

H. PREPARATION AND RECORDING OF MINUTES

1. Preparation of Minutes

Rather than trying to type each item of the minutes, most Clerks have adopted the use of forms. A variety of forms, prepared ahead of time, cover the majority of types of judgments and orders. Working from the judge's docket sheet, the Clerk (in some cases or counties, the county attorney) determines what form is needed, fills in the requisite data and returns the completed form to the judge for his or her signature.

Exactly what constitutes criminal minutes varies somewhat from office to office. At minimum, judgments and dismissals must be recorded. Some Clerks prefer to record all instruments signed by the judge, and a few Clerks record all instruments filed for record so that the minutes are a duplication of the case jacket. Consultation among the Clerk, judge, and county attorney will determine which documents become part of the minutes in each county.

2. Recording of Minutes

As in all of the Clerk's processes, the objective is to transcribe or copy essential instruments into a permanent record book. A set of criminal minutes should be kept for each county court that hears criminal cases. Most courts are considered to be in continuous session, hearing cases year round. It may be, however, that some courts will be divided into terms and that minutes for each term will be so certified to by the judge and Clerk. The Clerk should check local procedure on this matter.

To record minutes, the Clerk should receive the instrument and see that all blanks are properly filled out and that the judge's signature is present.

Determine what volume will be used and assign the next unused page number to the instrument. Write or stamp the volume and page number on the instrument. Follow usual procedures for recording. Note the volume and page number in the index to criminal minutes, judge's docket sheet, criminal file docket, and case jacket.

File the instrument (or the copy) in the case jacket.

I. COLLECTION OF FINES, FEES AND COURT COSTS

Upon conviction of most misdemeanors, the punishment will be the levying of a fine and court costs upon the defendant. While not required by statute, in many counties the Clerk will collect the fine and costs for all county offices at the termination of each case. This only applies, however, to cases in which the defendant either pleads guilty or is found guilty upon final judgment. When cases are dismissed or when the defendant is not found guilty, no court costs are assessed.

NOTE: Article 103.003 of the Code of Criminal Procedure authorizes the following to collect court costs and fees:

1. District and County Attorneys
2. County Clerks and District Clerks
3. Sheriffs
4. Constables
5. Justices of the peace
6. Community supervision and corrections departments

NOTE: The Office of Court Administration operates a program to help Clerks with the collection of fines and court costs. Please call the Office of Court Administration at 512/463-1625 for more information. Information on the collection program is also available online at <http://www.txcourts.gov/cip.aspx>.

When the defendant appears before the Clerk to pay the fine, the Clerk should have available the judge's docket sheet, the criminal file docket (fee book), and a bill of costs with all necessary information. The Clerk will then do the following:

- Check the judge's docket to see that judgment and sentence have been rendered and that the defendant has accepted sentence.
- Fill out the bill of costs as to case number, style of case, court designation, and judgment rendered.
- Transfer from the criminal file docket to the bill of costs each item of court costs charged by all county offices.
- Enter the amount of fine shown in the judge's docket on the bill of costs.
- In some cases, the judge will order the defendant to pay to the Clerk restitution to parties damaged as a result of the crime. If so, note that fact and the amount on the bill of costs.
- Sign the bill of costs, affix the Clerk's seal, and give the bill to the defendant.
- Issue a detailed receipt to the defendant for payment received and note payment in the criminal file docket.

Enter the payment into the office's accounting system. Each Clerk must maintain a fee record.

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Art. 103.010
CCP
Art. 103.009

J. CURRENT FEES AND COURT COSTS

The Office of Court Administration has developed and made available on its website the County Clerk's Misdemeanor Court Cost Chart – Original Jurisdiction (effective 9/01/2013), which sets out the fees and costs that are to be assessed upon a defendant's conviction. Historical charts are also available on the OCA website at <http://www.txcourts.gov/publications-training/publications/filing-fees-courts-costs/criminal-court-costs-historical-charts.aspx>.

K. INDIGENT DEFENDANTS AND DEFENDANTS WHO REFUSE TO PAY

Incarceration of an indigent person for failure to immediately pay a fine or court cost violates the equal protection clause of the fourteenth amendment to the United States Constitution, and is therefore impermissible. However, persons able but unwilling to pay fines and court may be incarcerated for their failure to pay. In 2013, Senate Bill 393 and Senate Bill 395 amended Article 43.091 of the Code of Criminal Procedure regarding waiver of payment of fines and costs for certain defendants who were children at the time the offense was committed and to authorize a judge to allow a child defendant charged with or convicted of an offense over which a municipal or justice court has jurisdiction to elect at the time of conviction to discharge the fine and costs by performing community service or receiving tutoring as an alternative to paying the fine and costs.

Gustanson v. State, 666 S.W.2d 183 (Tex. App. - Dallas 1983, pet. ref'd)

Tate v. Short, 401 U.S. 395, 91 S. Ct. 668, 28 L.Ed.2d 130 (1971)
SB 393 and SB 395 (83rd Leg.)
CCP
Art. 43.03
Art. 43.03(f)
Art. 43.015
Art. 43.05

When a defendant fails to pay fines and court costs, the court is required to hold a hearing at which the defendant is able to offer an explanation as to why he or she did not pay. For purposes of a hearing described by Article 43.03, Subsection (d), Code of Criminal Procedure, a defendant may be brought before the court in person or by means of an electronic

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State of Texas

ARTICLE 10. COLLECTION OF CERTAIN COSTS, FEES, AND FINES

IN CRIMINAL CASES

SECTION 10.01. Chapter 103, Code of Criminal Procedure, is amended by adding Article 103.0033 to read as follows:

Art. 103.0033. COLLECTION IMPROVEMENT PROGRAM.

(a) In this article:

(1) "Office" means the Office of Court Administration of the Texas Judicial System.

(2) "Program" means the program to improve the collection of court costs, fees, and fines imposed in criminal cases, as developed and implemented under this article.

(b) This article applies only to:

- (1) a county with a population of 50,000 or greater; and
- (2) a municipality with a population of 100,000 or greater.

(c) Unless granted a waiver under Subsection (h), each county and municipality shall develop and implement a program that complies with the prioritized implementation schedule under Subsection (h). A county program must include district, county, and justice courts.

(d) The program must consist of:

- (1) a component that conforms with a model developed by the office and designed to improve in-house collections through application of best practices; and
- (2) a component designed to improve collection of balances more than 60 days past due, which may be implemented by entering into a contract with a private attorney or public or private vendor in accordance with Article 103.0031.

(e) Not later than June 1 of each year, the office shall identify those counties and municipalities that:

- (1) have not implemented a program; and
- (2) are able to implement a program before April 1 of the following year.

(f) The comptroller, in cooperation with the office, shall develop a methodology for determining the collection rate of counties and municipalities described by Subsection (e) before implementation of a program. The comptroller shall determine the rate for each county and municipality not later than the first anniversary of the county's or municipality's adoption of a program.

(g) The office shall:

- (1) make available on the office's Internet website requirements for a program; and
- (2) assist counties and municipalities in implementing a program by providing training and consultation, except that the office may not provide employees for implementation of a program.

(h) The office, in consultation with the comptroller, may:

- (1) use case dispositions, population, revenue data, or other appropriate measures to develop a prioritized implementation schedule for programs; and

(2) determine whether it is not cost-effective to implement a program in a county or municipality and grant a waiver to the county or municipality.

(i) Each county and municipality shall at least annually submit to the office and the comptroller a written report that includes updated information regarding the program, as determined by the office in cooperation with the comptroller. The report must be in a form approved by the office in cooperation with the comptroller.

(j) The comptroller shall periodically audit counties and municipalities to verify information reported under Subsection (i) and confirm that the county or municipality is conforming with requirements relating to the program. The comptroller shall consult with the office in determining how frequently to conduct audits under this section.

SECTION 10.02. Section 133.058, Local Government Code, is amended by adding Subsection (e) to read as follows:

(e) A municipality or county may not retain a service fee if, during an audit under Section 133.059 of this code or Article 103.0033(j), Code of Criminal Procedure, the comptroller determines that the municipality or county is not in compliance with Article 103.0033, Code of Criminal Procedure. The municipality or county may continue to retain a service fee under this section on receipt of a written confirmation from the comptroller that the municipality or county is in compliance with Article 103.0033, Code of Criminal Procedure.

SECTION 10.03. Section 133.103, Local Government Code, is amended by amending Subsections (b) and (c) and adding Subsection (c-1) to read as follows:

(b) Except as provided by Subsection (c-1), the ~~The~~ treasurer shall send 50 percent of the fees collected under this section to the comptroller. The comptroller shall deposit the fees received to the credit of the general revenue fund.

(c) Except as provided by Subsection (c-1), the ~~The~~ treasurer shall deposit 10 percent of the fees collected under this section in the general fund of the county or municipality for the purpose of improving the efficiency of the administration of justice in the county or municipality. The county or municipality shall prioritize the needs of the judicial officer who collected the fees when making expenditures under this subsection and use the money deposited to provide for those needs.

(c-1) The treasurer shall send 100 percent of the fees collected under this section to the comptroller if, during an audit under Section 133.059 of this code or Article 103.0033(j), Code of Criminal Procedure, the comptroller determines that the municipality or county is not in compliance with Article 103.0033, Code of Criminal Procedure. The municipality or county shall continue to dispose of fees as otherwise provided by this section on receipt of a written confirmation from the comptroller that the municipality or county is in compliance with Article 103.0033, Code of Criminal Procedure.

SECTION 10.04.

(a) Notwithstanding Subsection (e), Article 103.0033, Code of Criminal Procedure, as added by this article, not later than September 1, 2005, the Office of Court Administration of the Texas Judicial System

shall identify those counties and municipalities that are able to implement a collection improvement program under Article 103.0033, Code of Criminal Procedure, as added by this article, before April 1, 2006. Beginning June 1, 2006, the Office of Court Administration of the Texas Judicial System shall comply with Subsection (e), Article 103.0033, Code of Criminal Procedure, as added by this article.

(b) Not later than September 1, 2005, the Office of Court Administration of the Texas Judicial System shall make available on the office's Internet website requirements for a program under Article 103.0033, Code of Criminal Procedure, as added by this article, in accordance with Subsection (g) of Article 103.0033.