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*Written Testimony from Just Liberty
to the Texas House Criminal Jurisprudence Committee:*

Interim Charge #2: Class C Misdemeanors and Citations in Lieu of Arrest

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Thank you to Chairman Collier and the committee for the opportunity to comment on this interim charge.

Scope of Class C Misdemeanor Problem

Class C misdemeanors as a whole have declined significantly in recent years, according to the Office of Court Administration's Annual Statistical Report. Traffic and parking violations declined from 9.1 million in calendar-year 2006 to 5.3 million in 2019 – a 42% reduction. Another 1.1 million people received Class C citations last year.

Cities vary widely in their reliance on traffic fines for revenue. An item in Forbes a few years ago calculated 2013 per-capita ticket revenue for US cities with more than 250,000 population: In El Paso, the city received \$6.16 per capita from these sources; in Houston the per-capita figure was \$17.89; Dallas, \$32.58; Plano, by contrast, received \$43.36 per capita.¹

To what extent are Class C misdemeanors driving debtors-prison practices? In 2018, according to an Office of Court Administration data query, **524,628 people satisfied Class C misdemeanor fines and fees through jail credit.**

By contrast, despite legislation passed in 2017 to make it easier for judges to waive fines and provide community service options, only 53,773 people had their fines waived for indigency in 2018, and 97,260 avoided fines with partial or full credit for community service.

So more than three times as many people in 2018 sat out their fines in jail compared to those who received indigency-based relief. Not all jail credit is problematic. Many defendants have traffic tickets cleared when they're jailed for other charges, and this practice should continue. But annual "warrant roundups" and the practice of arresting drivers with warrants at traffic stops can also snatch people out of their daily lives and incarcerate them until they are able to

pay, or accumulate enough jail credit to be released. These practices are abusive toward the poor and should immediately cease.

The OCA provided no data on how long those getting "jail credit" were incarcerated. A reasonable estimated average may be two days. Most people will only be in jail one day, but some with unpaid fines will be incarcerated much longer, with jail credit satisfying their fines at a statutory rate of \$100/day.

Assuming an estimated 2-day average length of stay at a cost of \$60 per day, Texans spent 2,875 bed years incarcerated for petty Class C tickets in 2018, at a cost of ~\$63 million. That's a significant, hidden expense generated by the current system.

Equally concerning, there are second-order impacts to focusing policing efforts on generating fine revenue. In 2018, the Washington Post performed an analysis of traffic fines and crime data, demonstrating that jurisdictions which were more reliant on fine revenue for their budgets had lower clearance rates for more serious crime.²

Effects of Class C Debt on Poor People

Texans understand that the justice system discriminates against the poor. A 2019 survey by the Office of Court Administration found that "81 percent of Texas registered voters believe the wealthy enjoy substantially better outcomes in the criminal justice system than poor and working-class people."³

The OCA survey found that slightly less than 3 in 10 Texans (29%) agree that "Texas courts treat people alike regardless of socio-economic status." Two thirds (66%) disapproved of jailing people who owe court costs and filing fees when they cannot afford to pay.

We know many Texans struggle to pay traffic fines. The Federal Reserve has estimated that 40 percent of Americans could not pay a surprise \$400 bill without borrowing or going into debt.⁴ In the wake of COVID-19, that number has almost assuredly increased.

The Omnibase program flags driver's license of people with unpaid traffic tickets so they cannot renew them without paying. Hundreds of Texas jurisdictions participate in this program, but Harris County and several Texas cities have recently pulled out. Fox News reported over the summer that more than a half million drivers have had their licenses suspended in Harris County alone.⁵

Moreover, license suspensions fail to keep drivers off the road. Reported NPR in 2015, "According to the National Highway Traffic Safety Administration, at least 75 percent of Americans who get their licenses suspended continue driving."⁶

A 2007 analysis out of New Jersey provided the most detailed analysis available of the economic impact of license suspensions.⁷ They found suspensions were concentrated among

young males in low-income neighborhoods and significantly worsened their employment prospects. According to that study, of persons with suspended licenses whose annual income was under \$30,000: (1) 64% were unable to maintain their prior employment following a license suspension; (2) only 51% of persons who lost their job following a license suspension were able to find a new employment; (3) 66% reported that their license suspension negatively affected their job performance; and (4) 90% of persons whose licenses were suspended within this income bracket indicated that they were unable to pay costs that were related to their suspended driving privileges. In addition, of those who were able to find a new job following a license suspension-related dismissal, 88% reported a reduction in income.

There is no reason to believe the pattern in Texas is any different.

Alternatives to jail and license suspension for Class C debt

Overwhelmingly, most people who receive traffic tickets just pay them. And that works fine. States that treat traffic infractions as non-criminal and send the debt to collections have essentially similar payment rates to Texas.

We know Texas could make this work because the same Texas Justices of the Peace who handle Class C traffic tickets at the county level also handle civil claims up to \$10,000. When a defendant loses in what used to be called small-claims court, a JP typically orders monetary payment as judgment.

If the defendant cannot pay, jailing them is not allowed. Instead, plaintiffs must pursue debt collection using other methods, such as liens on property, turnover orders, sending the debt to commercial collections, etc..

We're left to wonder, why is debt to the government somehow such a big deal that it warrants incarceration of those who cannot pay? Clearly, non-carceral methods are sufficient for these same JPs to declare "justice" done if the beneficiary of court-declared debt is a private citizen, not the government.

The state has created a double standard to benefit itself. Ethical qualms about the private sector excessively squeezing the poor are routinely ignored by public officials when it is the public sector owed Class C misdemeanor fines.

Debtors prison practices have been eliminated for most debt but are still the go-to move for Texas courts processing Class C cases. That must change.

Expand Citations in Lieu of Arrest

After Sandra Bland was pulled over for failure to signal a lane change and arrested, a bipartisan movement emerged to stop arrests for Class C misdemeanors for which the maximum punishment is a fine, not jail time.

An analysis from Texas Appleseed found 19 percent of jail bookings in the 10 largest counties stemmed from Class C misdemeanors,⁸ a much higher proportion than anyone had previously understood. In Jefferson County, an astonishing 37 percent of people booked into the county jail had a Class C misdemeanor as the highest charge, they reported.

It makes no sense to focus the most expensive incarceration resources on these low-level offenses that the Legislature doesn't even think deserve jail time. Both the Republican and Democratic Party platforms call for ending arrests for Class C charges.

There are also opportunities to expand use of citations to more serious misdemeanors. In 2007, the Texas Legislature authorized law enforcement to give citations instead of arresting people for seven Class B misdemeanors, including driving with a suspended license, as well as Class A and B misdemeanor marijuana possession.

At first, few jurisdictions utilized this new authority. But particularly amidst efforts to reduce jail populations due to the coronavirus, more Texas cities are now using it with zero problems reported and no negative public-safety impacts whatsoever.

This experiment has been so successful, it raises the question of whether these arrests should be eliminated statewide. With more than 2,000 law enforcement agencies around the state, it would be better to have consistent policies regarding enforcement of these low-level misdemeanors. The largest jurisdictions already give citations in these circumstances. Suburban and rural Texans don't deserve to be treated more harshly.

Recommendations

Texas took an important first step toward rectifying some of these problems with abolition of the Driver Responsibility surcharge in 2019. But there's more to be done.

The Legislature should eliminate the Omnibase program suspending driver's licenses for nonpayment of fines and fees. At least nine other states, most recently New York in July, have reduced or eliminated license suspensions for nonpayment of traffic fines in the last three years.⁹ Texas should follow suit.

Barring outright abolition, the Legislature should adjust the Omnibase rules to allow drivers to renew their licenses if they get on a payment plan, the way they could for the Driver Responsibility surcharge before it was abolished in 2019.

Class C debt should expire outright or be converted to a civil judgment after five years. Texas has seen people jailed for traffic tickets received decades prior. That is not justice.

The statutory rate at which fines can be satisfied by jail credit should be increased from \$100 per day to \$500.

This would not only reduce the amount of time people spend incarcerated for unpaid debt, but it would also compensate people's time more fairly. At \$100 for 24 hours, the current jail credit amounts to a rate of \$4.17 per hour. At \$500, the jail credit rate would be \$20.83 per hour, which is much closer to median Texas wages.

More detailed data should be gathered on jail credit distinguishing between fine debt extinguished while sitting out other charges vs. people arrested for an outstanding warrant.

The Legislature should pass the Sandra-Bland legislation carried by state Rep. James White in 2019. In cases where the Legislature has held not even *conviction* merits incarceration, taking someone to jail perverts legislative intent, frequently resulting in abusive interactions like that seen with Ms. Bland.

Finally, the Legislature should forbid arrests for the Class B and A misdemeanors for which police currently have *discretion* to issue citations. This would reduce incarceration and free up officer time to devote to more important duties.

¹ Forbes, October 26, 2016. <https://www.forbes.com/sites/chuckdevore/2016/10/26/police-collected-fines-fees-and-forfeitures-how-does-your-city-rank/?sh=791bc7162520>

² Washington Post, Sept. 24, 2018. <https://www.washingtonpost.com/news/monkey-cage/wp/2018/09/24/want-your-police-department-to-collect-more-fines-it-will-solve-fewer-crimes/>

³ Texas Municipal Courts Education Center, The Brief, October 2018.

https://www.tmcec.com/files/9715/3860/4324/THE_BRIEF_Oct_18.pdf

⁴ "40 percent of Americans can't cover a \$400 emergency expense," CNN Money, May 22, 2018.

<https://money.cnn.com/2018/05/22/pf/emergency-expenses-household-finances/index.html>

⁵ Fox News, July 29, 2020. <https://www.foxnews.com/auto/houston-drivers-not-paying-tickets-make-550000-ineligible-for-license-renewal-study>

⁶ NPR, "How Drivers License Suspensions Unfairly Target the Poor," January 5, 2015.

<https://www.npr.org/2015/01/05/372691918/how-drivers-license-suspensions-unfairly-target-the-poor>

⁷ Motor Vehicles Affordability and Fairness Task Force, Final Report, February 2006.

https://www.state.nj.us/mvc/pdf/about/AFTF_final_02.pdf

⁸ Texas Appleseed, "An Analysis of Jail Bookings: How Texas counties could save millions of dollars by safely diverting people from jail." April 2019.

<https://www.texasappleseed.org/sites/default/files/An%20Analysis%20of%20Texas%20Jail%20Bookings%20Apr%202019.pdf>

⁹ "NY Legislature Ends Driver License Suspensions for Unpaid Traffic Tickets," New York Parking Ticket Blog, July 23, 2020. <https://newyorkparkingticket.com/driver-license-suspensions/>