

Texas Office of Court Administration
Bench Card Relating to the Collection of Fines and Costs
District and County Court Version – Applies to Jailable Offenses

LAWS IMPACTING THE ASSESSMENT AND COLLECTION OF FINES, COURT COSTS, AND FEES IN CRIMINAL CASES.¹

➤ **REQUIREMENT FOR ASSESSING ABILITY TO PAY *ON THE RECORD* DURING OR IMMEDIATELY AFTER SENTENCING**
(Art. 42.15(a-1))

- During or immediately after imposing a sentence in a case in which the defendant entered a plea in open court, **the judge must inquire on the record whether the defendant has sufficient resources or income to immediately pay** all or part of the fine and costs.
- At the time of the inquiry, **the judge must consider the defendant’s financial history and other relevant information** regarding the defendant’s ability to pay.
- If the judge determines that the defendant does not have sufficient resources or income **to immediately pay** all or part of the fine and costs, **the judge must determine** whether the fine and costs should be:
 - required to be paid at some later date or in a specified portion at designated intervals;
 - discharged by performing community service;
 - waived in full or part; *or*
 - satisfied through any combination of these methods.

➤ **(NEW) RECONSIDERATION OF THE DEFENDANT’S ABILITY TO PAY AND STANDARDIZED FORM** (Art. 42A.655)

- If a defendant placed on community supervision, including deferred adjudication community supervision, files a written statement with the clerk requesting reconsideration of the defendant’s ability to pay, **the court must reconsider the defendant’s financial circumstances and ability to pay**, and determine whether the defendant’s current circumstances substantially hinder the defendant’s ability to pay.
- House Bill 385 (87th Legislature) **requires the court or supervision officer to provide a standardized form prepared by the Office of Court Administration of the Judicial Branch of Texas to the defendant promptly on the defendant’s request**. The defendant may use the form to request reconsideration of the defendant’s ability to pay.² The form is available on [OCA’s website](#).

➤ **REQUIREMENTS AND OPTIONS FOR COMMUNITY SERVICE** (Art. 43.09)

- Any **order requiring a defendant to perform community service must**:
 - specify the number of hours to be performed;
 - designate which agency will perform the administrative duties associated with the defendant’s performance of community service; *and*
 - include the date by which a defendant must submit proof of completion of the community service to the court.
- **Community service options have been expanded** to include not only service provided to a governmental entity or certain nonprofit organizations, but also:
 - attending a work and job skills training program, a preparatory class for the GED, an alcohol or drug abuse program, a rehabilitation program, a counseling program, a mentoring program, or any similar activity; *or*
 - performing community service for an educational institution or any organization that provides services to the general public that enhances social welfare and the well-being of the community.
- **A court may not require a defendant to perform more than 16-hours per week of community service, unless** the court determines that additional hours will not impose an undue hardship on the defendant or the defendant’s dependents.
- The court **must provide a credit of \$100 for every eight hours of community service performed**.

¹ Unless noted otherwise, statutory references are to the Texas Code of Criminal Procedure

² Article 42A.655(h)

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➤ **WAIVER OF PAYMENT OPTION (Art. 43.091)**

- **Courts no longer need to wait for a defendant to default before waiving all or part of a fine or cost.**
 - A judge may waive all or part of a fine if the court determines that:
 - the defendant is indigent, does not have sufficient resources or income to pay all or part of the fine, or was a child at the time of the offense; and
 - each alternative method of discharging the fine would impose an undue hardship on the defendant.
 - A judge may waive all or part of the costs if the court determines that the defendant:
 - is indigent;
 - does not have sufficient resources or income to pay all or part of the fine or costs; or
 - was a child at the time of the offense.

➤ **REQUIREMENTS FOR ISSUING A CAPIAS PRO FINE; DUTY TO RECALL (Art. 43.05)**

- **A court may not issue a capias pro fine** for the defendant's failure to pay or satisfy the judgment **unless**:
 - the court holds a hearing to determine whether the judgment imposes an undue hardship on the defendant; and
 - the defendant fails:
 - to appear at the hearing; or
 - to comply with an order to pay or satisfy the judgment no later than 30 days' after a previous determination that the judgment did not impose an undue hardship on the defendant.
- Additionally, **the court must recall a capias pro fine** if, before the capias pro fine is executed, the defendant:
 - voluntarily appears and makes a good faith effort to resolve the matter; or
 - provides notice to the court that the defendant is having a difficult time paying and a hearing is set under Article 43.035 to determine whether the judgment imposes an undue hardship on the defendant.³

➤ **JAIL CREDIT RATES (Art. 43.09)**

- A defendant earns a **credit of \$100 per day** toward the amount owed if the defendant is confined in jail for failure to pay.

➤ **UNCOLLECTIBLE FINES AND FEES (Art. 103.0081)**

- Courts **may enter a finding that a fine, reimbursement or other fee, or item of cost is uncollectible if**: (1) the defendant is deceased; (2) the defendant is serving a life sentence or sentence for life without parole; or (3) the fine, reimbursement or other fee, or item of cost has been unpaid for at least 15 years.

➤ **BEARDEN V. GEORGIA, 461 U.S. 660 (1983)**

- The U.S. Supreme Court held that courts may not incarcerate a person for nonpayment of fines or fees without first establishing that the person's failure to pay was willful.

³ The defendant may notify the court by voluntarily appearing and informing the court or clerk, by filing a motion, by mailing a letter, or by any other method established by the court. Arts. 43.05(a-4), 43.035(b)