

(43) Administrative Fee (Failure to Appear) – Transportation Code § 706.006(a) -- \$30.00 (driver's license)

This fee is required if a person fails to appear (FTA) for a citation or complaint reported to DPS, unless: (1) the person is acquitted of the charge for which the person failed to appear; (2) the underlying charge is dismissed with prejudice for lack of evidence; (3) the FTA was reported in error; or (4) the underlying case is closed and the FTA report has been destroyed pursuant to a record retention policy. The fee must be paid when: (1) the court enters judgment on the underlying charge (UC); (2) the UC is dismissed; or (3) bond or other security is posted to reinstate the UC on the court's docket. Do not charge this fee if the city does not have a contract with DPS under Transportation Code, § 706.002(a). Also, if the court with jurisdiction over the UC makes a finding that the defendant is indigent, the defendant does not have to pay the fee. A defendant is presumed to be indigent if the defendant: (1) is required to attend school full time under Section [25.085](#), Education Code; (2) is a member of a household with a total annual income that is below 125 percent of the applicable income level established by the federal poverty guidelines; or (3) receives assistance from: (A) the financial assistance program established under Chapter [31](#), Human Resources Code; (B) the medical assistance program under Chapter [32](#), Human Resources Code; (C) the supplemental nutrition assistance program established under Chapter [33](#), Human Resources Code; (D) the federal special supplemental nutrition program for women, infants, and children authorized by 42 U.S.C. Section 1786; or (E) the child health plan program under Chapter [62](#), Health and Safety Code. See Transportation Code § 706.006(d). The County must have a contract with DPS under §706.002, Transportation Code, in order to charge this fee.

Detailed Description of Offenses in each Misdemeanor Category

- A Passing School Bus (Transportation Code, § 545.066)
- B Rules of the Road Offense¹ (other than a Parking Offense, Pedestrian Offense, or Passing School Bus Offense) that is a moving violation²
- C Rules of the Road Offense (other than a Parking Offense, Pedestrian Offense, or Passing School Bus Offense) that is not a moving violation)
- D Parent Contributing to Non-attendance Offense (Education Code, § 25.093)
- E Disobeying Warning Signs or Driving Around a Barricade (Transportation Code, § 472.022)
- F General fine-only misdemeanor offense³ that is a moving violation
- G General fine-only misdemeanor offense that is not a moving violation
- H State Parking Offense or State Pedestrian Offense that is a Rules of the Road Offense
- I Violation of Municipal Parking Ordinance
- J (1) State Parking Offense or State Pedestrian Offense that is not a Rules of the Road Offense; or (2) Violation of Municipal Pedestrian Offense

¹A rules-of-the-road offense is any offense found in Transportation Code, Chapters 541 – 600.

² The list of offenses considered to be moving violations can be found in 37 Tex. Admin. Code § 15.89(b) and is available online at <http://texreg.sos.state.tx.us/fids/201403910-1.html>.

³ A general fine-only misdemeanor offense is any fine-only misdemeanor offense not listed in Categories A - E and H - J.

Court Cost and Fee Destinations

- (1) Generally, 90% to the State and 10% to the City as a collection fee to be deposited in the City General Fund. However, a city may be able to retain an additional \$22.50 if the city maintains a certified breath alcohol testing program but does not use the services of a certified technical supervisor employed by DPS and the conviction was an offense under Chapter 49, Penal Code, other than an offense that is a Class C misdemeanor (See Art. 102.016(b), CCP). The State money goes to 12 destinations as follows: ~~(4) abused children's counseling [0.0088%];~~ (2) crime stoppers assistance [0.2581%]; (3) breath alcohol testing [0.5507%]; (4) Bill Blackwood Law Enforcement Management Institute [2.1683%]; (5) law enforcement officers standards and education [5.0034%]; ~~(6) comprehensive rehabilitation [0.8218%];~~ (7) law enforcement and custodial officer supplemental retirement fund [11.1426%]; (8) criminal justice planning [12.5537%]; (9) Center for the Study and Prevention of Juvenile Crime and Delinquency at Prairie View A&M University [1.2090%]; (10) compensation to victims of crime fund [37.6338%]; (11) emergency radio infrastructure account [5.5904%]; (12) judicial and court personnel training fund [4.8362%]; (13) Correctional Management Institute of Texas and Criminal Justice Center Account [1.2090%]; and (14) fair defense account [~~8.0143~~17.8448%]. If a city is entitled to retain the additional \$22.50, it must be used to defray the costs of maintaining and supporting a certified breath alcohol testing program.
- (2) 4% ~~5%~~ to the City as a service fee for collection and 96% to the State. The money is directed to the State as follows: (1) 70% ~~67%~~ to the credit of the undedicated portion of the General Revenue Fund; and (2) 30% ~~33%~~ to the credit of the designated trauma and emergency medical services account under Section 780.003, Health & Safety Code.
- (3) 100% to the City. If the City has a population greater than 850,000, the money is deposited in a fund known as the Municipal Child Safety Trust Fund. Money in the fund is to be used to provide school crossing guard services as provided by Chapter 343, Government Code. After payment of the expenses of the school crossing guard services, any remaining money in the fund may be used for programs designed to enhance child safety, health, or nutrition, including child abuse intervention and prevention and drug and alcohol abuse prevention. If the City has a population of less than 850,000, the money must be used for a school crossing guard program if the City operates one. If the City does not operate a school crossing guard program (or if the money received from the cost exceeds the amount necessary to fund the school crossing guard program, the City may expend the additional money for programs designed to enhance: (1) child safety, health, or nutrition, including child abuse prevention and intervention and drug and alcohol abuse prevention; or (2) public safety and security.
- (4) 100% to the City. If the City has a population greater than 850,000, the money is deposited in a fund known as the Municipal Child Safety Trust Fund. Money in the fund is to be used to provide school crossing guard services as provided by Chapter 343, Government Code. After payment of the expenses of the school crossing guard services, any remaining money in the fund may be used for programs designed to enhance child safety, health, or nutrition, including child abuse intervention and prevention and drug and alcohol abuse prevention. If the City has a population of less than 850,000, the money must be used for a school crossing guard program if the City operates one. If the City does not operate a school crossing guard program (or if the money received from the cost exceeds the amount necessary to fund the school crossing guard program, the City may expend the additional money for programs designed to enhance: (1) child safety, health, or nutrition, including child abuse prevention and intervention and drug and alcohol abuse prevention; or (2) public safety and security.
- (5) \$0.60 goes to the City's General Fund "to promote the efficient operation of the . . . municipal courts and the investigation, prosecution, and enforcement of offenses that are within the jurisdiction of the courts." \$5.40 goes to the State Judicial Fund for court-related purposes for support of the judicial branch of the State, for child support and court management as provided by § 21.007, Government Code, and for basic civil legal services to the indigent as provided by § 51.943, Government Code.
- (6) 100% of the money stays with the City. There is no stated purpose for the money.
- (7) 90% to the State "Fair Defense Account" to fund indigent defense; 10% goes to the City as a collection fee.
- (8) Generally, 100% of the money goes to the State for deposit to the credit of a dedicated account in the General Revenue Fund known as the "Truancy Prevention and Diversion Fund." An exception exists in those cities that have established (or are attempting to establish) a juvenile case manager program. These cities have the option of retaining 50% of the money. The other 50% of the money would be directed to the State's Truancy and Prevention Fund." The money retained by the City is to be used to operate or establish a juvenile case manager program.
- (9) 90% of the money goes to the State and is deposited to the credit of the "Civil Justice Data Repository Fund" in the State's General Revenue Fund. The State money is "to be used only by the Texas Commission on Law Enforcement to implement duties under Section 1701.162, Occupations Code." The Commission's duties involve the audit of certain law enforcement agency records.
- (10) The money is directed to: (1) the law enforcement agency that executed the arrest warrant, *capias*, or *capias pro fine*, if the agency requests of the court, not later than the 15th day after the date of the execution of the arrest warrant, *capias*, or *capias pro fine*, the imposition of the fee on conviction; or (2) the law enforcement agency that processed the arrest warrant, *capias*, or *capias pro fine*, if: (a) the arrest warrant, *capias*, or *capias pro fine* was not executed; or (b) the executing law enforcement agency failed to timely request the fee.
- (11) Generally, 100% of the money stays with the City. The exception is if the service is performed by a peace officer employed by the State (e.g., DPS, Parks & Wildlife, etc.). In such an instance, the City keeps 80% of the fee. The other 20% goes to the State.
- (12) Generally, 100% of the money stays with the City. The exception is if the service is performed by a peace officer employed by the State (e.g., DPS, Parks & Wildlife, etc.). In such an instance, the City keeps 80% of the fee. The other 20% goes to the State.
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- (18) Generally, 100% of the money stays with the City. The exception is if the service is performed by a peace officer employed by the State (e.g., DPS, Parks & Wildlife, etc.). In such an instance, the City keeps 80% of the fee. The other 20% goes to the State.
- (19) Generally, 100% of the money stays with the City. The exception is if the service is performed by a peace officer employed by the State (e.g., DPS, Parks & Wildlife, etc.). In such an instance, the City keeps 80% of the fee. The other 20% goes to the State.
- (20) Generally, 100% of the money stays with the City. The exception is if the service is performed by a peace officer employed by the State (e.g., DPS, Parks & Wildlife, etc.). In such an instance, the City keeps 80% of the fee. The other 20% goes to the State.
- (21) Generally, 100% of the money stays with the City. The exception is if the service is performed by a peace officer employed by the State (e.g., DPS, Parks & Wildlife, etc.). In such an instance, the City keeps 80% of the fee. The other 20% goes to the State.
- (22) \$20 is directed to the State while \$10 is retained by the City. Of the \$20 directed to the State, \$10 is credited to the DPS to implement Chapter 706 of the Transportation Code. Chapter 706 outlines the procedure for DPS to deny the renewal of the driver's license of a person who has failed to pay his or her court-ordered fine and costs. The remaining \$10 goes to the State, but is not designated for any particular purpose. Of the \$10 retained by the City, it should be deposited in the general fund. There is no stated purpose for its use. See Transp. Code § 706.007.
- (23) 100% to the City. If the City has a population greater than 850,000, the money is deposited in a fund known as the Municipal Child Safety Trust Fund. Money in the fund is to be used to provide school crossing guard services as provided by Chapter 343, Government Code. After payment of the expenses of the school crossing guard services, any remaining money in the fund may be used for programs designed to enhance child safety, health, or nutrition, including child abuse intervention and prevention and drug and alcohol abuse prevention. If the City has a population of less than 850,000, the money must be used for a school crossing guard program if the City operates one. If the City does not operate a school crossing guard program (or if the money received from the cost exceeds the amount necessary to fund the school crossing guard program, the City may expend the additional money for programs designed to enhance: (1) child safety, health, or nutrition, including child abuse prevention and intervention and drug and alcohol abuse prevention; or (2) public safety and security.
- (24) 50% of the money (\$6.00) goes to the State's Compensation to Victims of Crime Fund. The other 50% of the money (\$6.00) is to be retained by the court "for costs incurred in collecting the specified installments."
- (25) 100% to the City. The money is deposited in a fund known as the Municipal Child Safety Trust Fund. Money in the fund is to be used to provide school crossing guard services as provided by Chapter 343, Government Code. After payment of the expenses of the school crossing guard services, any remaining money in the fund may be used for programs designed to enhance child safety, health, or nutrition, including child abuse intervention and prevention and drug and alcohol abuse prevention.
- (26) 100% to the City. The money must be used for a school crossing guard program if the City operates one. If the City does not operate a school crossing guard program (or if the money received from the cost exceeds the amount necessary to fund the school crossing guard program, the City may expend the additional money for programs designed to enhance: (1) child safety, health, or nutrition, including child abuse prevention and intervention and drug and alcohol abuse prevention; or (2) public safety and security.
- (27) 90% to the State Jury Service Fund to reimburse counties for juror costs; 10% as a collection fee to the City.
- (28) 100% of the money stays with the City.
- (29) 100% of the money stays with the City and is directed to the City's Juvenile Case Manager Fund.
- (30) 100% of the money is retained by the City and is deposited in the "Municipal Court Technology Fund."
- (31) 100% of the money stays with the City. The money is to be deposited in the Municipal Court Building Security Fund.
- (32) \$20 is directed to the State while \$10 is retained by the City. Of the \$20 directed to the State, \$10 is credited to the DPS to implement Chapter 706 of the Transportation Code. Chapter 706 outlines the procedure for DPS to deny the renewal of the driver's license of a person who has failed to pay his or her court-ordered fine and costs. The remaining \$10

goes to the State. There is no stated purpose for this \$10 amount. Of the \$10 retained by the City, it should be deposited in the general fund. There is no stated purpose for its use. See Transp. Code § 706.007.

- (33)** 50% of the money (\$12.50) is sent to the State and the other 50% (\$12.50) is retained by the City. The money directed to the State is to be deposited in the State's General Fund. As for the 50% of the money retained by the City, 80% (\$10.00) goes to the City for unspecified purposes. The remaining 20% (\$2.50) is to be used "for the purpose of improving the efficiency of the administration of justice in the county." The City is required to "prioritize the needs of the judicial officer who collected the fees when making expenditures . . . and use the money deposited to provide for those needs."
- (34)** \$10 goes to the State and is to be credited to the Department of Public Safety (DPS). The other \$2 also goes to the DPS and is specially designated to be used to support the "State Electronic Internet Portal" project.
- (35)** 100% of the money stays with the City.
- (36)** 100% of the money stays with the City.
- (37)** 100% of the money stays with the City.
- (38)** 100% of the money stays with the City.
- (39)** 100% of the money stays with the City.
- (40)** 100% of the money stays with the City, but it must be deposited in a special account that can be used only to offset the cost of operating the truancy court.
- (41)** The fee may be used only to reimburse the county assessor-collector for the County in which the City is located or the Texas Department of Motor Vehicles for expenses related to providing services under the contract, or another county department for expenses related to services under the contract.
- (42)** 100% of the money stays with the City. The money must be deposited in the City's treasury for the use and benefit of the City.
- (43)** \$20 is directed to the State while \$10 is retained by the City. Of the \$20 directed to the State, \$10 is credited to the DPS to implement Chapter 706 of the Transportation Code. Chapter 706 outlines the procedure for DPS to deny the renewal of the driver's license of a person who has failed to pay his or her court-ordered fine and costs. The remaining \$10 goes to the State's General Fund. There is no stated purpose for this \$10 amount. Of the \$10 retained by the City, it should be deposited in the general fund. There is no stated purpose for its use. See Transp. Code § 706.007(d).

CONSTITUTIONAL CHALLENGES TO COURT COST AND FEE DESTINATIONS (This is not an exhaustive list. There could be other cases.)

New Test Used to Establish the Constitutionality of a Criminal Court Cost or Fee

In *Peraza v. State*, 467 S.W.3d 508 (Tex. Crim. App. 2015), the CCA established a new test for determining the constitutionality of a criminal court cost. In *Peraza*, CCA said a cost is constitutional if the statute creating the cost directs the cost to be expended for criminal justice purposes. *Id* at 517. CCA defined a “criminal justice purpose” to be “one that relates to the administration of our criminal justice system.” *Id*. The Court later used this test to find allocations of funds from the consolidated court cost to the abused children’s counseling and comprehensive rehabilitation accounts facially unconstitutional as a violation of the Separation of Powers Clause. See *Salinas v. State*, 523 S.W.3d 103, 106 (Tex. Crim. App. 2017). Following the Court’s decision in *Salinas*, the Legislature subsequently amended the relevant statute (LGC § 133.102) to fix the constitutional infirmity. Consequently, courts can still assess the consolidated court cost.

Other Constitutional Challenges to Criminal Court Costs and Fees – *If your city is in the jurisdiction of a court of appeals that has issued an opinion on the issue, this opinion may be binding on your court. You should discuss the matter with the city attorney for your city. Also, you should check with your attorney to see whether an opinion is final.*

Peace Officer Fee – Summoning a Witness (charge per witness each time summoned) – CCP, art. 102.011(a)(3)

The First Court of Appeals declared this fee facially unconstitutional. *Allen v. State*, No. 01-16-00768-CR, 2017 Tex. App. LEXIS 11015 (Tex. App.—Houston [1st Dist.] Nov. 28, 2017, no pet. h.) (motion for en banc reconsideration pending)

Peace Officer Fee - Mileage Fees for certain Conveyances and Travel (29¢/mile) – CCP, art. 102.011(b)

The First Court of Appeals declared this fee facially unconstitutional. *Allen v. State*, No. 01-16-00768-CR, 2017 Tex. App. LEXIS 11015 (Tex. App.—Houston [1st Dist.] Nov. 28, 2017, no pet. h.) (motion for en banc reconsideration pending)

Prosecutor’s Fee - CCP, art. 102.008(a)

The First Court of Appeals declared this fee facially unconstitutional. *Hernandez v. State*, No. 01-16-00755-CR, 2017 Tex. App. LEXIS 7612 (Tex. App.—Houston [1st Dist.] August 10, 2017, no pet. h.) (motion for rehearing pending)

Jury Fee - CCP, art. 102.004(a)

The First Court of Appeals declared this fee facially unconstitutional. *Johnson v. State*, No. 14-16-00658-CR, 2018 Tex. App. LEXIS 2136 (Tex. App. Tex. App.—Houston [14th Dist.] March 27, 2018, no pet. h.)

EMS Trauma Cost - CCP, art. 102.0185

The Second and Sixth Courts of Appeals declared this fee facially unconstitutional. *Casas v. State*, 524 S.W.3d 921 (Tex. App.—Fort Worth 2017); *Robison v. State*, No. 06-17-00082-CR, 2017 Tex. App. LEXIS 9713 (Tex. App.—Texarkana [6th Dist.] October 10, 2017)

WAIVER OF PAYMENT OPTION (Art. 43.091, CCP)

- Courts may waive all or part of a fine or costs and must no longer wait for a defendant to default.** A court may waive payment of all or part of a fine or costs imposed by law if the court determines that: (1) the defendant is indigent or does not have sufficient resources or income to pay all or part of the fine or costs or was, at the time the offense was committed, a child; and (2) each alternative method of discharging the fine or cost would impose an undue hardship on the defendant.