



# Inability To Pay: What You Need To Know And Why

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1

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2

# What We Are Covering Today!

- History
- Present
- Legal Basics
  - Civil
  - Criminal

3

## Resources

Deskbooks

- [www.tjctc.org/tjctc-resources/Deskbooks.html](http://www.tjctc.org/tjctc-resources/Deskbooks.html)

Forms, Charts, SRL Packets,  
Webinars, Legal Board

- [www.tjctc.org/tjctc-resources.html](http://www.tjctc.org/tjctc-resources.html)

Code of Criminal Procedure

- [statutes.capitol.texas.gov](http://statutes.capitol.texas.gov)

Rules 500-510, Texas Rules  
of Civil Procedure

- [www.txcourts.gov/rules-forms/rules-standards/](http://www.txcourts.gov/rules-forms/rules-standards/)

4

# Roll Play Game That Includes Questions!

Throughout this presentation, you are Jordan Smyth.

- You work 40 hours a week as a sales associate
- Make \$10 per hour now but you are up for a raise in 6 months
- You use the weekends to apply for better paying jobs and part-time jobs for the weekends
- You love basketball and baking
- Your goal is to start saving money to adopt a dog



5

History

6

## U.S. Supreme Court Case: Tate v. Short

--Argued Jan. 14, 1971

--Decided March 2, 1971

- Houston Case—Petitioner was indigent
- Traffic offense (fine only offense) with \$425 fine
- Sentenced to lay out fine at a prison farm because he had no money to pay fine
- Rate of \$5 per day (85 days total)



7

## U.S. Supreme Court Case: Tate v. Short 2

- Case held it is not legal to convert a fine to jail time due to only inability to pay
- Violates equal protection of 14<sup>th</sup> Amendment
- Mandated alternatives to immediate payment
- Vote 9-0 for judgment



8

# 2017 Changes to Indigency Law

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Started with Ferguson Missouri and United States Department of Justice--Civil Rights Division report.

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Missouri raised revenue by issuing citations

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Law enforcement focus was on revenue rather than public safety needs.

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Michael Brown's death.

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All led to spotlight on courts, including Texas Courts.

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Austin, El Paso, Amarillo and other cities sued for failure to provide indigency hearings (mostly issue in municipal courts).

9

## Spotlight on Texas

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It was discovered that thousands of Texans were laying out fines and costs without indigency hearings.

Texas Supreme Court and Texas Legislature responded.

10

## Texas Supreme Court Chief Justice Nathan Hecht

11

### Video Transcript

So, we were looking at the problem from three principal perspectives: just the liberty interest of the people involved, the defendants, making sure that this was being done according to the Constitution and the law. Secondly, the integrity of the judiciary: we were worried that sometimes these courts seem too close to the other branches of government. And then thirdly, from just the point of view, the very conservative view of the taxpayers, they are paying for all this. They are paying for all these, uh, jail cells to keep these people, who are not going anywhere, can't go anywhere, have not done anything, for the most part, uh terribly pernicious to society. They ran a stop sign or something. And really, I mean is the public going to pay two or three hundred dollars to keep that person in jail to teach them a lesson or keep them off the street or what? It just was not making any sense.

12

## Present—Where We Are Now

13

# Texas Statistics

- 13.4% of Texans live in poverty
  - That is almost 4 million Texans.
- Median gross rent in Texas, 2016-2020 was \$1,082
- Per capita income in past 12 months (in 2020 dollars), 2016-2020 was \$32, 177

[~https://www.census.gov/quickfacts/fact/table/TX/IPE120220#IPE120220](https://www.census.gov/quickfacts/fact/table/TX/IPE120220#IPE120220)

14

# Yearly Stats

- For Supplemental Security Income (SSI)
  - \$841 monthly for one person = \$10,092 per year
  - \$1,261 mo. with an eligible spouse = \$15,132 per year

~<https://www.ssa.gov/oact/cola/SSI.html>

15

## Oh SNAP Benefits!

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- Helps people buy the food they need
- Cannot be used to:
  - Buy tobacco.
  - Buy alcoholic drinks.
  - Buy things you cannot eat or drink.
  - Pay for food bills you owe.
- Generally, 3-month limit in 3-year period

16



## SNAP Info—Max Monthly Income Limits

Family size	Maximum monthly income
1	\$ 1,775
2	\$ 2,396
3	\$ 3,020
4	\$ 3,644
5	\$ 4,268
For each additional person, add:	\$ 625

17

## Oh SNAP Info 2—Max Monthly SNAP Amount

Family size	Monthly SNAP amount
1	\$250
2	\$459
3	\$658
4	\$835
5	\$992
6	\$1,190
7	\$1,316
8	\$1,504
For each additional person, add:	\$188

18

## 2022 Poverty Guideline For The 48 Contiguous State And The District Of Columbia –Yearly Income

Persons in family/household	Poverty guideline
1	\$13,590
2	\$18,310
3	\$23,030
4	\$27,750
5	\$32,470
6	\$37,190

19

## Where To Verify!

- SNAP Benefits: <https://www.hhs.texas.gov/services/food/snap-food-benefits>
- Federal Poverty Guideline: <https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines>

20

# Attorney Representation

- Someone having an attorney does not mean they have money
  - Texas Legal Aid firms assist more than 100,000 families each year
  - In 2019, Texas private attorneys provided 2.48 million hours in free legal services and 1.74 million hours in reduced-fee legal services
  - Also, do not forget cases taken on contingency basis

~Texas Bar Journal, Vol. 85, No. 6, pg. 409



21

## Attorney Representation 2

- But there are more Texans than resources available
- Texas ranks 44<sup>th</sup> in the nation regarding access to legal aid lawyers
- 0.6 legal aid lawyers for every 10,000 Texans who qualify

~Texas Bar Journal, Vol. 85, No. 6, pg. 409



22

## Living Wage Calculator

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- <https://livingwage.mit.edu/>

23

You cannot squeeze blood out of a turnip.

24

# Legal Basics

1. Civil
2. Criminal

25

## Virtual Hearings Remain An Option



- National Center for State Courts (NCSC) Report
  - Evidence suggest higher attendance rates for virtual
  - But virtual takes longer

<https://www.ncsc.org/media/ncsc/files/pdf/newsroom/TX-Remote-Hearing-Assessment-Report.pdf>

26

# Civil Procedures

Texas Rules of Civil Procedure (TRCP) govern

27

## **Inability to Pay Standard**

**Standard is a snapshot of the moment:**

- Different standard  
than indigence
- “Present ability” to pay is  
the standard

28



# Indigence

## Long-term financial classification:

- Income 125% or less of Federal Poverty Guideline
- ~Local Gov't Code 133.002(2)

29



## Statement of Inability to Afford Payment of Court Costs

- A plaintiff who is not able to afford to pay the filing and service fees may file a "Statement of Inability to Afford Payment of Court Costs." Upon the filing of the Statement, the clerk of the court must docket the action, issue citation, and provide any other customary services.
- Court should make form available without charge or request.

~TRCP 502.3(a) and (b)

30

# What Is The Standard For Civil Cases?

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Present inability to pay or indigence?

Answer: Present inability to pay

31

## Jordan Question 1—Judge Black Presiding

Look at handout! Jordan(you) completed an Inability to Pay Statement because you need to sue your mechanic:

1. Are you indigent?
2. If opposing party contests your Inability Statement, should their contest be overruled?

32



## 2 Situations for Inability Statement



**Filed When Petition  
Is Filed**



**Filing To Appeal**

33

## Same Form

- Waives court costs
- It can be used to file the appeal
- Waives appeal bonds

34

# Who Can Contest

- **Opposing party and judge**

- But a judge is not required to contest a Statement on their own and may never deny a Statement without a hearing. *In re Heaven Sent Floor Care. . [2016 WL 7320387 (Tex. App. – Dallas 2016)]*

35

# Contesting Limits

- If plaintiff alleges that they receive a government entitlement based on indigence, then the only challenge that can be made is whether the person is actually receiving the government entitlement.

~TRCP 502.3(d)

36

## Watch Out For Legal Aid Certificates

- A Statement of Inability to Afford Payment of Court Costs accompanied by a legal aid provider certificate may not be contested.

~TRCP 502.3(c)

37

## Written Order Required After Hearing



- If contest sustained, the judge must enter a written order listing the reasons for the determination, and the plaintiff must pay the fees in the time specified in the order or the case will be dismissed without prejudice.
- If contest denied, the judge should enter a written order denying the contest of the statement and approving the statement.

~TRCP 502.3

38

# Appeal If Contest Sustained

- Appellant can appeal JP contest order by filing appeal notice with court
  - Bond or cash deposit not required to appeal this order
- If appealed, JP must then forward all related documents to the county court for resolution.

~TRCP 506.1

39

## Criminal Procedures

Texas Code of Criminal Procedure (CCP) govern

40

# Texas Code of Criminal Procedure

- Art. 1.053. Except as otherwise specifically provided, in determining a defendant's ability to pay for any purpose, the court shall consider only the defendant's present ability to pay.

41

## What Is The Standard For Criminal Cases?

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Present ability to pay or indigence?

Answer: Present ability to pay

42

# Alternative Legal Requirements

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- Notify defendants that alternatives are available
- Allow defendants to use those alternatives when applicable

43

## How to notify of alternatives?

Put notice in:

- Citations
- Pre-trial collection notices
- Notices for failure to appear
- Notices of failure to satisfy judgment
- Public Posting (not required)

44

## Texas Code of Criminal Procedure 2



- Art. 45.041—Immediately after imposing sentence, judge must determine immediate ability to pay, and if not able, the alternatives.

45

## Options/Alternatives

- Payment Plans
- Community Service
- Waiver of Fine and Costs
- Jail Credit (with legal protections)
- Combo of the above

46

## In Judgment

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If able, make determination at trial and include alternatives in judgment if appropriate.

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Failing to satisfy judgment triggers hearing on ability to pay

47

## Jordan Question 2 (Poll)

Same facts presented in handout. You (Jordan) got a speeding ticket and have \$65.53 in your bank account during the court date. Court costs are \$129 and fine range is \$0-\$200. Should Judge Black make alternatives available?

- A. Yes
- B. No

48



# Payment Plans

- Never allow a payment plan without having a written judgment
- Plan can be in judgment or in separate order
- Court should not hold person in contempt for failing to make payment , nor file new charges against them



49

## Payment Plans—Time Payment Reimbursement Fee

- Remember to consider time payment reimbursement fee
  - Payment made 31 days or more after judgment/order incurs a \$15 fee
  - May be waived (more on that later)



50

# Jordan Question 3 (Poll)

Same facts presented in the handout. Judge Shannon Black gave a fine of \$171, and court costs are \$129, which makes for a total of \$300. Is a payment plan of \$50 for 6 months appropriate?

- A. Yes
- B. No

51

## Order of Commitment for Jail Credit

- Tool used to confine defendant in jail to lay out fines and costs
- Indigency hearing is a **prerequisite**

52

## **Required Written Findings for Order of Commitment**

Either:

- Defendant not indigent; and
- Failed to make a good faith effort to discharge judgment

53

## **Required Written Findings for Order of Commitment 2**

- Defendant is indigent; and
  - Failed to make a good faith effort to discharge judgment via community service; and
  - Could have completed community service without undue hardship.
- ~CCP 45.046(a)

54

## **Jail Credit**

### **Charge in your court:**

- Credit for any time spent in jail
- Minimum of \$150 for 24 hours
- But, no more often than 8 hours

~CCP 45.048

55

## **Jail Credit**

### **Credit for Other Offenses:**

- Confinement must be after the charge pending in your court
- Credit only for actual sentence
- Minimum of \$150 per day
- Credit given per day only

~CCP 45.048

56

## Jordan Question 4—Wheel of Fate



1. Flat Tire --\$49
2. Broken Workplace Water Pipe--  
\$160 Lost Wages
3. Cavity Filling--\$170
4. Car Inspection/Registration--  
\$116
5. Medication Price Increase--\$35

57

## Jordan Question 4—Continued (Poll)

Other than what fate has dealt Jordan, same facts presented in the handout. You (Jordan) cannot make full payment this month on his payment plan. You call the court and let them know and tell them you can bring documentation. You ask for an extension. Is Jail Credit an option for Jordan?

- A. Yes
- B. No

58

## Community Service –CCP 45.049

- Court's order for community service must include:
  - Number of hours, and
  - Due date
- 16 hours per week is the maximum, unless judge determines more hours are not an undue hardship
- Minimum credit of \$100 for every 8 hours (can give more)
- Defendant can pay outstanding balance to get out of community service

59

## Jordan Question 5—Wheel of Fate



1. Flat Tire --\$49
2. Broken Workplace Water Pipe--  
\$160 Lost Wages
3. Cavity Filling--\$170
4. Car Inspection/Registration--  
\$116
5. Medication Price Increase--\$35

60

## Jordan Poll Question 5—Judge Black Presiding (Poll)

After more misfortune, Jordan (you) call the court again and let them know the situation. Would community service be a good fit instead of the payment plan?

- A. Yes
- B. No

61

## Waiver of Fine:

- If community service or other alternative is an undue hardship:
    - and
  - Indigent or unable to pay
    - or
  - Under age 17 when offense committed
- ~CCP Art. 45.0491

62

Waiver of Costs  
or  
Reimbursement  
Fees:

- Defendant is indigent, or
  - Unable to pay all or part of costs,
- OR
- Under age 17 when offense committed.

~CCP Art. 45.0491

63

## Undue Hardship?

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- Within the court's discretion

64



## Undue Hardship Considerations:

- Significant physical or mental impairment or disability
- Pregnancy and childbirth
- Family commitments or responsibilities, including dependent care
- Work hours and responsibilities



65

## Undue Hardship Considerations 2:

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- Transportation
- Homelessness or housing insecure
- Any other factors court determines is relevant

66

## Jordan Question 6—Wheel of Fate



1. Flat Tire --\$49
2. Broken Workplace Water Pipe--  
\$160 Lost Wages
3. Cavity Filling--\$170
4. Car Inspection/Registration--  
\$116
5. Medication Price Increase--\$35

67

## Jordan Question 6—Continued

You present your issue this month and ask for another extension.

- Should Judge Black waive fine?
- Should Judge Black waive cost and/or reimbursement fee?

68

# Texas Supreme Court Chief Justice Nathan Hecht

69

Texas  
Supreme  
Court Chief  
Justice  
Nathan Hecht

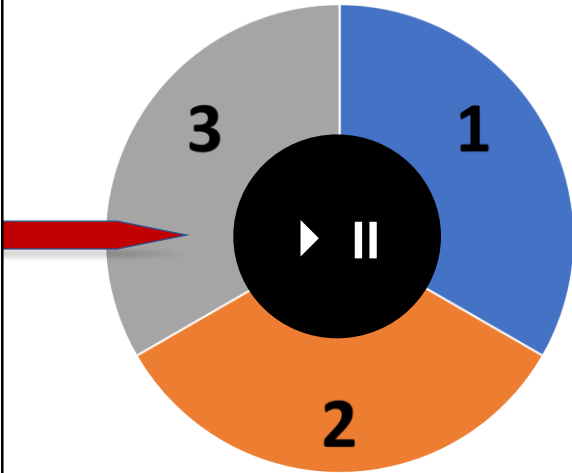


## Video Transcript:

“A parent disciplining a child may say you know this hurts me more than it hurts you, but when taxpayers have to say to criminal defendants, this hurts us more than it hurts you, something’s wrong.”

70

# Jordan Final Wheel of Fate!



1. A mean relative dies and leaves you \$100,000!
2. You win the lottery!
3. You get the work promotion now and make \$30 an hour!

71

You Can Pay The Court And Adopt A Puppy!

72

# Questions?

**Thank you!**

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