

City of Austin



**A Report to the
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SPECIAL REQUEST REPORT

Special Request Report on
Alternatives to Incarceration at
Municipal Court

July 2016



REPORT SUMMARY

The Constitution requires cities to provide alternatives to incarceration (or imprisonment) for fine-only offenses for indigent (or extremely poor) defendants guilty of fine-only offenses. Austin utilizes several types of alternatives to incarceration for people who are unable to pay the fines and fees assessed. Those alternatives include payment plans; community service restitution; and partial or full waivers of the amount owed. Other Texas cities offer similar alternatives to incarceration. Some peer cities also provide information on incarceration alternatives on their websites and hold court hearings at a variety of sites throughout the city to make it easier for people to access court.

TABLE OF CONTENTS

BACKGROUND1

WHAT WE LEARNED2

Appendices

Appendix A: Texas Cities Comparison7

PROJECT TYPE

Special request projects conducted by the Office of the City Auditor are considered non-audit projects under Government Auditing Standards and are conducted in accordance with the ethics and general standards (Chapters 1-3).

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The Office of the City Auditor updated footnote 5 for clarification on July 25, 2016.

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Special Request Report Highlights

Why We Did This Report

This memo responds to a request from Councilmember Kitchen regarding the use of alternatives to incarceration at Austin's Municipal Court.

What We Did

To complete this special request, we:

- interviewed employees and judges at the Austin Municipal Court as well as the Downtown Austin Community Court;
- interviewed judges and clerks from other jurisdictions;
- obtained and reviewed documentation of procedures in place to provide alternatives to incarceration to defendants; and
- researched relevant Federal, State, and local laws, as well as industry literature.



For more information on this or any of our reports, email oca_auditor@austintexas.gov

Special Request Report on Alternatives to Incarceration at Municipal Court

BACKGROUND

Austin Municipal Court is the judicial branch of Austin's City government. They provide adjudication of Class C misdemeanor offenses. Such offenses are generally: violations of traffic laws, city ordinances, parking violations, and select state and school offenses. They are typically punishable by a fine.

Austin uses two courts to administer justice: the Municipal Court, which handles mainly traffic violations, and the Downtown Austin Community Court, which primarily handles quality of life issues (such as: camping in a public place or public nuisance).

OBJECTIVES AND SCOPE

The objectives of this special request were to:

- identify procedures in place at Austin Municipal Court to provide alternatives to incarceration for indigent defendants, including requirements for applying these alternatives; and
- identify related practices in place at comparable courts.

WHAT WE LEARNED

The Constitution requires cities to provide alternatives to incarceration (or imprisonment) for fine-only offenses for the indigent (an accused person suffering from extreme poverty). It also prohibits a court from committing an indigent defendant to jail for inability to pay fines and fees.

Austin utilizes a variety of alternatives to incarceration including: payment plans, community service, and waivers of fines and fees. Judges have discretion to work with defendants to determine an appropriate penalty that they are able to fulfill; court clerks are bound to the collection methods decreed by the Texas Office of Court Administration. While procedures are in place to provide alternatives to incarceration for indigent defendants, none of the alternatives to incarceration can be considered if an individual fails to contact the court. Additionally, judges are not required to apply consistent criteria to determine indigence.

Other Texas cities offer similar alternatives to incarceration, and trends are emerging nationwide to better communicate alternatives to incarceration to potentially indigent persons. Both the United States Department of Justice and Texas Office of Court Administration have recently proposed changes to ensure municipal courts are providing incarceration alternatives to those who qualify.

WHAT WE LEARNED

Federal and State law require Courts to offer the indigent alternatives to incarceration.

The United States Constitution requires that indigent people not be jailed solely for inability to pay fines and fees. Texas State law provides for three alternatives to incarceration for people who cannot pay the fine:

- payment plans provided by the administrative branch of the court or a Judge,
- community service for those able to perform it, and
- a partial or complete waiver of fines and fees.

“We hold... a sentencing court must inquire into the reasons for the failure to pay... To do otherwise would deprive the probationer of his constitutional freedom...Such a deprivation would be contrary to the fundamental fairness required by the Fourteenth Amendment.”

- Bearden V. Georgia, Supreme Court of the United States

The Texas Office of Court Administration promulgates rules for Municipal Court administration and collects data for each municipal court in the state (see a summary of this data in Appendix A). Those rules are handed down by the Texas Judicial Council. Rules proposed in March 2016 seek to give municipal courts more flexibility in setting up payment plans for low-income defendants.

Per the Texas Code of Criminal Procedures, only a judge can determine whether a defendant is indigent, which is done at a hearing after sentencing and is required by law to be documented. If a defendant is incarcerated and is able to show indigency, he/she shall then be discharged from jail. Judges have complete discretion to determine if a defendant is indigent. The Texas Municipal Court Education Center states that the following should be considered when making an indigency determination: defendant’s amount and source of income; defendant’s expenses; and defendant’s disabilities.

In Austin there are a variety of options for resolving a Class C misdemeanor citation.

Most Class C misdemeanor citations in Austin are traffic-related and are resolved through Municipal Court. People charged with Class C misdemeanors are not entitled to a public defender nor are they assigned one at a commitment hearing. Austin also maintains a community court, called Downtown Austin Community Court, for certain misdemeanors occurring within and close to downtown (see depiction of the Jurisdiction of Downtown Austin Community Court highlighted in the map). Community court exists, in part, to divert defendants from the criminal justice system to social services.



In municipal courts across Texas, decisions about whether to commit someone to jail for failure to pay a judgement on a Class C misdemeanor are left to the discretion of the judge presiding over each specific

case. As such, the people appointed to judgeships have a significant impact on the frequency and manner in which indigency is considered in municipal court adjudications. Judges in Austin are appointed to a four-year term by City Council and appointments are typically done in executive session. The legal process begins when a citation is issued for a Class C misdemeanor. That citation includes information on how to pay or challenge the citation.¹ Following the citation, many people pay the fine and associated fees outright and some agree to a payment plan with the court. The cited individual may also meet with a prosecutor to discuss the citation and any corrective actions he/she has taken since, such as renewing their registration or license. To resolve the citation, the prosecutor has the authority to: offer a reduced fine to settle the case or offer the defendant a deferred disposition (which may require the defendant to take additional steps other than paying the fine, like taking a defensive driving course). A judge must approve the deal the prosecutor makes with the defendant. Both of these options

Class C Misdemeanors

- traffic infractions
- code violations
- public order violations



require the defendant to make some payment to the court. If a person cannot pay, they must appear in court to resolve the citation and have alternative options considered. None of the alternatives to incarceration can be considered if an individual fails to contact the court. Available alternatives are summarized in Exhibit 1.

EXHIBIT 1

Alternatives to Incarceration Offered by the City of Austin



SOURCE: OCA summary of the process as described by the City of Austin Judges, July 2016

Those who do not pay the ticket or make another agreement with the court incur additional costs and face increasing penalties (e.g., a summons, a hold on the person's driver's license, or an arrest warrant) until they satisfy their obligations to the court. The City of Austin allows a 30 day extension to pay the fine; City employees offer assistance in filling out the necessary form for the extension. If the person is unable to pay after the extension, he/she may be awarded a longer (typically four months) payment

¹ Challenging a citation is a separate legal proceeding and was not covered in this special request.

plan extension based on adequate evidence of their financial situation.² There are fees associated with missing a deadline as well as entering a payment plan.³

If a defendant still does not meet their obligation to the court by paying the fine, performing community service, or participating in an educational training, he/she can be committed to the custody of the Travis County Sheriff credited at a rate of at least \$50 a day until the fine is paid via jail credit. Legal counsel is not provided to defendants at commitment hearings although they are recorded and the outcome is documented on a form by the presiding judge. We reviewed a small sample of these forms and found varying results - some judges documented lengthy comments on why they chose to commit the defendant and others wrote nothing.

The right to legal representation is not extended to defendants with Class C misdemeanors because they are fine-only. While procedures are in place to provide alternatives to incarceration for indigent defendants, they may be applied inconsistently since judicial discretion allows each judge to determine indigency using their own judgement.

Other Texas cities follow procedures similar to Austin's, with some notable differences.

We contacted municipal court personnel and judges in other Texas Cities⁴ (including Dallas, El Paso, Fort Worth, and San Antonio) to discuss their municipal court procedures and how they provide alternatives to incarceration to defendants. Amongst these cities, we noted the following similarities:

- complying with the Constitutional requirement to hold a hearing to determine indigency (some cities hold this hearing separately while others hold it immediately after sentencing),
- offering a payment plan compliant with Texas Office of Court Administration rules,
- allowing judges to set payment plans at their discretion, and
- relying on individual judges to determine whether a defendant is indigent.

Practices in Texas Cities

-  *Option to work for the city to pay off the fine*
-  *Policy to not commit people and offer jail credit for time served for other offenses*
-  *Expanded access to courts through multiple sites and kiosks*

Data collected by the Texas Office of Court Administration on: warrants issued, cases satisfied with community service, jail credit awarded, and indigency waivers is summarized for each peer city in Appendix A.

However, all courts reviewed are bound by the principle of judicial discretion; therefore individual judges are responsible for determining whether a defendant is indigent making it difficult to compare practices uniformly across the peer cities reviewed. Some notable distinctions are detailed below.

² Texas Judicial Council recently proposed rules to give municipal courts more flexibility with setting up payment plans.

³ Late fees, collections fees, payment plan fees, and warrant fees are among the fees determined by the State of Texas. These fees can also be waived by judges at their discretion.

⁴ We also contacted officials in Houston, TX to discuss municipal court procedures and alternatives to incarceration provided to defendants but at the time of this publication, we have been unable to reach staff at the Houston court.

1. Information provided on public webpages

Some cities (Dallas, Austin, and Houston) explain alternatives to incarceration on their websites. Dallas additionally has a video on their website outlining the options for those unable to pay which may be especially helpful to people with low English literacy. Since this information is available on public webpages, defendants in these cities may be more likely to pursue alternatives to incarceration earlier in the process, possibly before incurring additional costs and penalties. El Paso features information about community service options on their website.

2. Option to work for the City to pay off the debt

Like Austin, Dallas and Fort Worth provide a community court that focuses on rehabilitation not punishment. An alternative to incarceration offered by Dallas and Austin is a work release where the defendant works for the city in some capacity to pay off their debt.

3. Jail commitment policies

The Presiding Judge in San Antonio worked with the City Manager, the County Sheriff, and the Mayor to develop a policy stating that no one will be committed for not paying fines. Due to principles of judicial discretion, this policy is controversial since the Presiding Judge cannot legally enforce it.⁵ Also, people who are committed on other charges, which are generally more serious crimes, are given jail credit against their Class C misdemeanor fines for time spent in jail for other offenses.

4. Access to court

We also noted some cities (Dallas and Fort Worth) hold court hearings at a variety of sites throughout the city to make it easier for people to access court. San Antonio features “kiosk court” where a person can have a hearing at a kiosk located in an HEB.

The Department of Justice and other courts throughout the country are pioneering new Municipal Court practices.

The United States Department of Justice released best practices in March 2016 in response to an investigation into municipal court and policing practices in Ferguson, Missouri. It states that courts have a duty to ask about the defendant’s ability to pay throughout the case. The Department of Justice’s Ferguson Report found that law enforcement and the municipal court were seeking to maximize revenue and this impetus led to injustice and unfairness in the municipal court system.

“A missed payment cannot itself be sufficient to trigger a person’s arrest or detention unless the court first inquires into the reason for the person’s non-payment and determines that it was willful.”

- Best Practice by the Department of Justice, March 2016

⁵ A federal judge dismissed a claim of due process violations in *Harris v. City of Austin* because the City is not responsible for the decisions made by municipal judges acting in their judicial capacity. The judge noted: “In all cases, the municipal judge hearing each individual case—and in so doing, acting in his judicial capacity—makes the ultimate decisions about what will or will not happen in a particular defendant's case.”

Practices Outside Texas



Department of Justice best practice guidance calling for holistic review of defendant's ability to pay



"Bench cards" explaining the Constitutional requirements of an indigency hearings



Free childcare provided while defendants resolve their cases



Low cost or free counsel during the hearing to jail

Austin Municipal Court has performance indicators relating to a variety of aspects of the justice system, some of which are collection rates and gross revenue received. However, we saw no evidence that revenue collection was prioritized over the proper administration of justice.

Lawsuits by the American Civil Liberties Union in two states resulted in an agreement to develop "bench cards", which are helpful guides for judges kept at the bench explaining the Constitutional requirements of an indigency hearing.

We also noted a variety of innovations designed to make it easier for a person to conduct business at court. For example, some courts now offer free childcare provided by licensed professionals.

As stated, the right to legal representation is not extended to defendants with Class C misdemeanors because they are fine-only. While procedures are in place to provide alternatives to incarceration for indigent defendants, it appears there may continue to be a lack of understanding among defendants about the alternatives available to them. Several cities have taken steps to help empower indigent defendants by providing them with legal counsel. Texas law requires counsel be provided to the indigent when there is a possibility the defendant will be confined to jail and when interests of justice require representation.

APPENDIX A

Data collected by the Texas Office of Court Administration

September 1, 2014 – August 31, 2015

City	2014 Population	Warrants*	Cases Satisfied by Community Service**	Cases Satisfied by Jail Credit	Indigency Waivers Cases	Indigency Waivers Amount Waived
Austin ⁶ (including DACC)	790,390	90,708	3,991	19,591	9	\$1,275
Dallas	1,197,816	209,382	1,976	37,630	30	\$8,932
El Paso	649,121	85,070	231	33,741	19	\$4,735
Fort Worth	741,206	197,166	3,424	40,281	3,795	\$1,349,984
Houston	2,099,451	266,351	2,551	46,680	71	\$2,446
San Antonio	1,327,407	160,556	1,221	39,548	4,261	\$477,574

SOURCE: Texas Office of Court Administration (data not validated in this special request)

*Warrants include both arrest warrants for Class C misdemeanors and Capias Pro Fine warrants (issued in response to a defendant’s failure to comply with the agreed-upon payment plan).

**Cases Satisfied by Community Service includes cases fully and partially satisfied by community service.

⁶ Austin Municipal Court staff stated that the data produced for the Texas Office of Court Administration is not reliable and that supplemental information regarding indigency waivers is available on the Municipal Court website at: https://austintexas.gov/sites/default/files/files/Municipal_Court/Waived-Reduced_FY_2012_to_FY_2016_Q1.pdf. They further stated the court is working to remedy these data concerns with the Texas Office of Court Administration.