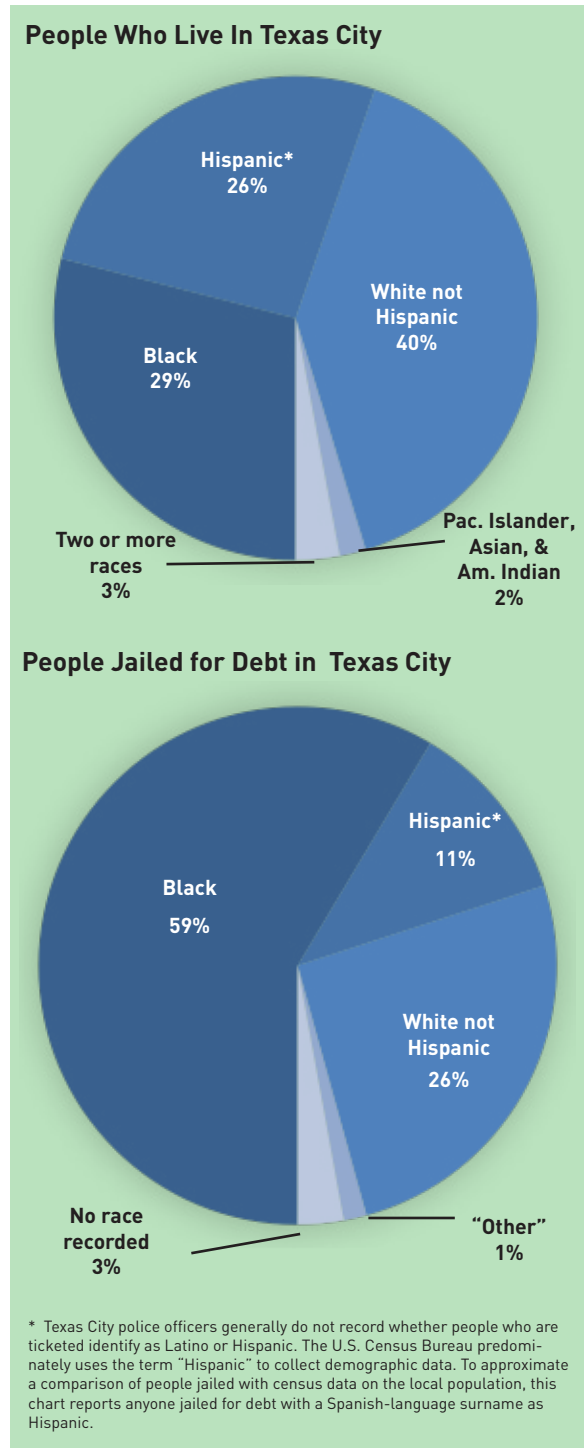
Jailing people for failure to pay has a high cost for all Texans. Jail terms impose serious collateral consequences on the people who are locked up, waste local government resources on low-level offenders, and amplify existing racial disparities in our criminal justice system.

Texas law enforcement officers stop, search, ticket, and arrest Black and Latino⁶ people at disproportionately high rates. Black and Latino Texans also live in poverty at disproportionately high rates. These racial disparities don't disappear during enforcement of outstanding fines; instead, they are amplified through systemic racism and implicit bias. For example, over a four-month period in 2015 and 2016, 48.9% of the people Houston Municipal Court jailed were Black, in a city with a 23.7% Black population. It is difficult to know the impact on Latinos, because officers do not record ethnicity on their tickets.

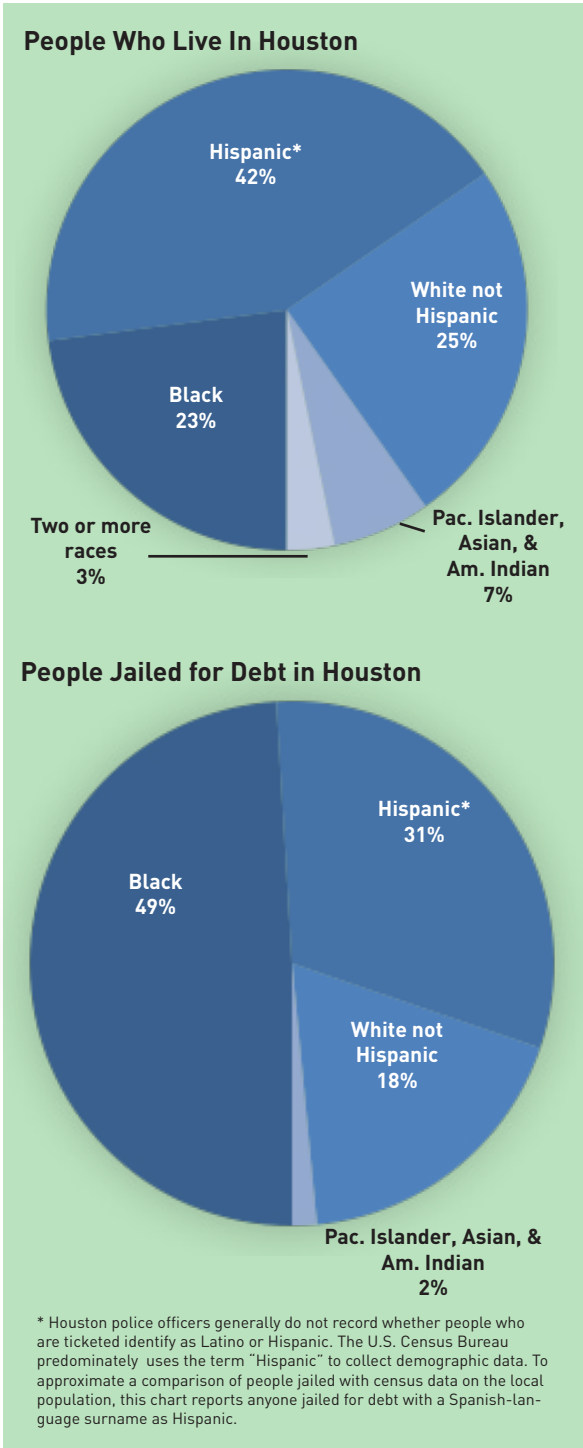
The same disparities persist in smaller communities. Sixty percent of the people Texas City Municipal Court sentences to jail are Black, but Black people make up less than a third of the community. The indignity visited on prisoners can also serve as a reminder that enforcement of unaffordable fines in local courts has a long history as a tool of racial oppression. . Texas's history of enforcing fines with forced labor reaches back to the Reconstruction Era. Less than a year after the Thirteenth Amendment was passed, the Texas Legislature authorized counties to require prisoners to work

⁶ This report discusses injustice for self-identified Latinos. Charts demonstrating racial and ethnic demographics, however, refer to the category "Hispanic," because the United States Census Bureau uses that term to collect demographic data.

Racial Disparities: Texas City Jail Commitments for Failure to Pay Based on six months of commitment records



**Racial Disparities: Houston
Jail Commitments for Failure to Pay**
Based on four months of court data



off fines for petty offenses. Almost all of the people required to labor under these sentences were Black. Today, some courts continue to require labor for early release. For example, Texas City Municipal Court orders people to report to the jail to labor for a set amount of hours in order to pay off their fines. The judge separates case files by gender, and jail staff assign people to labor that is gender-specific. Women are ordered to clean the jail and launder clothes, while men are ordered to perform labor outdoors, including washing police cars.

Perpetuating racial injustice isn't the only cost of jailing people for failure to pay. Jail terms have collateral consequences that reach beyond the unfair deprivation of liberty. People who are jailed are likely to lose their jobs or job prospects especially low-skilled workers who are easy to replace. Jail can also force people to miss a rent payment, jeopardizing their housing. People are generally jailed without warning forcing parents of young children to scramble to arrange childcare without access to phone numbers for loved ones. People on prescription medication are generally jailed without proof of their prescriptions, leading many local lockups—which are completely unregulated by the State—to deny people the medications they need. In fact, local lockups are so poorly regulated that they get away with feeding prisoners cheap, nutritionally inadequate "meals," like a single Pop Tart. And local lockups aren't required to screen people for suicide risk or monitor their cells, despite the fact that people with little to no criminal history are at risk for jail suicide.⁷

⁷ Of all people who commit suicide in jail, 57.3% have either no criminal history or minor criminal history. 23.4% of jail suicides occur within the first 24 hours of confinement. NAT'L INST. OF CORR., U.S. DEPT OF JUSTICE, NATIONAL STUDY OF JAIL SUICIDE: 20 YEARS LATER at 16, 22 (April 2010), <http://static.nicic.gov/Library/024308.pdf>.

COSTS OF JAIL

Jail also comes at an economic cost for local governments. Most obvious is the fact that local governments granting credit through jail time are losing modest, partial payments that people on low incomes could make on a more realistic plan. Local governments also pay the actual cost per inmate per day of jail, whether in the locality’s own jail or through contractual arrangements with another jail. Contractual arrangements for daily jail costs often fail to factor in additional costs to taxpayers that fall outside of the jail budget, such as employee benefits, administrative support, and legal judgments. Finally, there is a significant cost to law enforcement officers who execute capias pro fine warrants. These warrants force officers to spend valuable time arresting people for failure to pay—not for any threat to public safety— and bringing them before a court or booking them into jail. What’s even more absurd is that the same person arrested under a capias pro fine warrant may have been turned away from the courthouse when she sought a hearing on the very same matter. Overall, pursuing a high debt through years of harsh enforcement proceedings against a person who simply does not have money to give up is a fool’s errand. It would be more efficient to open the courthouse doors and assess realistic fines with notice and transparency. ordered to perform labor outdoors, including washing police cars.

Jail Snapshot: Montgomery County Conroe Police Department Bookings Based on three months of jail records	
Capias Pro Fine Warrant Alone	21.8% of jail bookings
Capias Pro Fine Warrant & Other Offense Warrant took away officer’s discretion to write citation	34.0% of jail bookings

Debtor’s Prison Snapshot: League City
Jail Commitment Orders for Failure to Pay
Based on two months of commitment records in League City

- Median debt owed is \$443.00
- Jailed without release and opportunity to pay fine in 70.7% of cases
- Jailed without ability to pay finding in 92.7% of cases
- Jail cost per person per day is \$67.70
- Photo ID required for court appearance
- Detains people pretrial for non-jailable offenses
- Cost to bail out and plead not guilty
- Double the fine for guilty plea

Jail Snapshot: Fort Bend County Bookings by Stafford PD or on Stafford Warrants Based on three months of jail records	
Capias Pro Fine Warrant Alone	20.3% of jail bookings
Capias Pro Fine Warrant & Other Offense Warrant took away officer’s discretion to write citation	29.0% of jail bookings

Personal Impact

“When I was 19 years old, I was cited for speeding and improper lane change. I lost my driver’s license. Back then, I was moving from city to city, job to job, trying to gather myself. I didn’t live anywhere long. I never received any mail, so I didn’t know there was a warrant out for my arrest.

“If you have a warrant when they pull you over, on top of everything else you have to pay a \$200 towing fee. I didn’t have enough for that, let alone the hundreds more I’d need for the fine, the fees, the surcharges and whatnot. I went to jail a few times and paid off what I owed with time served.

“This happened over and over. I couldn’t pay my fines if I couldn’t get to my job, and I couldn’t get to my job without driving illegally. The last time I was released from jail, Bexar County told me I still had to make payments.

“It’s worse now. I’m 35 years old. I owe Bexar County \$3,000, which is the only reason I can’t get my license back. I’m in full-on renal failure. I can’t survive long without dialysis and I can’t get to my doctor’s appointments without driving illegally.

“And they don’t offer dialysis treatments in the Bexar County jail.”

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COMMON-SENSE SOLUTIONS

Ask About Ability to Pay Before Sentencing. Judges can ensure a proportional punishment by assessing an appropriate fine in the first instance, rather than trying to find ways to undo the fine later on.

- Judges should be required to reduce or waive standard fines and fees for anyone unable to pay the standard fines and fees at sentencing. Converting sizeable, unaffordable debts into unrealistic payment plans or community service orders sets people up for failure.
- The Legislature should establish a rebuttable presumption of inability to pay for people in appropriate circumstances, such as people receiving means-tested government assistance, people who are homeless, or people who live near the federal poverty level.

Eliminate Unfair Court Costs and Fees.

- Texas shouldn't be funding essential public services, like the judiciary, law enforcement, and health care, through fees assessed disproportionately against the poor. These institutions should be funded by all taxpayers. At a minimum, the warrant fee, the writ fee, and the payment plan fee should be eliminated.
- Court costs and fees should be waived automatically for anyone who is paying on a payment plan, paying a reduced fine, or performing community service. Alternatively, judges should be encouraged to waive court costs and fees at their discretion, not forced to wait until after the defendant has defaulted.

Help Local Governments Transition to Better Budgeting Practices. Statewide leadership associations, such as the Texas City Management Association, should advertise best practices for budgeting that avoid relying on Municipal and JP Courts as revenue centers.

Give People Notice About Court Proceedings and Alternative Sentencing. Courts should include basic information with tickets, in sentencing orders and any demands for payment, such as:

- Each specific charge, including the date and time of the ticket;
- The right to contest the charge;
- The total amount owed or potentially owed, disaggregated by different charges and their associated fines, fees, court costs, and any payments that have already been made;
- The terms of any current payment or community service obligation and relevant deadlines;

- Alternative sentencing options for people who are unable to pay a standard fine or comply with the court's order; and
- Logistical information about setting a hearing or appearing in court to ask for an alternative sentence. Courts should not require an in-person visit to the clerk's office to set or reset a court date.

Schedule A Hearing Before Resorting to A Warrant.

- Courts should schedule a hearing before resorting to a *capias pro fine* warrant.
- The hearing should be scheduled with a pre-hearing notice of the court's judgment (including outstanding fines and fees the defendant owes), her alleged failure to comply with the judgment, how the defendant can demonstrate ability to pay, and possible outcomes of the hearing.
- At the hearing, the court should modify its existing order if the defendant demonstrates that it is a hardship for her to comply.
- Courts should be forbidden from requiring a payment in order to see a judge.
- Notice of the hearing should be served in person. Where feasible, court staff should use available resources, like the TCIC/NCIC database, to find current contact information for anyone who is failing to respond to written correspondence.
- Courts should be forbidden from requiring a payment in order to see a judge or clear a warrant.
- When courts do resort to *capias pro fines* warrants, those warrants should be limited in scope. No one should be booked into jail for inability to pay, even temporarily. *Capias pro fine* warrants should be limited to execution during times when a judge is available to conduct an immediate ability to pay hearing.

End the Driver Responsibility Program and License and Registration Suspension. Texas shouldn't be funding essential public services, like trauma centers, through fees assessed disproportionately against the poor. These institutions should be funded by all taxpayers. At a minimum:

- The current law on surcharge waivers should be strengthened. Local courts already have the authority to waive surcharges for anyone who demonstrates inability to pay. Courts should be required to send the Department of Public Safety a surcharge waiver for anyone who is paying a reduced fine, paying according to a payment plan, or performing community service.
- The Department of Public Safety should be prohibited from suspending driver's licenses

for failure to pay, and the Department of Motor Vehicles should be prohibited from suspending renewal of vehicle registrations for failure to pay. In the alternative, each Department should be required to issue adequate notice and hold a hearing on ability to pay before suspending these essential services. It should be illegal to suspend license or registration renewal for someone who is unable to pay.

- The Indigency and Incentive Programs for reducing surcharges should be expanded significantly. The Department of Public Safety should advertise these programs on all surcharge correspondence, and clarify program applications to explain what documentation is necessary and/or sufficient to demonstrate indigency. The Department should not require applicants to notarize their applications, which is a waste of applicants' limited time and money with little discernible benefit.
- The Department of Public Safety should copy surcharge correspondence to the address on file with the court of conviction, if that address differs from the address on file with the Department.
- Surcharges should be reduced to one-year charges. This solution would lower the total financial burden of surcharges. It would also reduce license suspensions resulting from inadequate notice, where defendants who pay their surcharges for one year without realizing that they still have two years of payments to go.

Eliminate jail commitments under Article 45.046.

- The Texas legislature already agrees that no one should be jailed for inability to pay—we just need the right procedural protections to make sure it never happens. Commitments for failure to pay under Article 45.046 of the Code of Criminal Procedure should be eliminated. Municipal and Justice of the Peace Courts should be permitted to jail defendants only upon charges of criminal contempt for which the defendant is appointed counsel.
- In the alternative, the Code of Criminal Procedure should specify what the Constitution already requires: no one can be jailed under Article 45.046 unless they were represented by counsel at each critical stage of the criminal proceeding resulting in their jail term, and at the ability to pay hearing immediately preceding imprisonment. Courts should be required to report statistics on jail commitments for failure to pay, including the race and ethnicity of the defendant, to the Office of Court Administration.

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