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Kelly Gilbert, *Committee Clerk*

**The Texas Senate
 Committee on Criminal Justice**

November 1, 2000

The Honorable Rick Perry
 Lieutenant Governor of the State of Texas
 Post Office Box 12068
 Austin, Texas 78711

Dear Governor Perry:

The Senate Committee on Criminal Justice is pleased to submit its final report on Interim Charge Nine. The mandate of Charge Nine has prompted the Committee to:

Evaluate the collection efforts for criminal fines, and costs imposed by courts to determine how collection efforts may be enhanced, including incentives to increase collections. The Committee shall determine what fees may be imposed on offenders and which entities are entitled to a portion of the collected fees.

In compliance with your request, a copy of this report will be circulated to all Senators and other interested parties.

Respectfully submitted,

Senator Ken Armbrister Chairman

Senator Robert Duncan
 Vice Chairman

Senator Mike Jackson

Senator Jane Nelson

Senator Florence Shapiro

Senator Royce West

Senator John Whitmire

METHODOLOGY

The Criminal Justice Committee met on April 18, 2000, and listened to invited and public testimony on this issue. Appendix A details written testimony submitted by participants at the April 18 hearing, or received in other correspondence on this charge.

Witnesses testified on the amount of revenue that could be collected and was not, the amount of the collections that was retained by the collecting jurisdiction as it relates to the amount remitted to state coffers, the number of different fees added and amended by the legislature each biennium, the ability of those convicted to pay fees associated with the crime convicted of, and the responsibility of collecting these charges. Other issues were also broached during the hearing.

In addition to our review, the Texas Comptroller of Public Accountants has undertaken a review of this area. Using the mandate of Senate Concurrent Resolution 12, 76th Legislature, the Comptroller established a working group to "develop strategies for increasing the efficiency and reducing the complexity of fee collection and dispersal by county and municipal clerks". SCR 12 is attached as Appendix B. The Comptroller's report and recommendations will be submitted to the legislature by January 1, 2001.

CRIME AND PUNISHMENT

Criminal violations of state law are generally designated as either misdemeanors or felonies. The three classes of misdemeanors are established according to the amount of punishment imposed. Based on the nature of the crime, the level of fine and length of incarceration are increased. Class C misdemeanors often include theft, moving violations, and violations of municipal codes. These infractions are punishable by fine only, and the fine is limited to a maximum of five hundred dollars. Examples of Class B misdemeanors include theft of an item exceeding \$50 in value but less than \$500, or criminal mischief causing damage in the same amount, certain drug possession offenses, first time driving while intoxicated offenses, and in some cases terrorist threats. Class B misdemeanors are punishable by county jail time not to exceed 180 days, a fine up to \$2000, or both. Class A misdemeanors include unlawful possession of a firearm, certain assaults, and additional driving while intoxicated offenses. Punishment for Class A misdemeanors include jail time not exceed one year, a fine up to \$4000, or both.

The punishments for felony offenses in our state, excluding capital offenses, range from incarceration in state jail facilities for usually drug related offenses, to confinement for life in a penitentiary unit of the Texas Department of Criminal Justice. Each felony

offense, whether capital, or of the first, second or third degrees, including those state jail felonies, carries with it a possible punitive amount to be assessed against the offender.

In addition to any punishment rendered, an offender is also responsible for a variety of fees and court costs depending on the jurisdiction of the proceeding. The state and local political subdivision will share in the monies collected under this effort. Types of fees and court costs vary from jurisdiction. Appendix C details the different fees and court costs assessed in criminal cases.

In each criminal case, the jurisdiction responsible for determining the guilt or innocence of the accused is responsible for the assessment and collection of associated criminal court costs and fines or fees. Approximately two-thirds of all state court costs and fee revenue in criminal cases are generated by municipal courts. Justice of the peace, county, district and appellate courts account for the remaining one third generated. Further, municipal and justice of the peace courts combined account for approximately eighty five (85) percent of the total revenue generated, assessed, and collected.

In Texas, fees and court costs must be recovered prior to any fines being collected from the convicted. County and district clerks are usually responsible for collecting these

fees, and in most cases counties may retain ten percent of the fees and costs to cover their collection expenses. Counties generally keep one hundred percent of the fines they collect. The Office of Court Administration, a branch of the Texas Supreme Court, estimates that in fiscal year 1997 both state and local uncollected revenues from criminal cases exceeded one hundred million dollars. A reproduction of their methodology in reaching this estimate follows.

ESTIMATE (based on data from state fiscal 1997)

Approximate number of cases the fee applied to	6,046,318
Multiplied by the court cost amount	x \$1
Estimated total if full amount paid	\$6,046,318
State share of 90% (cities and counties retain 10%)	5,441,686
Actual state revenue	\$3,945,680
Estimated collection percentage ($\$3,945,680 \div \$5,441,686$)	72.51%
Total state revenues from all court costs and fees in criminal cases	\$141,014,949
Estimated total state revenues from all court costs and fees in criminal cases if full amount paid ($141,014,949 \div 72.51\%$)	194,476,554
Estimated gross uncollected revenues from state court costs and fees ($194,476,554 - 141,014,949$) \div (90%)	59,401,783
Less estimated amount satisfied via jail and community service credits ($59,401,783$) (15%)	- 8,910,267
Net estimated uncollected revenues from state court costs and fees ($59,401,783 - 8,910,267$)	50,491,516
Add estimated amount of uncollected local court costs, fees, and fines - which at a minimum should equal uncollected revenues from state court costs and fees	<u>50,491,516</u>
Estimated total (state and local) uncollected court costs, fees, and fines from criminal cases in state fiscal 1997	<u>\$100,983,032</u>

MODEL FINES COLLECTION PROGRAM

In September 1996, the Office of Court Administration (OCA) developed a model fine collection program. Based on the campaign established for Dallas County, the model program includes software and instruction that can be adapted to a unique collection need. Instruction is provided by OCA staff to assist counties in developing and tailoring a fines collection program to meet its specific needs. OCA produces historical collection rate information to measure the effectiveness of the current collections program and to evaluate the benefits derived through the enhancements implemented with the model program. Training is offered on collections policies, procedures, and techniques and the software included. Technical assistance is maintained after implementation by a staff at the Austin office of OCA.

Nineteen Texas counties operate or will soon implement the model fines collection program. These counties represent over one half of the state's population. Because of its efficacy, eight of the nineteen counties involved are in various stages of expanding the collections programs to additional courts at all levels. The Office of Court Administration estimates that training and implementation of the model program can cost a county \$20,000 to \$100,000, depending the size of the county and the resources it is willing to commit. OCA also has determined that, on the average, counties with fines collection programs will collect \$7.15 for every dollar spent on training and

implementation.

RECOMMENDATION

With nearly \$100,000,000 in fees and court costs uncollected in 1997, local jurisdictions should make every effort to collect as much in this revenue stream as possible. The state should undertake a comprehensive review of revenue distributions to determine if incentives are in place that promote better collection efforts. Though privatization of these monies may be an option, the loss of control over a particular collection and the fees associated with privatization seem prohibitive. Incentives could be predicated upon a local jurisdiction's commitment to employing the Office of Court Administration and its model fines collection program.

With such promising results as those noted in the charts shown at Appendix D, the Committee recognizes that the programs and assistance offered by the Office of Court Administration are a valuable revenue enhancement tool for local jurisdictions. As such, the Committee strongly urges prudent appropriation and fee distribution be made for the Office to insure its ability to continue to provide timely, quality training and assistance to political subdivisions .

Finally, the Committee recognizes that other areas for streamlining collection efforts

could increase participation and raise badly needed local revenues. These conclusions are addressed below.

CONCLUSION ONE

The Parole Division of the Texas Department of Criminal Justice should establish and maintain a better working relationship with local jurisdictions to insure notification and promote collection efforts for parolees upon their release from incarceration. The Division and its field staff should make every effort to notify the jurisdiction where the offense was committed of the release of the offender and the proper information necessary for contacting the offender and establishing collection schedules from them.

CONCLUSION TWO

The Legislature should carefully review any proposed additional fees and court costs and attempt to consolidate these costs into one consolidated fee structure. In addition, the Legislature should consider the continued review and possible sunseting of certain fees that no longer meet their intended purposes.

CONCLUSION THREE

The Legislature should review and establish a simple system for allocating fees and other costs paid in an installment arrangement.

CONCLUSION FOUR

The Legislature should review and establish a plan to reimburse local governments a percentage of state fees if the entity has successfully increased collections by a specified margin. This incentive would compel political subdivisions to pursue more aggressive collection efforts and employ the Office of Court Administration model.

APPENDIX

A

OMNIBASE

Services Incorporated

October 4, 1999

Senate Standing Committee on Criminal Justice
335 Sam Houston Building
Austin, Texas 78701

Dear Chairman Senator Kenneth Armbrister
Vice-Chairman Senator Robert L. Duncan
Senator Mike Jackson
Senator Jane Nelson
Senator Florence Shapiro
Senator Royce West
Senator John Whitmore

I understand that your committee has been charged by Lieutenant Governor Perry to evaluate the collection efforts for criminal fines, fees, and costs imposed by courts to determine how collection efforts may be enhanced, including incentives to increase collections. You are also charged to determine which fees may be imposed on offenders and which entities are entitled to a portion of the collected fees.

OmniBase Services Inc. is the service provider for the Texas Department of Public Safety for the Failure to Appear Program. You will recall that this program was authorized by Section 706 of the Texas Transportation Code to provide assistance to political jurisdictions in the collection of Class C misdemeanor violations. Essentially, participating jurisdictions are able to restrict the renewal of the drivers license of a violator who fails to appear in court to take care of outstanding violations. Currently more than 350 political subdivisions (271 cities and 80 counties) are participating in the program and more than 730,000 offenses have been entered into our database.

While the Failure to Appear Program has been limited to Class C misdemeanors and denial of renewal of a drivers license may not be adequate for collections on more serious criminal violations, the Failure to Appear Program has provided a viable alternative for Class C misdemeanor offenses and should be retained. You will recall that this program was initially limited to traffic violations, but was expanded at the request of political subdivisions during the last legislative session to include all Class C misdemeanors. Experience with the expanded scope is limited yet but participating jurisdictions are anticipating a substantial benefit from the program. This tool or some modified version of it should also be considered for more serious violations.

We might also be of assistance to your committee's efforts as we can provide information on how effective this tool has been for political subdivisions during the three years that the program has been in existence. We can also discuss some of the issues which have been encountered in using denial of privileges to enhance collections and give you the benefit of our experience from presentations to political subdivisions and from almost daily communication with the participating

jurisdictions. For example, part of the focus of your charge appears directed toward the use of collection agencies. Some jurisdictions report good success with collection agencies but other relate stories of the collectors getting all the proceeds and some small jurisdictions report difficulty in retaining a collector at reasonable rates. If you consider adding additional fees to enhance the collection, we can discuss the reluctance of some jurisdictions to participate in the Failure to Appear program because of the additional \$30.00 fee placed on each offense. Many judges report concerns with the court costs, etc. that are now imposed on offenders and they are reluctant to add additional fees on them.

If you believe that our assistance would benefit your efforts, I would appreciate the opportunity to share our experience with the Committee or provide any assistance that you might require. I can be reached by telephone at (512) 346-6511 ext. 110 or by E-mail at cbrother@omnibase.com.

Best Wishes with your interim study.

Sincerely,

A handwritten signature in cursive script that reads "Charles A. Brothers". The signature is written in black ink and is positioned above the printed name and title.

Charles A. Brothers
President



TEXAS MUNICIPAL COURTS ASSOCIATION

1350 NASA Road One, Suite 200 • Houston, Texas 77058 • 281/333-9229

June 16, 2000

Senator Ken Armbrister
Chairman, The Texas Senate
Committee on Criminal Justice
P. O. Box 12068
Austin, Texas 78711

Dear Senator:

This letter is a follow-up to the oral testimony of Judge Joe Pirtle of Seabrook, First Vice-President of the Texas Municipal Courts Association (TMCA), who appeared before your committee, as a representative of the TMCA, on April 18, 2000. Mr. Quinton Porter, Coordinator of the San Antonio Municipal Courts, also appeared before your committee as a representative of the Texas Municipal League on April 18, 2000. Mr. Porter is a member of the Board of Directors of the TMCA. The TMCA endorses Judge Pirtle's and Mr. Porter's remarks before your committee without reservation.

Over the years, Texas Municipal Courts have been accused of being interested only in raising revenue. Although there have been some isolated cases of Municipal Courts attempting, through fines, to raise the operating budget for the city, we believe that those instances are rare. Now it appears that Municipal Courts have become a fund raising entity of the State. The rapid escalation of Court Costs imposed by the State is seriously affecting the ability of Municipal Courts to administer justice. In many cases, of the most minor offenses, Municipal Courts waive fines collecting State Costs only, of which cities receive only 10%. We believe that it is near unanimous opinion of Texas Municipal Judges and city officials that the State Costs of matters before Municipal Courts is much too high. There is also great difficulty in administering the collection and reporting of Court Cost due to the variation in costs on different matters heard by Municipal Courts.

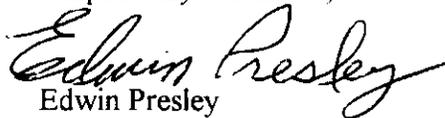
We would, then, respectfully submit the following suggestions for improvement of Court Cost administration in Texas Municipal Courts:

1. Reduce some of the costs. The most glaring of those costs that might be reduced is the Victims of Violent Crimes Cost. Less than 5% of the cases coming before Municipal Courts involves violence, yet this one Cost contributes most to the inflation of Municipal Court Cost. While the Victims of Violent Crimes Cost is an appropriate one, it should be greatly reduced.
2. Make the Cost the same for all offenses before Municipal Courts and the same in all cities.
3. Consolidate all Court Costs arising in Municipal Courts. The current system is a collection and reporting nightmare for Municipal Court Clerks. If Costs were the same for all offenses, the same in all cities and the Costs collected were consolidated, a great burden would be lifted from Municipal Court Clerks.
4. The time payment provision for each offense is a burden that weighs heavily on those who can least afford the burden. Many of the offenses in Municipal Court are the result of economics. Maintaining insurance, vehicle inspection and registration are offenses in which the dereliction is frequently the result of the individuals shortage of personal funds. To add to these burdens a \$25.00 per offense late charge for the late payment of fines is a harsh burden on those least able to deal with it. We recommend the abolition of this charge or serious amendment such as one payment for a payment plan rather than for each offense.
5. Make the due date for payment of Court Costs to the State the same for all Costs and all courts. This speaks for itself.
6. Calculate Court Costs on the date of conviction or assessment of fine, eliminating the calculation of Costs from some remote violation date. This problem results from the apprehension of "failure to appear" or "violation of promise to appear" defendants. Since Costs are administrative rather than punitive, at least theoretically, we believe this would not be an ex post facto change.
7. Every odd year when the Legislature meets, there is a change in Court Costs, sometimes monumental changes, and almost always confusing changes. Invariably, Cost changes become effective on September 1, of the legislative year. We recommend that these changes become effective on January 1, of the following year to allow for Attorney General and Comptroller opinions and computer changes. There are lots of Municipal Courts and very few computer software firms that deal with Court Costs. Making changes by September 1 is unrealistic.

8. We also believe that the current 10% fee that cities receive for collecting Court Costs is unreasonably low. We recommend that this fee be raised to 25%.

The Texas Municipal Courts Association is a non-profit, non-political, professional organization. While we are not lobbyists, we are quite willing to share our collective knowledge with the Legislature when requested. We greatly appreciate the opportunity for our representative to appear before your committee and contribute this written follow-up.

Respectfully submitted,


Edwin Presley
President

cc: Comptroller of Public Accounts

Williamson County



APR 17 2000

P.O. Box 24
Georgetown, Texas 78627
(512) 943-1212

Bonnie J. Wolbrueck
District Clerk

April 13, 2000

The Honorable Ken Armbrister
Texas Senate
P O Box 12068 – Capitol Station
Austin, Texas 78711

In re: Committee on Criminal Justice

Dear Senator Armbrister:

Thank-you for the invitation regarding the public hearing on Tuesday, April 18, 2000. I will not be able to attend the hearing but I have enclosed herein written testimony. This testimony mainly addresses the current fee structure for the collection of criminal fees. This complicated structure hinders the collection efforts. The testimony includes recommendations for changes, which I hope your committee will consider.

Thanking-you, I am,

Yours very truly,

Bonnie J. Wolbrueck
District Clerk
Williamson County, Texas

bw/
Encls.

WRITTEN TESTIMONY

Submitted to:

Senate Committee on Criminal Justice

Interim Charge

Collection of Fees and Costs

April 18, 2000

Criminal Fee Collection Structure

General Issues

The current Texas fee structure continues to be plagued with complex procedures although a partial consolidated fee structure was adopted in 1997 - 74th Legislative Session. Prior to 1997, there were approximately twelve fees collected at the local level for submission to the state on criminal actions. Article 102.075, Code of Criminal Procedure, consolidated eight of the fees allowing a percentage allocation for each fund. Ironically, during the same session of the legislature two new fees were added – one for \$.25 - which only burdened an already complicated structure. New fees were added also during the last legislature session.

Complex Procedures

- (1) Numerous different state fees are required to be collected at the local level requiring repeated costs for computer changes, forms, training, reporting, staff time allocation.
- (2) Fees are collected for variable amounts according to the type of offense committed making tracking cumbersome.
- (3) Fee assessment is according to the date of offense not the date of conviction. Manual or computerized programming must recognize many, many years of different fee requirements when payments are received i.e. offense date in 1994, arrested and convicted in 2000. Fees assessed are 1994 fees.
- (4) Complicated computer programming or manual procedures are necessary for the percentage allocation of each fee upon receipt of a partial payment.
- (5) Reporting of fees to the state is performed at the local level on numerous forms. (see attachments)
- (6) Required dates of reporting are not uniform and levels of local administrative fee retention are variable.

Recommendations

- (1) Require that all criminal state fees be consolidated into one consolidated fee amount.
- (2) Have statutory requirement that any new state criminal fee (funds) that may be added must be part of the consolidated fee structure.

- (3) Develop a formula for percentage allocation to each fund from one consolidated amount along with a formula for increase to the consolidated amount for additional funds. See percentage allocation in CCP 102.075
- (4) If deficiencies are experienced in any fund, allow allocation from general revenue until the formula or collection amount can be revised. Note: The funds not consolidated in 1997 feared that their collection amounts would decrease with the formula allocation. This recommendation would allow uniform support of the consolidated effort.
- (5) Require sunset revision of each fund in which a fee is collected determining if need is being met and adjust fees and funding accordingly.
- (6) If possible, eliminate fee rate based on offense date and change to conviction date.
- (7) Eliminate collection under old fee structure and 1997 consolidated structure when new consolidated structure is approved. Current collection and reporting is under two structures.
- (8) Require that all reports be due at the same date and under one form.
- (9) Local administrative fee allocation should be uniform.

Summary

A consolidated fee structure will result in substantial costs savings on the state and local level in areas such as computer programming, reporting, staff training and staff time allocations. It is past time that changes be made to this most complicated structure.

Although these recommendations have been made regarding criminal fees, it should be noted that similar collection and reporting issues are also required in the civil fee structure. Consolidated collection and reporting of civil state fees is also necessary.

Submitted by:
Bonnie J. Wolbrueck
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