




MEMORANDUM

TO: Mayor and City Council Members
FROM: Rey Arellano, Assistant City Manager 
DATE: November 15, 2016
SUBJECT: City Council Resolution 20160811-037 regarding Fair Treatment of Indigent Defendants

The purpose of this memorandum is to request an extension and provide a status report for Council Resolution No. 20160811-037, which the City Council passed on August 11, 2016. In summary, the resolution directed the City Manager to draft a proposed amendment to the City Code defining indigency for use by Municipal Court Judges; obtain stakeholder input; conduct a nationwide study to determine the best practices for alternative definitions of indigency and the appointment of Counsel; and expanding the list of community service options. The resolution directs the Presiding Judge and Court Clerk to work with the City Manager in carrying out the actions of the resolution.

The Council asked that the proposed amendments and report be provided to Council no later than November 9, 2016. An extension to May 2017 is required in order to properly conduct a nationwide study of best practices, conduct a stakeholder input process, and subsequently prepare relevant ordinance amendments for Council consideration.

Attached you will find a status of the resolution's six deliverables. For more information regarding this memo, please contact me at (512) 974-2222 or Rey.Arellano@AustinTexas.gov.

Cc: Elaine Hart, Interim City Manager
Judge Sherry Statman, Presiding Judge, Municipal Court
Mary Jane Grubb, Court Clerk, Municipal Court
Pete Valdez, Court Administrator, Downtown Austin Community Court

Attachment: Status of City Council Resolution 20160811-037 regarding Fair Treatment of Indigent Defendants

Status of City Council Resolution 20160811-037 regarding Fair Treatment of Indigent Defendants

Summary Status of Deliverables

1. Propose amendments to Chapter 2-10, Article 3 of the City Code:
Status: In progress
2. Convene Stakeholders:
Status: In progress
3. Conduct nation-wide study of best practices regarding indigency determinations:
Status: In progress
4. Amend Municipal Court forms:
Status: Complete. Existing forms have been updated
5. Track number of defendants committed to jail:
Status: Partially complete. Procedures have been put in place to track the number of defendants of solely Class C misdemeanors and staff has completed the required training. The first reports should be available in mid-December 2016.
6. Develop guidelines for determining community service hours and undue hardship:
Status: Complete. The Financial Disclosure/Affidavit of Indigency form has been expanded to ask individuals how many hours per month he or she can perform and when he or she can begin. This is in addition to identifying factors such as their age, responsibility for dependents, weekly work volume, and physical impairment.

Detailed Status of Resolution Deliverables

Deliverable 1: Draft a proposed amendment to Chapter 2-10, Article 3 of the City Code and present it to Council within 90 days, in order to:

1. Include a definition for indigency for use by the Municipal Court,
2. Make it clear a defendant may only be committed to jail for failing to pay a fine if the Court has first determined that the defendant is not indigent and entered written findings of the defendant's non-indigency into the case record
3. Use language that will not affect a judge's ability to jail a defendant who does not comply with alternative sentencing, as currently provided by law.

Status: In progress

Deliverable 3: Study nationwide best practices regarding:

1. Alternative definitions of indigence used in other courts that may better reflect individual defendants' inability to discharge their sentences
2. Appointment of counsel in fine-only offenses in instances when a defendant might be committed to jail; and
3. Expanding the list of community service options that may be made available to defendants.

Status: In progress

The Presiding Judge has reminded all municipal judges of the applicable state law and provided an opportunity to watch a webinar on best practices presented by the Texas Municipal Courts Education Center. In addition, the Presiding Judge updated the commitment form used at Central Booking to prompt judges to inquire about possible hardships.

The Presiding Judge and the City Attorney's Office have started reviewing state definitions of indigence and guidelines utilized by state courts and state public defender offices. The Presiding Judge identified a project of the Criminal Justice Clinic at Washington University School of Law in St. Louis, MO published in November 2012 that compiled state by state definitions of indigence. Research continues on this topic.

The Presiding Judge and staff worked with the City Manager's Office, with input from the Texas Fair Defense Project and Texas Appleseed, to identify the following 20 cities for analysis of their applicable laws, local rules, and guidelines to determine best practices for Austin. The proposed cities are:

Texas	National
Amarillo	Charlotte NC
Corpus Christi	Columbus OH
Dallas	Denver CO
El Paso	Jacksonville FL
Houston	Phoenix AZ
Lubbock	Portland WA
San Antonio	San Francisco CA
Tyler	Seattle WA

With regard to expanding the list of community service options, the Austin Municipal Court (AMC) currently has 39 community service providers on the court's approved list. Some judges specify that the CSR must be from the approved list, some do not. The organizations on the list have been vetted by the court, have insurance, and agree to the court's zero tolerance policy prohibiting the presence of drugs or alcohol at CSR locations and abusive language or conduct towards those performing CSR.

Defendants may also perform community service with the Downtown Austin Community Court (DACC). As an incentive, DACC gives eight hours of credit for every six hours worked. DACC is also able to assist defendants in reporting their hours to AMC which streamlines the verification process.

Deliverable 2: Convene relevant staff and stakeholders to add further insight and uniformity into the drafting of the amendment for achieving the objectives identified in this section.

Status: In progress

The schedule for stakeholder input will be aligned with the progress on the nation-wide study. An initial stakeholder meeting will be scheduled for late November/early December. It is currently anticipated that a second stakeholder meeting will be held in approximately April to discuss the result of the nationwide study and gather stakeholder input. A third meeting will be held in late April to present staff draft recommendations prior to presented a final report to the Council in May 2017.

Deliverable 4: Ensure forms are available to Municipal Court judges to facilitate both the evaluation of a defendant's indigency or non-indigency and entry of the judge's findings about indigency into the Court record.

Status: Complete

The Austin Municipal Court has had financial information forms available for many years. These have been updated to inquire if a defendant needs an extension to pay, a payment plan, would like to request community service, or has a possible hardship and needs to discuss ability to pay or perform community service.

Regarding payment plan requests, the updated form requests that the defendant inform the court how much he or she can pay per month and what date he or she can make a payment. Regarding community service requests, the form asks the defendant to inform the court how many hours he or she can perform each month and when the first set of hours can be completed. A judge still has discretion to assign a different amount. The data gathered from the updated form will provide valuable information for future analysis.

Page 4 of the form includes a section for a judge to enter findings regarding indigence. All judges have been informed of the new form and provided a copy. These forms are available in both English and Spanish in courtrooms, at the front counters, and on-line at: http://www.austintexas.gov/sites/default/files/files/Municipal_Court/Financial_Affidavit_English.pdf

Deliverable 5: Develop a system to track the number of defendants committed to jail by the Municipal Court, including the reason for and duration of the commitment, and to make that information available to Council during judicial reappointments.

Status: Partially complete

Municipal Court has developed a mechanism to track the number of people arrested and committed on solely Class C charges (meaning there are no other charges). The only reason that an individual may be committed at this level is if they have failed to comply with court orders and are determined NOT to be indigent; or, if indigent, they have willfully refused to comply with court orders. Our current software does not have the ability to track the number of days the person is committed to jail. Recommendations to address this and other resource needs will be included in the final report.

Deliverable 6: Draft guidelines as a reference point for determining how many hours of community service would potentially impose an undue hardship on defendants, while working within the framework of guidelines established in State law.

Status: Complete

The resolution directed that guidelines as to the assignment of CSR hours should take into account factors such as the person's age, responsibility for dependents, weekly work volume, and physical impairment.

The revised form referenced under deliverable 4 makes a holistic inquiry into an individual's home and work situation. This was based in part on a suggested form from the Texas Municipal Court Education Center and an on-line form utilized by the Dallas Municipal Court. It has been expanded to ask individuals how many hours per month he or she can perform and when he or she can begin. This comports with the Presiding Judge's long-time practice of asking defendants to educate her as to their abilities and situation.