Indigency Considerations in Texas Criminal Cases

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Pertinent Texas Statutes

- **Texas Code of Criminal Procedure Art. 45.0445:** If a defendant notifies a judge (in justice and municipal courts) that paying fines and/or court costs to satisfy a judgment will be difficult, the judge must hold a hearing to determine whether the judgment imposes an undue hardship on the defendant. If so, the judge can order that the judgment be satisfied through community service, extended payment plans, or waiving some or all of the amount owed. Judges also have authority to skip a hearing and order alternate methods of satisfying a judgment if they already know a judgment would impose an undue hardship on a particular defendant.

- **Texas Code of Criminal Procedure Arts. 45.045 & 45.046:** Allows for confinement of a defendant in jail in the event that a fine is not satisfied as part of a judgment within the time specified by the judgment. The warrant is called a "capias pro fine" and if arrested, the defendant is confined for a period of time calculated to satisfy the amount owed in full. The capias pro fine cannot be issued without the court first providing a date to the defendant for a hearing to determine if payment of the amount owed would impose an undue hardship. If it would be an undue hardship, the judge has discretion to order alternate forms of payment like community service, extended time to pay, or waiver in part or in full of the amount owed.

Pertinent Texas Statutes

- The Texas Code of Criminal Procedure provides largely similar mechanisms to address indigency in higher level criminal offenses filed in county or district courts.

- Such statutes require that judges review and consider various factors, but do not order any specific decision. This preserves judicial autonomy and discretion and maintains constitutional separation of powers.

- Broad statutory language allows for flexibility in addressing cases on an individual basis and by locality. Factors such as finances, health concerns, familial obligations, and transportation issues can all be factored into a judge's consideration of "undue hardship."

- Prosecution has autonomy under Texas' statutory construct as well. Indigency considerations are made by the court, not the prosecutor, which allows for unrestricted plea bargaining. Only after a plea is entered does a judge take into consideration the defendant's status, and judgments are modified accordingly at the final stage of the process.

Harris et al v. City of Austin
Case No. A-15-CA-956-SS
W.D. Texas, Austin Division
2015

- Plaintiff was 35 year old single mother with seven children. Over a 14-year period, plaintiff received numerous misdemeanor citations for various traffic offenses, including driving without insurance, driving without a current inspection, and driving without a valid driver's license.

- Plaintiff was twice arrested for failing to pay fines she owed arising out of convictions for her traffic citations, once in 2010 and once in 2013. She alleged that in both instances, Austin Municipal Court judges failed to inquire as to her ability to pay the fines before they ordered her confinement.

- Lawsuit was brought against the City of Austin under a 42 USC § 1983 cause of action, which alleged that the judges' actions constituted a City policy that violated plaintiff's right to due process, legal counsel, and right to equal protection. She sought a declaration that the City's practices violated the Fourteenth and Sixth Amendments and an injunction prohibiting the City from jailing people who lacked the ability to pay fines.

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- City filed motion to dismiss, claiming that even if plaintiff's allegations were true, the actions taken by municipal judges in this context did not constitute municipal policy.

- The trial court agreed with the City, finding that the dispositive question was whether a judge took an action as an exercise of state-granted judicial authority (ie: conducting indigency hearings, setting bail, informing a defendant of the right to counsel) or as an exercise of municipal policymaking authority (ie: hiring and firing personnel as a delegation of municipal power).

- Trial court found two cases persuasive: *Johnson v. Moore*, 958 F.2d 92 (5th Cir. 1992) and *Eggar v. City of Livingston*, 40 F.3d 312 (9th Cir. 1994). Both circuit courts distinguished between judges exercising core judicial functions and judges acting as municipal policymakers. Only in the case of the latter would a city be held liable for a judge's actions.

Austin Municipal Court Indigency Policies and Procedures

- Austin City Code § 2-10-21 restates Texas Code of Criminal Procedure provisions concerning alternative sentencing, waiver of fines, and extended time to pay.

- The Austin City Code also provides more factors for judicial consideration of indigency. For example, to take into account Austin's high cost of living, municipal judges may consider a defendant indigent if they earn 200% of the federal poverty guidelines established by the U.S. Department of Health and Human Services.

- There is a "walk-in" docket every Monday-Thursday during business hours. Defendants can simply walk into that courtroom and speak to a judge about their case to request extensions, have an indigency hearing, or speak to a prosecutor. No arrest warrants are executed for people who come in like this. Defendants can also call ahead of time to notify the court and set up a time to come in without arrest.

- Multiple notifications by mail, phone call, and text are sent to defendants ahead of scheduled court dockets to prevent no-shows and warrants being issued. Similarly, defendants who do have judgements against them are afforded multiple notifications of deadlines in the same manner.

Austin Municipal Court Indigency Policies and Procedures

- Judges have discretion to satisfy fines with jail credit and are often very lenient when doing so. If a defendant has spent more than 24 hours in confinement, judges have the authority to wipe out all fines that the defendant owes to the court and frequently do so.

- Multiple forms of community service are considered and community service is tailored according to a defendant's particular characteristics. Hours spent at substance treatment programs such as Alcoholics Anonymous or Narcotics Anonymous are accepted, as are hours spent in after-school programs for minor defendants still in school.

- Every judge begins in-person first appearance dockets by informing defendants of their rights and tells defendants that if they have any difficulty paying fines or fees that they can arrange alternatives with the court. Similar information is given at trial dockets.

- Post-*Harris*, the Austin Municipal Court has made it a policy to keep more extensive records for every case, including notes by judges. In practice, the court conducted itself in much the same way prior to the lawsuit, but recordkeeping was not as thorough. This enabled the plaintiff to submit distorted information to the trial court in order to paint an inaccurate statistical picture.

Prosecutors and Indigent Defendants

- **Texas Code of Criminal Procedure Art. 2.01**: "It shall be the primary duty of all prosecuting attorneys, including any special prosecutors, not to convict, but to see that justice is done."

- Pursuing justice requires a prosecutor to balance the need to account for the harm done to society by criminal offenses against the effect of the punishment on the defendant.

- Prosecutors must be cognizant of undue hardship imposed by financial penalties on indigent defendants but must not lose sight of the crucial need to hold indigent defendants equally as accountable for crimes as non-indigent defendants.

- Austin municipal prosecutors approach their cases through a set of guidelines for plea bargaining. There are standard offer terms in place for the majority of offense types, with most of the cases pertaining to traffic violations. A monetary fee is included, but once a defendant agrees to a plea deal (called a deferred disposition), the matter goes before a judge who then conducts indigency inquiries.

- Plea bargaining baselines with the option to modify is preferable because it allows for flexibility while still maintaining a consistent approach to address underlying offenses.

Prosecutors and Indigent Defendants

- There has been a growing outcry against fine-only criminal enforcement over the last 10 years, which is frequently filtered through a socio-political lens. Opponents argue that enforcement disproportionately punishes marginalized and vulnerable communities.

- In Texas, the most common fine-only offenses are traffic citations. The Texas Transportation Code regulates a huge variety of subject matter on the roadways, with virtually all regulations related directly or indirectly to public safety.

- Traffic offenses are not minor or irrelevant, and traffic fatalities are almost always the result of unsafe driving behavior. Even offenses related to licensing and vehicle registration arise out of statutory efforts to ensure vehicle safety and driver training.

- While prosecutors must recognize disproportionate impact of fines upon defendants financially unable to pay them, justice requires that even the indigent must be held accountable for their actions. Indigent drivers can kill or injure others through poor driving habits just as readily as non-indigent drivers. Laws must apply equally to everyone.