

# Step-By-Step Enforcement of Criminal Judgments

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## Resources

- TJCTC Criminal Procedure Deskbook at pages 28 – 42 and 58 - 67
- Code of Criminal Procedure Ch. 45
- [www.statutes.legis.tx.us](http://www.statutes.legis.tx.us)
- [www.tjctc.org](http://www.tjctc.org)
  - Forms, Newsletter Articles, Webinars
  - Legal Q&A Board

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# Payment Alternatives

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## Indigence

- Long-term view of the defendant's financial picture

## Inability to Immediately Pay

- A snapshot that looks at that moment

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Why does  
the  
difference  
matter?

Some protections and options only apply if a defendant is “indigent”

- Example: waiver of the \$10 Omni reimbursement fee (*Transportation Code 706.006(d)*)

Also, some waivers are based on “inability to immediately pay” and not indigency

- Example: A person is in court today, and has no cash on hand, and they don’t get paid until next week. They might not be indigent, but they are unable to immediately pay court costs and fines, so they court must allow them to make alternative arrangements to satisfy the judgment

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The Legislature clarified in 2019 that except as otherwise specifically provided, in determining a defendant’s ability to pay for any purpose, the court must consider only the defendant’s present ability to pay. *Code of Criminal Procedure Art. 1.053.*

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## Payment Alternatives at the Time of Judgment

When the court enters a judgment against a defendant who is present in court, the judge **must** *immediately determine if the defendant is unable to immediately pay the fine and costs.*

If can't pay → Court **MUST** enter order allowing alternative!

CCP 45.041

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A form laying out the various methods of satisfying a judgment may be found under the Criminal Procedure tab at <http://www.tjctc.org/tjctc-resources/forms.html>.

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## Payment Alternatives

**Note:** Even if payment alternatives are not ordered at this point, they should still be ordered later, if appropriate.

- New explicit requirement that the court hold a hearing to reconsider alternatives to payment of the fine and court costs **if the defendant notifies the court that they have difficulty paying the fine and costs.**  
*CCP 45.0445*
- Examples:
  - Defendant's circumstances change.
  - Defendant mails in plea and then later comes in and says they can't afford the fine.

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Reconsideration  
of Fine or  
Court Costs

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Example: Defendant is on a payment plan, but before they can finish making payments, they lose their job. They call the court to see if anything can be done.

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If a determination occurs after judgment, the court should issue a separate written order, specifying how the fine and costs shall be discharged.

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Many courts also take other steps to ensure that defendants are aware of these rights, such as **publicly posting** the methods of alternative satisfaction of fines and costs.

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The screenshot displays a court website with a header for 'WILLIAMSON COUNTY, TEXAS'. The main content area is titled 'Alternatives to Payment of Fines and Costs' and includes a list of options for defendants to satisfy their fines and costs. The options are:

- Payment Plan:** A payment plan allowing the defendant to make payments toward the fine and costs in designated installments. Note that a payment plan must be approved by the court before the defendant can begin making payments.
- Disposition of the Asset:** A defendant is authorized to voluntarily surrender a vehicle or other asset to the court to satisfy the fine and costs. The court will then sell the asset at a public auction. The proceeds from the sale will be used to satisfy the fine and costs. The defendant must provide a written statement of the asset's value and a description of the asset to the court.
- Community Service:** A defendant is authorized to perform community service in lieu of paying the fine and costs. The court will assign the defendant to a community service project. The defendant must complete the project within the specified time frame. The court will then certify the completion of the project to the clerk of the court.
- Charitable Contribution:** A defendant is authorized to make a charitable contribution in lieu of paying the fine and costs. The court will accept the contribution from the defendant. The court will then certify the contribution to the clerk of the court.

The website also includes a sidebar with links to various court services and a footer with contact information.

Some Examples

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## Payment plan

- The judge **must** allow a defendant who is unable to immediately pay the judgment to pay in specified portions at designated intervals.
- Can outline the payment plan in the judgment or draft a separate order.
- **Never** allow a payment plan without a written judgment.

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## Time Payment Fee

- If **any portion** of the fine and costs is paid more than 30 days after the judgment, a **Time Payment Reimbursement Fee of \$15** must be assessed.
- This went into effect 1/1/2020.

*Local Government Code Sec. 133.103; renumbered as Art. 102.030, Code of Criminal Procedure, as of 1/1/20*

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## Time Payment Reimbursement Fee Changes

Now a “reimbursement” fee

Only applies to a conviction → NOT to a  
deferral or DSC

It was different prior to  
1/1/2020!

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## What if a Defendant Fails to Comply with a Payment Plan?

DO NOT hold the defendant in contempt!

You can use the other methods we will  
discuss later to enforce the judgment.

The court may have a show cause hearing  
to see why the defendant isn't complying.

- The Defendant can't be held in contempt if they don't show up to the show cause hearing.
- The Defendant can't be charged with FTA or VPTA for failing to appear at the show cause hearing.

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## Community Service

The court may allow a defendant to satisfy all or part of the judgment by performing community service.

- Minimum credit = **\$100 for every 8 hours.**
- Court **must** give written order of how many hours to complete & due date.
- May not order more than 16 hours per week unless it does not cause **undue hardship** to the defendant or their dependents.

*See CCP 45.049; TJCTC community service forms; and Chapter 8 of the Criminal Procedure Deskbook for more details on community service.*

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## Community Service Options



a work and job skills training program



a preparatory class for the high school equivalency exam



an alcohol or drug abuse program



a rehabilitation program



a counseling program, including a self-improvement program



a mentoring program



any similar activity

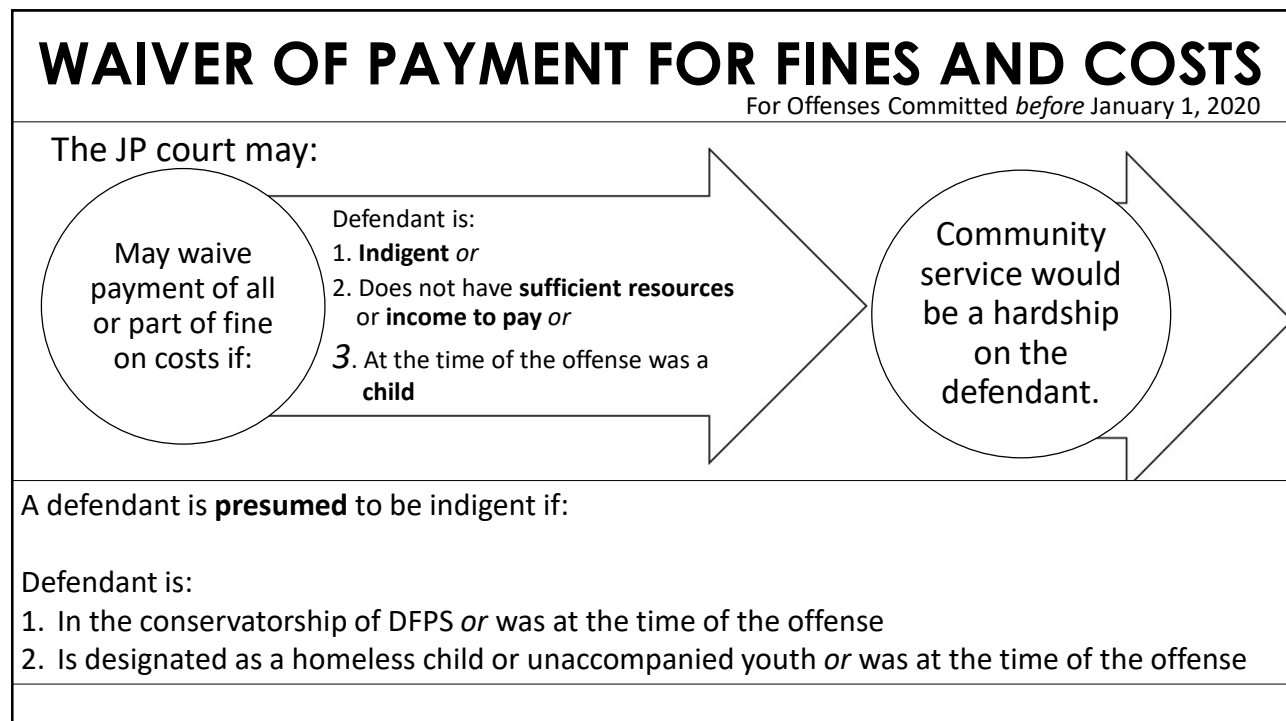
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## Waiver

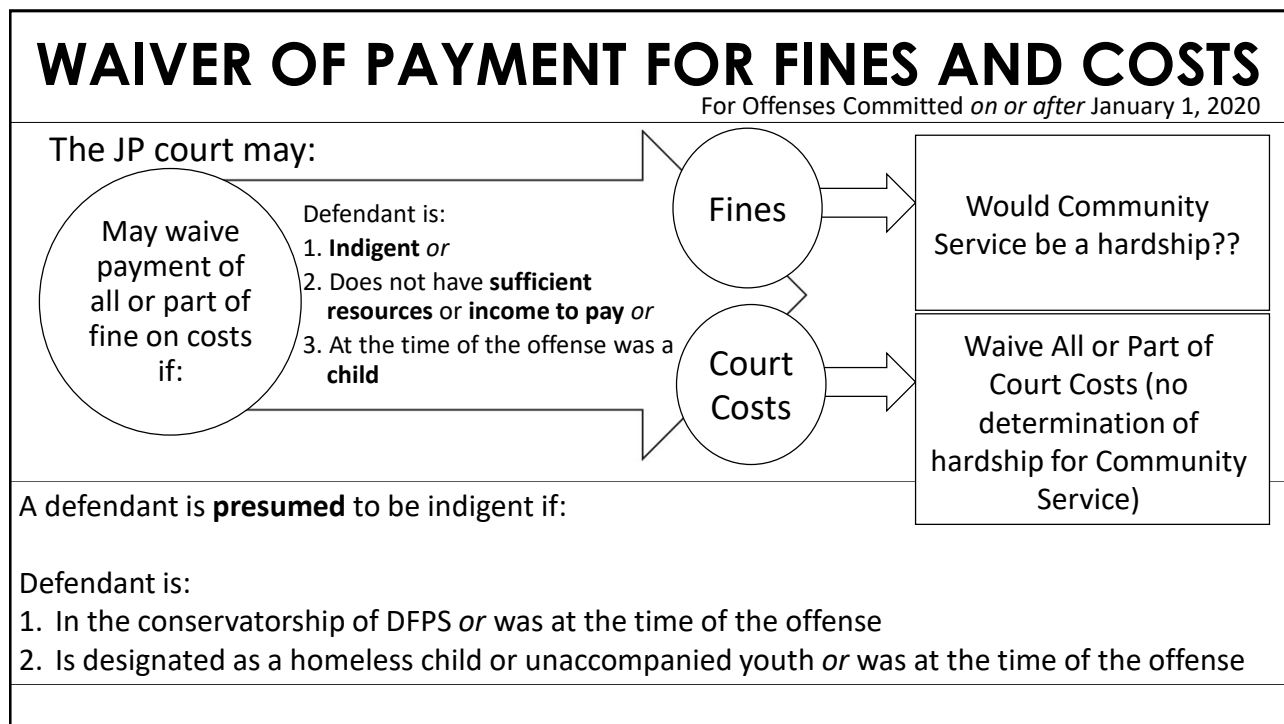
- If a defendant is unable to pay (or was a child at the time of the offense) and performing community service would be an undue hardship, the judge may **waive** all or part of the fine.
- If a defendant is unable to pay (or was a child at the time of the offense) the judge may **waive** all or part of the costs and reimbursement fees.

CCP 45.0491, 45.004.

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What is a Hardship?
<p>The Court may consider the following:</p> <ol style="list-style-type: none"> <li>1. Significant physical or mental impairment or disability;</li> <li>2. Pregnancy &amp; Childbirth;</li> <li>3. Substantial family commitments or responsibilities, including child or dependent care;</li> <li>4. Work responsibilities &amp; hours;</li> <li>5. Transportation limitations;</li> <li>6. Homelessness or housing insecurity; and</li> <li>7. Any other factors the court determines relevant.</li> </ol>

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## Waiver

This means the fine and costs are forgiven, and just “go away.”

The criminal **conviction** **does not** just “go away” even if the monetary penalty is waived.

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## Courtesy Letter

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Has a defendant not paid by the due date or missed a payment?

Often a **courtesy letter** will solve the problem. People forget stuff!  
A lot of courts do this automatically before moving on to other options.

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## Post-Judgment Collections

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## Post-judgment Collections

A county may contract with an entity to collect past due fines and costs.

- Defendant may be referred to collections if any amount is **60 days** past due.
- A **30% collection fee** is added to all amounts **paid** on cases referred to collections – *this fee is **not** added for cases disposed of by jail credit or community service.*

CCP 103.0031

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## Post-Judgment OMNI Reporting

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## Post-Judgment OMNI Reporting

A county may contract with **Omnibase**, who then contracts with DPS to block renewal of driver's licenses for defendants who fail to satisfy criminal judgments.

*Transportation Code Ch. 706 & Ch. 2 of the Fines, Fees, & Costs Deskbook*

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## When Does a Case Get Reported to OMNI

A defendant fails to appear pursuant to a citation or complaint.

*OR*

**A defendant fails to satisfy a judgment that has been rendered against them.**

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## What Needs to be Reported?

Defendant's Name

Date of birth

Driver's License Number

*TC 706.004(b)*

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When A  
Defendant  
CANNOT be  
Reported to  
OMNI

- They do not have a driver's license.  
*Omni is not a suspension order, or an order to not issue a DL, it is merely a tool to stop a defendant from renewing their DL.*
- They fail to pay restitution or comply with sanctions that have specific consequences such as attending an alcohol awareness course.

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## Getting Out of OMNI

**To be released from an “Omni hold,”  
the defendant generally must:**

satisfy the judgment,  
appeal the judgment, or  
enter into an agreement with the court  
(*such as a payment plan or community  
service*)

**Pay the \$10 Omni Reimbursement  
Fee.**

This fee is waived if the defendant  
is indigent.

*For more info, see TC 706, Criminal Deskbook Chapter 8, and the Fines, Fees & Costs Deskbook Chapter 2.*

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## Capias Pro Fine

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## Capias Pro Fine

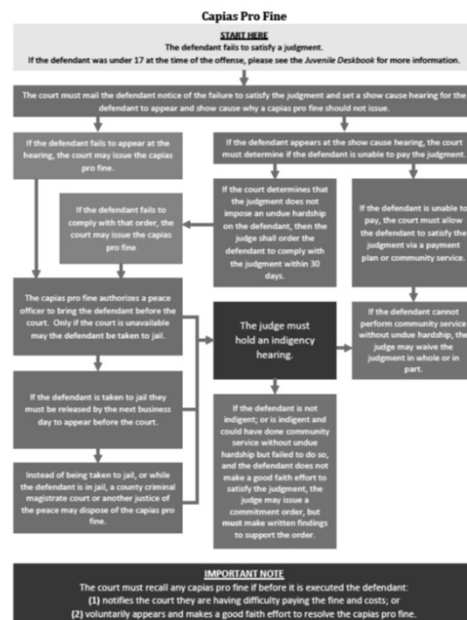
A **capias pro fine** is an order to have a defendant arrested and **brought to the court** to determine why they have not satisfied the judgment.

A capias pro fine **must not** be issued until the defendant is sent a notice of failure to satisfy the judgment and a **show cause hearing** is set for the defendant to explain why they have not satisfied the judgment.

*CCP 45.045, Flowchart in Ch. 8 of Criminal Deskbook*

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## Capias Pro Fine Flowchart



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## Show Cause Hearing

- This hearing can be conducted via telephone or video conference if bringing the person in would impose an undue hardship
- *Example:* If the person is already having a hard time paying their fine and costs, and they have a job, it might be easier for them to call in to a telephone hearing on their lunch break rather than missing a day or part of a day of work to attend court in person.

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## Show Cause – If Defendant Appears

If the defendant **appears at the hearing**, the court should determine:

- why they have not satisfied the judgment, *and*
- that the judgment does not impose an undue hardship on the defendant.

If there is **no undue hardship**, the judge shall order the defendant to comply with the judgment not later than the 30<sup>th</sup> day after the court makes the determination.  
*CCP 45.045(a-4)*

If the defendant fails to pay after the 30<sup>th</sup> day, then the capias pro fine may be issued.

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## Show Cause — If Defendant Appears

- If there is an undue hardship, the court must determine whether the fine and costs should be satisfied through one of the alternative methods that we discussed earlier.
- Payment plan, community service, or waiver.

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## Show Cause — If Defendant Doesn't Appear

If the defendant **fails to appear at that show cause hearing**, or if the defendant fails to pay the fine and court costs within 30 days if ordered to do so:

*Then the court may issue the capias pro fine.  
CCP 45.045*

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## When Capias Pro Fine is Executed

- When defendant is brought before the court, the judge disposes of the capias pro fine by holding a hearing and:
  - granting time served,
  - granting a payment plan,
  - granting community service,
  - waiving fines and costs in full or in part, or
  - when appropriate, by entering an order of commitment *(more info on requirements for this coming up)*.

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## What if the Court is Unavailable?

In that situation, the defendant can be taken instead to jail, but **must** be released within **one business day**.

The defendant could instead be brought directly to any other justice of the peace in your county to dispose of the case.

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## Recall Capias Pro Fine

The court shall recall a capias pro fine if, before the capias pro fine is executed:

- the defendant voluntarily appears and makes a good faith effort to resolve the amount owed, or
- If the defendant provides notice that they have difficulty paying the fine and costs and a hearing is set under CCP 45.0445.

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## Payment to Peace Officer

There is a procedure that the court may approve where rather than arresting the person on the capias pro fine, the officer can accept payment in full of the fine and costs via credit or debit card.

The officer **MUST** inform the defendant of alternative methods of satisfying their fine and costs (as discussed earlier).

An officer can only do this if their court has specifically approved this procedure!

This also doesn't apply to a regular arrest warrant → there is no conviction and judgment assessing fine and costs there.

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# Order of Commitment

## *Jail Credit*

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### Order of commitment

Sometimes, it may be appropriate to order a defendant committed to jail to “lay out” the fine and costs.

However, ordering someone to jail to lay out the fine and costs because they are too poor to pay is referred to as “**debtor’s prison**” and violates the United States Constitution. *Tate v. Short*, 401 U.S. 395 (1971)

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It is **absolutely critical** that the court follows all of the procedures that create safeguards against jailing indigent defendants based on inability to pay.

Failure to do so violates the defendant's rights and may result in your county being sued.

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## Indigency Hearing

The court can issue a summons or capias pro fine to get the defendant to the hearing.

Can be conducted via two-way videoconferencing.

If a capias pro fine was issued, hearing may be heard by:

- JP who issued the capias pro fine,
- Any other JP in the same county as the issuing court, or
- A county criminal law magistrate located in the same county as the issuing court.
- *CCP 45.046(c) & (d)*

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## Findings

- An order of commitment may **only** be issued if the judge first finds **in writing** that the defendant:
  - Is **not indigent** and has failed to make a good faith effort to pay, **or**
  - **Is indigent**, was given the chance to do community service, failed to do community service, **and** could have done community service without undue hardship.

CCP 45.046

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## Amount of Credit for Time Served

- The defendant gets a **minimum of \$100** per unit of time, which the judge can set at **no less than 8 and no more than 24 hours**.
- For example, the judge could say the defendant earns \$150 for every 12 hours spent in jail.

*CCP 45.046 and 45.048*

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## What About Inmates Who Want Jail Credit?

- A defendant sitting in jail on a higher-level case might ask the JP for “time-served” on their class c cases.
- A defendant is only entitled to jail credit on time actually spent in jail on a particular offense. *CCP 42.03*
- However, it doesn’t make sense to continue to hold a fine-only misdemeanor open for months or even years waiting for a defendant to be released.
  - The Defendant can mail in a plea, the court may enter judgment, and waive the fine and costs due to the Defendant’s inability to pay and hardship.

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## Scofflaw Program

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## Scofflaw Program

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Counties may participate in this program where a defendant is not allowed to renew their vehicle registration until they take care of their ticket (by paying or one of the alternative methods discussed earlier).

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There is a \$20 reimbursement fee to be released unless the defendant is economically unable to pay or the court finds good cause not to impose the fee.

*Transportation Code 502.010*

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A referral to Scofflaw expires 2 years after referral, and a defendant can't be referred on new FTAs or failure to satisfy a judgment unless the original referral has been resolved.

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## Civil Enforcement of Judgments

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## Civil Enforcement

- CCP 45.047 states that a JP may order the fine and costs collected by execution after a defendant defaults in the payment of a fine.
- *However*, as you may know from hearing from judgment creditors, it can be hard to enforce civil judgments!
- This is discussed in detail in the Civil Deskbook.

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## Thanks for watching!

Don't forget to submit your form for credit here: <https://www.tjctc.org/tjctc-resources/Webinars/Webinar-Certification-and-Evaluation.html>

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