

**CONVERSATION ON COLLECTION OF CLASS C FINES AND FEES
THE UNIVERSITY OF TEXAS SCHOOL OF LAW
FEBRUARY 10, 2016**

EVENT SUMMARY

On February 10, 2016, the William Wayne Justice Center for Public Interest Law hosted a conversation on collection of Class C fines and fees, bringing stakeholders together to promote a dialogue about criminal justice debt collection practices in Class C misdemeanor cases across Texas. Judges, government officials, advocates, and others shared insights about legal and policy issues arising in this context. The event included three presenters, followed by four discussants and an open discussion.

BACKGROUND

Texas law provides that Class C misdemeanors are punishable by fines only. Jail becomes an option only when an individual fails to pay the Class C debt and the judge determines in writing that (i) the individual is not indigent and did not make a good faith effort to discharge the debt, or (ii) the individual is indigent, did not make a good faith effort to discharge the debt, *and* could have discharged the debt without experiencing undue hardship. If an individual is deemed to be indigent and discharging the fine and costs would impose undue hardship, judges can choose to order community service in lieu of payment or waive the fines and costs (in part or in whole).

The United States Supreme Court has held that it violates the Due Process Clause for a judge to jail someone for failure to pay criminal debts, without determining the person's ability to pay and considering alternative punishments, including tailoring the debt to the person's ability to pay. The Supreme Court also has held that the Equal Protection Clause bars judges from jailing someone solely on the basis of their inability to pay, and that the Sixth Amendment requires counsel to be provided to indigent defendants facing imprisonment for misdemeanor offenses.

There is growing nationwide concern that court practices vary widely and sometimes run afoul of state and federal law. This convening brought stakeholders together to discuss these issues as they affect municipal court and justice court practices in Texas.

PRESENTERS

Christy Lopez, an attorney with the U.S. Department of Justice (DOJ), began by stating that the DOJ's investigation into the municipal court in Ferguson, Missouri had uncovered disturbing practices that included using the court to generate revenue, to the detriment of low-income community members and in violation of the Constitution. She described the nationwide momentum to improve local court practices related to criminal debt collection, highlighting the White House's December 2015 convening and subsequent judicial task forces formed to promote best practices. She suggested that common areas of needed reform include: ensuring written determinations of a defendant's ability to pay before imposition of a penalty; ensuring more consistent consideration of alternatives to imprisonment; ensuring that access to judges is not conditioned on payment of any amount; providing meaningful notice of their rights to criminal defendants; and ending the practice of driver's license suspension as a means to coerce payment. She commended the participants for

coming together to address these problems and ensure greater access to courts and justice for defendants who owe criminal debts.

Susanne Pringle, an attorney with the Texas Fair Defense Project, presented statewide data on the adjudication of Class C cases, based on data reported by local jurisdictions to the Office of Court Administration. The data showed, among other things, that many jurisdictions resolve Class C cases using jail credit far more often than they use community service or partial or full waiver of fines and costs. Her data also showed the number of defendants with only Class C judgments who were committed to jail in a recent week. She concluded by stating that although state and federal law provide safeguards to prevent unnecessary jailing, not all judges around the state use those safeguards.

Carla Sanchez-Adams, an attorney with Texas RioGrande Legal Aid, described the real-life consequences of unpaid debt on low-income Texans. She explained that unpaid debts, which are included in credit reports, result in the denial of applications for student loans and car loans. Unpaid debts prompt low-income Texans to use predatory lending agencies, causing them to fall deeper into debt. Unpaid debts that result in the loss of a driver's license or auto insurance threaten a person's ability to get to her job. Low-income Texans with unpaid debts have higher rates of anxiety and depression, experience higher divorce rates, and experience worsening health conditions. She concluded by noting that people may appear to be well-dressed for work and have a cell phone for necessity, but nonetheless may be too poor to pay their monthly bills.

DISCUSSANTS

David Slayton from the Office of Court Administration explained that although the legislature sets court costs and fees, the state's Judicial Council is exploring the improvement of the rules for the Collection Improvement Program, which is administered by the OCA. Chief Justice Nathan Hecht is a member of a national task force on fines, fees, and bail practices, and OCA is following the national debates on these issues. He encouraged participants to read reports from the Conference of State Court Administrators explaining that courts are not revenue generators.

Judge Edward Spillane, President of the Texas Municipal Courts Association, discussed the use of teen courts and community service for adjudicating cases of criminal debt owed by juveniles, who are inherently indigent. This system has proven successful and effective at promoting public safety, and is one model for legislation. He also urged courts to always be available to members of the public and not to condition availability on posting a bond or making a payment; to be prepared to assess a person's income and discuss alternatives to jailing; and to consider community service and waiver as alternatives to jailing whenever appropriate.

Ryan Turner, General Counsel of the Texas Municipal Courts Education Center, explained that TMCEC provides comprehensive training for judges, clerks, administrators and others on issues relating to Class C adjudication and administration, including the handling of indigent defendants. He argued that Texas courts are way ahead of other states like Missouri, and directed participants to the TMCEC's benchbook, which can help courts to strike the right balance between jailing willful violators and imposing alternatives for indigent defendants.

Jamie Dixon, Special Counsel to the Texas Indigent Defense Commission, explained that counties already have standards for determining indigency for purposes of providing public defense counsel, with most counties using 100%-150% of the federal poverty guidelines as a benchmark. Counties have found that they must make individualized determinations of indigency by talking with defendants, and when they do, those determinations are effective and reliable. She explained that there needs to be flexibility in the determination of indigency because there is no one-size-fits-all answer.

FACILITATED DISCUSSION

Participants engaged in an open discussion regarding Class C debt adjudication and collection. Among the many issues discussed, the following five areas of concern stand out:

- Legislatively-enacted court costs create pressure on courts, many of which believe that they cannot waive those costs. The legislature should not use municipal and justice courts to fund general revenue.
- Class C cases may be the most minor criminal offenses under state law, but enforcing even these judgments can be important to promoting public safety.
- Class C debts are criminal and courts must respect due process, provide adequate notice, and protect defendants' rights. One example of a problematic practice involved collection of fines and fees by private companies in cases in which a person has not yet pleaded guilty or been found guilty by a judge.
- There are significant negative consequences to taking away driver's licenses from people simply because they are too poor to pay their traffic tickets, and unpaid debts exacerbate harms to low-income Texans.
- Some courts may believe, perhaps mistakenly, that the OCA's collection improvement program constrains courts' ability to use reasonable payment plans or community service, while encouraging them to use jail commitments. Some participants expressed concern that the program's incentives undermine state law protections for indigent defendants.

Judges from various jurisdictions also shared examples of successfully implemented alternatives to imprisonment. One judge focused on behavior modification, not revenue collection, by having indigent defendants write essays about their traffic infractions. Another judge explained that his court no longer commits people to jail but nevertheless effectively enforces court judgments by offering alternatives to full payment. He emphasized that talking to defendants is critical to helping them be accountable. A third judge trained officers to stop "accepting" people's requests to "sit out" their fines, encouraging them instead to bring defendants before judges for proper adjudication.

The discussion ended with Andrea Marsh, who facilitated the discussion, highlighting several additional proposed reforms, including: making community service and payment plans available to everyone from the beginning of each case; improved judicial and court clerk education; ensuring that procedures are in place to determine indigency; and eliminating the Omnibase fee for dismissed tickets.