



April 26, 2016

Scott Griffith
Director of Research & Court Services
Office of Court Administration
P.O. Box 12066
Austin, Texas 78711-2066
Via Email: Scott.Griffith@txcourts.gov

Re: Proposed Amendments to Collection Improvement Program

Dear Mr. Griffith:

We represent a coalition of organizations working together to improve the way Municipal and Justice Courts administer justice for Texas's poorest residents. We strongly support the proposed amendments to the Collection Improvement Program, 1 Tex. Admin. Code §§ 175.1-175.3, published on March 25, 2016, in the Texas Register. The proposed amendments (i) clarify that the Program does not apply to indigent defendants and (ii) provide Program staff with the discretion to order payment plans in smaller monthly installments, by eliminating the requirement that full payment be completed within four months of the assessment date. Both of these changes will facilitate a more just resolution of cases against indigent and low-income defendants.

For one, these changes will improve accountability by encouraging sentences that low-income defendants have the ability to complete. Under the current Program, defendants who are too poor to pay their fines immediately are subject to hefty payment plans—by law, the “highest payment amounts” defendants can afford, with the entire debt to be paid over a period of no longer than four months. 1 Tex. Admin. Code § 175.3(c)(4)(B)–(4)(C). In practice, we have encountered many cases where judges fail to make an adequate assessment of what an indigent defendant can afford. When that case is then referred to the Program staff for collection, the four-month requirement results in unaffordable monthly payments. Defendants may be discouraged from coming to court at all, if they know they will not be able to pay their fines over four months—a condition that is often advertised on municipal court websites. Furthermore, once a case is pushed to the point of delinquency, the court typically issues a *capias pro fine* warrant, and the defendant avoids court for fear of arrest. Defendants should be more willing to come to court and more communicative if their payment plans are manageable.

Similarly, indigent defendants who are unable to make any payment to the court are fearful of coming to court. Indigent defendants know that if they are ordered to pay any amount of money, they will ultimately fail. By clarifying that the Program does not apply to the indigent, these amendments should ensure that Program staff refer any person that they determine to be indigent

back to the court for sentencing, where the judge can determine an appropriate alternative sentence. Ideally, judges will conduct indigency hearings upon initial sentencing, so that cases involving indigent defendants never enter the Program at all.

These changes will also make the Collection Improvement Program, and the system for adjudicating Class C fines and fees overall, more efficient. The purpose of the Program is to increase the amount of outstanding fines, fees, and court costs that courts collect. Program staff should not waste resources trying to collect money from indigent defendants who are unable to pay; clarifying that the Program does not apply to indigent defendants supports that goal. Collection resources will be redirected toward defendants who can make payments, positively impacting collection rates.

Moreover, for low-income defendants who are able to make modest payments, collection efforts will not be wasted on payment plans that these defendants cannot afford. The proposed rule eliminating the four-month requirement should help avoid wasting law enforcement resources on arresting and booking people who cannot keep pace with unaffordable monthly installments. In our experience reviewing court data, interviewing court staff, and representing indigent defendants, harsh payment plans are likelier to land low-income defendants in jail than to collect a few extra dollars. But when defendants are put on payment plans that they can actually afford, they are more likely to make payments and resolve their court debt.

Finally, these amendments will improve public confidence in the judiciary. Local courts around the country are the subject of an ongoing national conversation concerning administration of justice for defendants who are too poor to pay fines and fees.¹ By clarifying that courts should not direct their most intensive collective efforts at people who struggle to support themselves and their families, these amendments promote the public perception that Texas courts do not view themselves as revenue centers, but rather as institutions striving toward the impartial administration of justice.

For all of these reasons, we commend the Texas Judicial Council for taking action to clarify the scope of the Collection Improvement Program and to promote payment plans that are affordable for low-income Texans. Additional rule changes are necessary to ensure that the Collection Improvement Program treats indigent and low-income Texans with fairness, and we look forward to the additional amendments to the Collection Improvement Program that the Council plans to draft and publish in June.

¹ See, e.g., U.S. Dep't of Justice, Dear Colleague Letter on Fines and Fees in State and Local Courts (Mar. 14, 2016), <https://www.justice.gov/crt/file/832461/download>; CONFERENCE OF STATE COURT ADMINISTRATORS, 2011–2012 POLICY PAPER: COURTS ARE NOT REVENUE CENTERS (2011), <http://cosca.ncsc.org/~media/Microsites/Files/COSCA/Policy%20Papers/CourtsAreNotRevenueCenters-Final.ashx>.

Scott Griffith
April 26, 2016
Page 3

Sincerely,

Rebecca Bernhardt
Executive Director
Texas Fair Defense Project

Mary Schmid Mergler
Director, Criminal Justice Project
Texas Appleseed

Ranjana Natarajan
Director and Clinical Professor
Civil Rights Clinic
University of Texas School of Law
(Institution listed for identification
purposes only)

Matt Simpson
Senior Policy Strategist
ACLU of Texas

Trisha Trigilio
Staff Attorney
ACLU of Texas