DRIVEN BY DEBT
THE FAILURE OF THE OMNIBASE PROGRAM

Holds on Driver's Licenses for Unpaid Tickets Harm Communities and Fail to Increase Local Revenue

Cancel OmniBase Contracts and Work with Individuals to Modify Traffic Violation Debt

AUGUST 2021

Texas APPLESEED

TFDP
Texas Fair Defense Project

Texas Fair Defense Project

Texas Fair Defense Project is a nonprofit legal organization that fights to end the criminalization of poverty in Texas. We work to create a world where people who are poor are provided with resources and systems of support, rather than systems of surveillance and punishment.

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Texas Appleseed

Texas Appleseed is a public interest justice center. Our nonprofit, celebrating our 25th anniversary in 2021, works to change unjust laws and policies that prevent Texans from realizing their full potential. We anchor a dynamic network of pro bono partners and collaborators to develop and advocate for innovative and practical solutions to complex issues. Texas Appleseed also conducts data-driven research that uncovers inequity in laws and policies and identifies solutions for lasting, concrete change. The many issues on which we work are united by the goal of greater justice.

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Acknowledgements

INTRODUCTION

Emily Culp is a single mother, full-time student, and advocacy fellow with Texas Fair Defense Project. Emily currently cannot drive due solely to a hold on her driver's license under the OmniBase program for unpaid traffic tickets. Emily tried to pay off the tickets, but every time she drove to work to earn the money she needed to make the payments, she risked being stopped by police, receiving additional tickets for driving on an invalid license and incurring even more traffic-related fines. Eventually, she gave up on reclaiming her license and stopped driving except when absolutely necessary to provide for her children because she risked further fines.

Even so, as Emily explained in her testimony to the Texas Legislature this past session:

> *"Since I couldn't pay my tickets without risking getting more of them, the tickets turned into warrants for failure to pay and eventually I was arrested in front of my children…. [M]y kids begged the officers to let mommy go, that mommy isn't a bad guy. I then spent two weeks in jail, simply for unpaid tickets. In order to not get hurt, myself and many others were forced to do things that under no other circumstance would we ever have done, all to not be the one beat or stabbed that night. I was arrested for inability to pay tickets, and was released with the medical need to take cognitive therapy classes to deal with the trauma, anxiety and depression from that experience."*

Currently, more than 400,000 Texans like Emily cannot drive because their licenses are expired or revoked, and they are unable to renew their licenses due to holds under the OmniBase Failure to Appear Program of the Texas Department of Public Safety[1] (OmniBase Holds). Holds on license renewals are triggered when license holders either fail to pay fines and costs or fail to appear in court, usually for traffic offenses. However, eventually all OmniBase Holds are incurred due to an inability to pay, because the only way to lift a hold is to completely pay off all underlying debt. Even those drivers currently in compliance with the court and paying or working off their debt cannot reclaim licenses, increasing the odds that they will receive more tickets, those tickets will convert to warrants for inability to pay, and the driver will be arrested.

Like Emily, many people burdened with OmniBase Holds also end up in jail for weeks at a time for driving with an invalid license (DWLI). And also, like Emily, many drivers with holds on their licenses are unaware of the OmniBase program and the accompanying severe penalties. Drivers with OmniBase Holds on their licenses are thrust into the criminal legal system, creating more unpayable court debt, prolonging the length of driver's license holds, and feeding the cycle of jail and debt that programs like OmniBase perpetuate.

The purported goal of the OmniBase program is to increase court compliance and collections by providing an enforcement tool that requires ticketed drivers to appear in court and pay owed court debt. However, there is no evidence that OmniBase accomplishes these goals. **In fact, self-reported data from more than 800 active municipal courts across Texas indicates that no relationship exists between use of the OmniBase program and revenue collection**.[2] To the contrary, the average collection rate per case for active courts in cities that use the OmniBase program is $45.44 **less** than active courts in cities that choose not to use the program. Given the infrequency with which courts grant court debt waivers and reductions or allow people to satisfy court debt with community service, payment of court debt serves as a proxy for compliance; the reduced rate of collections represents a reduced rate of compliance in these jurisdictions.

Conflating court compliance with collection rates can cause courts to prioritize revenue collection and create a regressive taxation scheme that disproportionately affects the Black and Brown and low-income communities subjected to disparate police presence and arrests. For example, following the 2014 killing of Michael Brown by police in Missouri, the United States Department of Justice (DOJ) released *Investigation of the Ferguson Police Department,* in which the DOJ addressed the dangers of a local court

overly focused on fine and fee collection.[3] The investigation explained that the Ferguson Municipal Court suspended driver's licenses and would not lift the suspensions until tickets were paid in full.[4] When the tickets went unpaid, the Court imposed additional fines and fees for each missed payment or meeting, and only reluctantly considered "ability to pay" in either determining fine amounts or permitting alternative methods of compliance.[5] Additionally, the court's instructions regarding fulfilling penalty obligations were unclear.[6] These fines and fees snowball into mass surveillance and arrests. In a separate report, the Arch City Defenders found that in one year, the Ferguson municipal courts disposed of three warrants per resident.[7] These practices mirror how many courts using OmniBase operate today and, in the DOJ's view, they undermine the courts' role as arbiters for fairness.

In this report, we show that the OmniBase program, despite harming people like Emily through punitive and compounding fines and fees, and requiring practices that cast the courts as debt collectors, nonetheless fails to increase revenue. Section I of this report explains our methodology in determining the comparative collection rates between jurisdictions that do and do not participate in the OmniBase program. In Section II, we examine possible reasons the OmniBase program is not associated with improved collection rates. In Section III, we make recommendations for what local governments can do to improve compliance rates. An appendix detailing the raw data used in our analyses is attached.

## I. THE OMNIBASE PROGRAM IS NOT ASSOCIATED WITH INCREASED COLLECTION RATES

The stated purpose of the OmniBase program is to help local courts increase compliance rates and collections by taking away a person's driver's license until the court debt is completely paid off.[8] Therefore, many jurisdictions hesitate to end participation in the OmniBase program due to fears over lost revenue.

There is no evidence, however, that using the OmniBase program increases either compliance or increases revenue.[9] In fact, according to an analysis of self-reported data from over 800 active municipal courts across the state, the average amount collected per case is lower for active courts in cities that use the OmniBase program than for active courts in cities that do not. Even excluding courts that have very few criminal cases and criminal cases disposed (i.e., 10 or fewer cases), there is no significant difference in the amount of revenue collected between cities that use OmniBase and cities that do not.

This report draws on data from municipal and Justice of the Peace courts in Texas. Municipal courts have jurisdiction over violations of municipal ordinances; misdemeanor, fine-only offenses; and some civil offenses.[10] Similarly, Justice of the Peace courts have jurisdiction in criminal misdemeanor, fine-only cases. These courts often utilize the OmniBase program in attempting to collect fines and other court debt.

Using data collected through public information requests to the Texas Department of Public Safety on jurisdictions with OmniBase cases and municipal court activity by city from the Office of Court Administration, we determined: (1) the cities that are and are not using the OmniBase program; and (2) the amount each of those cities collect per each criminal case disposed. **These analyses showed that there is no significant difference between active courts in cities that use the OmniBase program and active courts in cities that do not use the OmniBase program, for both the average amount collected per criminal case disposed and for the median ranks of costs collected per criminal case disposed.**

REVENUE COLLECTED PER CRIMINAL CASE DISPOSED BY OMNIBASE USE
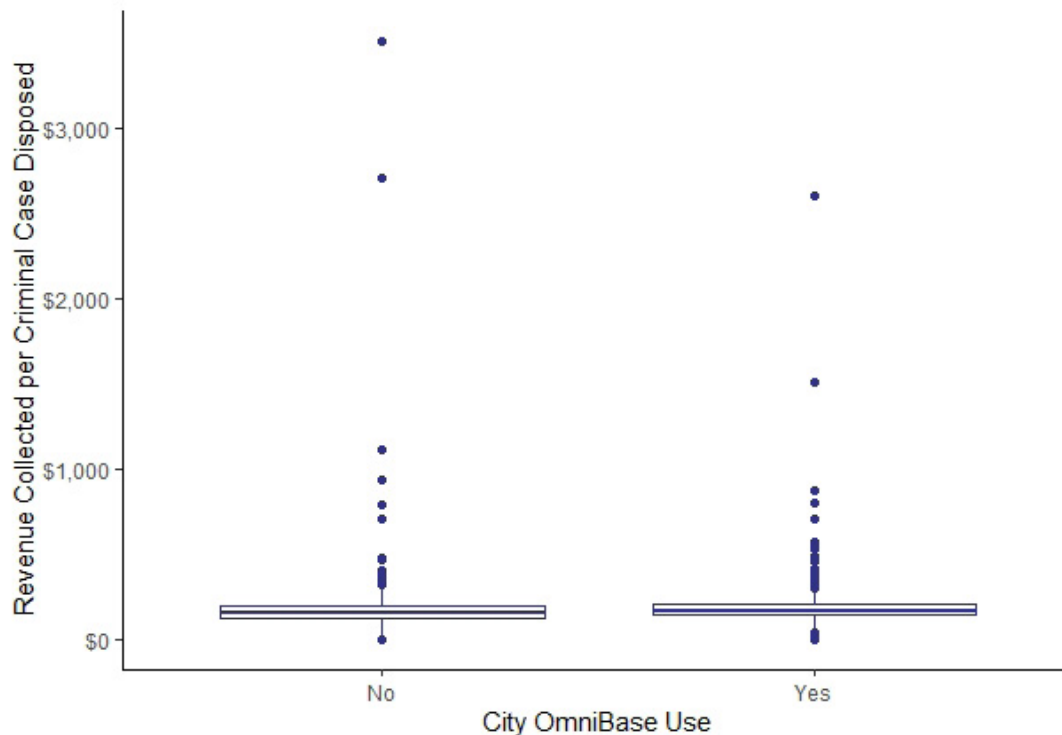
The above boxplot shows the distribution of revenue collected per criminal case disposed for cities with the OmniBase program and cities without the OmniBase program. The box represents 50% of all values of revenue collected per criminal case disposed — the darker line in the middle of the box is the median value. The vertical lines outside of the box represent bottom and top 25% of the values of revenues collected. The dots represent potential extreme values — we opted to retain these values in our analyses since they represent real court collection practices and there is no indication that the values were incorrectly entered. The boxplot shows that the overall distribution of revenues collected per criminal case disposed is similar for active courts in cities that use OmniBase and active courts in cities that do not use OmniBase.
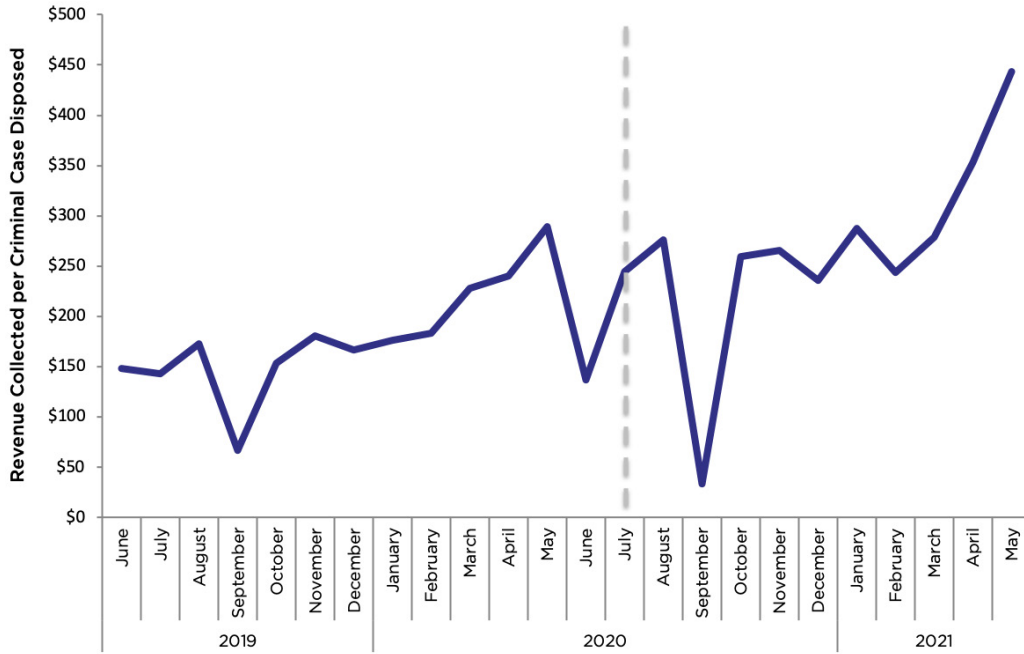
REVENUE COLLECTED PER CRIMINAL CASE DISPOSED BY OMNIBASE USE (2019)

| City OmniBase Use	Count of Cities	Average Revenue Collected*	Median Revenue Collected*	Total Criminal Cases Disposed	Total Revenue Collected	Total Population
No	135	$233	$158	1,108,314	$161,298,482	5,465,944
Yes	671	$188	$169	3,266,718	$442,226,891	15,331,686

* Per criminal case disposed

In 2020, Harris County and the City of Austin chose to cancel their contract with the OmniBase program despite expressed concerns about the possibility of lost revenue.[12] The concerns were unfounded, however: Revenue per criminal case disposed of without OmniBase increased slightly after ceasing the contract with OmniBase.[13]

AUSTIN:
REVENUE COLLECTED PER CRIMINAL CASE DISPOSED

HARRIS COUNTY:
REVENUE COLLECTED PER CRIMINAL CASE DISPOSED
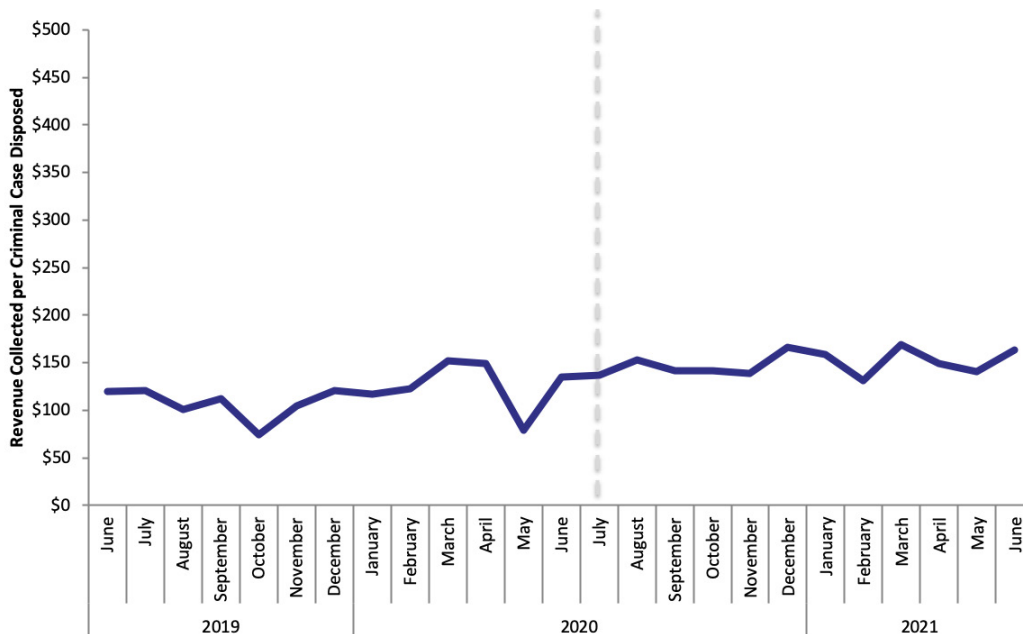
The results are unsurprising. Our research revealed several reasons why the OmniBase program does not positively impact collection rates.

First, people who do not have the money to pay fines and costs will not be able to pay, no matter how punitive the consequences for nonpayment. This is especially true for Texans burdened with OmniBase holds, who are more likely to be indigent. The following maps show the distribution of outstanding OmniBase Holds where residential zip codes were within Dallas County and the city of Houston in 2017.[14] These maps show that OmniBase Holds tend to be concentrated in lower-income zip codes.

RATE OF OMNIBASE HOLDS AND MEDIAN HOUSEHOLD INCOME BY ZIP CODE: DALLAS COUNTY (2017)[15]
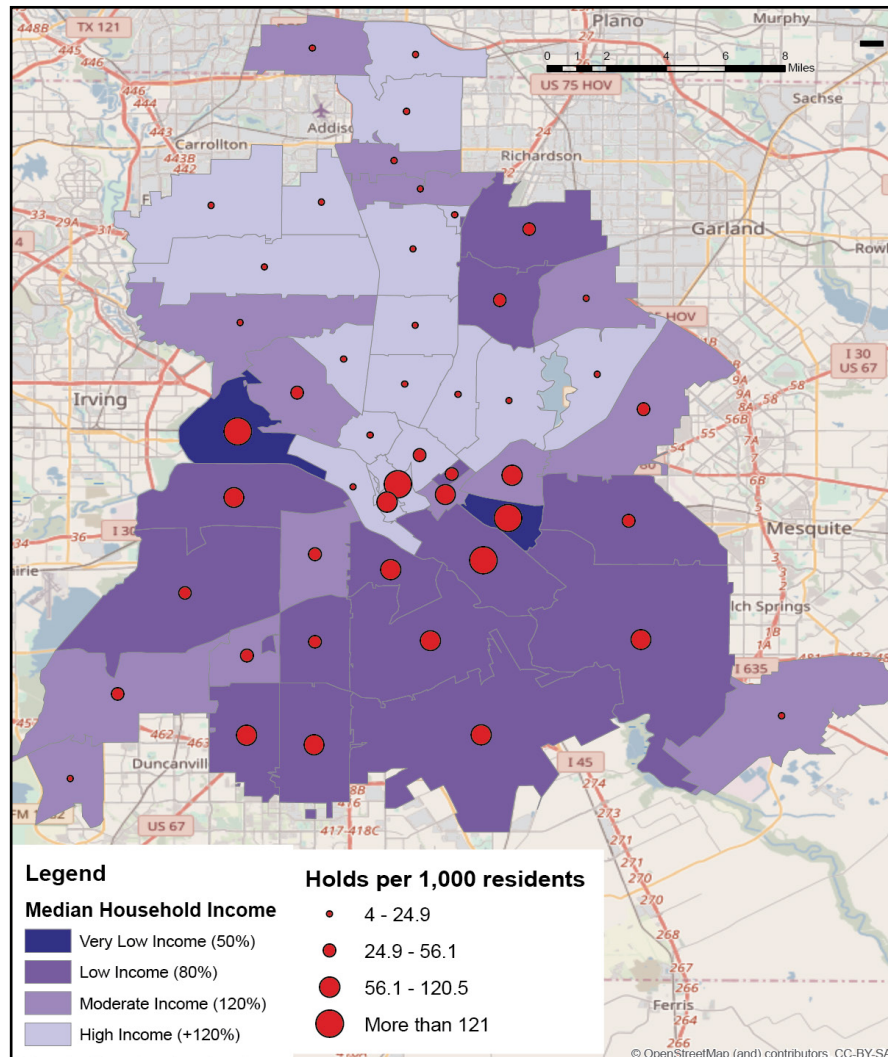
Sources: Driver's license Holds data taken from open records requests to the Department of Public Safety. Income data taken from U.S. Census Bureau American Community Survey 2012-2016 5-Year Estimates. Zip code shapefile taken from U.S. Census Bureau 2012-2016 American Community Survey 5-Year Estimates.
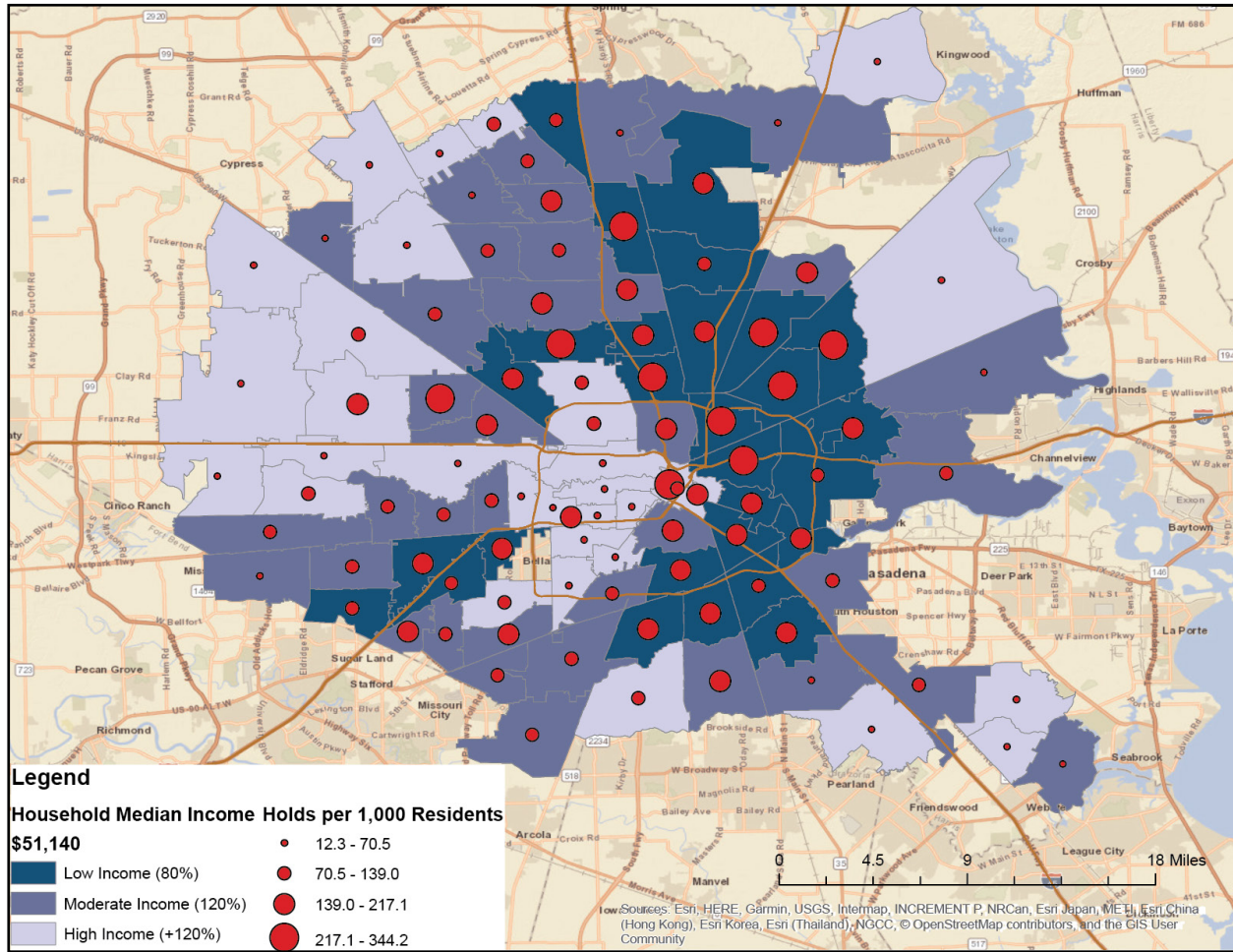
Data also show that people with OmniBase Holds are not only more likely to be from lower-income areas but also to be people of color: Though Black people make up only 11% of licensed drivers in Texas, they comprise 29% of people with OmniBase Holds.[17]

Second, there is a "Catch 22" to the operation of the OmniBase program: People burdened with license renewal holds need to be able to drive to obtain the funds to pay incurred fines and fees. As indicated in Emily's testimony, with her initial attempts to pay the money asked of her, she instead received an abundance of fees by trying to drive to work. Not only are people without licenses unable to drive to work legally, but also many employers require proof of a valid driver's license before hiring.[18]

Third, OmniBase Holds often lead to warrants and jail time. Texans with OmniBase Holds are more likely to be ticketed for charges associated with the inability to renew their driver's license, and these tickets convert to arrest warrants if they cannot pay them. People subject to arrest warrants are subject to arrest at any time, which makes it near impossible to hold down a steady job. Furthermore, the second time an individual with an invalid license due to the OmniBase program is pulled over, the DWLI charge can be enhanced to a Class B offense, which carries a steeper fine and the potential of a jail sentence. If convicted, the individual then has a criminal record which can make it even more difficult to find employment.

Fourth, the OmniBase program does not work as an incentive to pay fines and fees if the people who receive holds under the program are not aware of the program's existence. The Texas Fair Defense Project and its pro bono network represent hundreds of people with OmniBase Holds across the state each year — nearly none of them know what the OmniBase program is or how it affects them. All they know is that

no matter how hard they try, they keep getting more tickets, more debt, and more warrants. If anything, this hopelessness and lack of information disincentivizes payment of fines and fees.

Finally, most payments occur before any enforcement tool is used. People with money to pay their tickets tend to pay within the first thirty days of receiving the ticket.[19] People without money, by contrast, become overwhelmed by the increasing debt and are unable to pay no matter what enforcement tools are used, as discussed in the beginning of this Section.

III. IMPROVING COMPLIANCE RATES: ALTERNATIVES AND BETTER NOTIFICATIONS

Many municipal court judges and justices of the peace are puzzled by low appearance rates among people who cannot pay their fines and costs. Under Texas law, judges are required to consider a person's ability to pay fines and costs at sentencing or anytime the issue is raised, and assign alternatives where appropriate. These alternatives include payment plans, converting the debt into community service requirements, and reducing or waiving the amount owed. Some judges assert that if only indigent people would show up in court, they would work with them and turn their debt into something manageable.

However, most people with outstanding ticket debt have no idea that these alternatives exist. Typically, people with holds are fearful of going to court since they have no hope of paying the thousands or even tens of thousands of dollars in debt that they owe. A recent survey by the City of Dallas found that fewer than 18% of respondents were aware that either community service or waiver options existed.[20]

In fact, this lack of communication as to the options to payment of fines and fees is not due to a system flaw, but a system feature: Many judges and jurisdictions are hostile to granting alternatives to payment. Most jurisdictions do not mention community service, reduction, or waiver options on tickets or forms. Instead, most court forms contain a long list of payment methods, and detail penalties of arrest warrants if payment is not received. These forms also do not explain that individuals cannot and will not be arrested on their Class C misdemeanor warrants if they do appear in court.[21] In the experience of Texas Fair Defense Project attorneys, these forms scare people who have warrants for unpaid tickets from attending court hearings: They do not want to risk being arrested. And even when people do appear in court or call the courts for information, they may receive misinformation from clerks and judges about their options for discharging the debt. Emily Culp, whose story began this report, said, "I had to go to two additional court dates just to be granted the opportunity of community service. Initially when I called the court to request community service, the court told me that was not an alternative to paying."

If courts want to increase compliance rates, they should provide clear notice to people in all communications that judges will work with them if they appear in court, and will consider affordable or manageable alternatives, such as converting fines and fees into community service, or reducing or waiving the amount owed. Increasing access and awareness to alternatives such as community service and waivers appears to increase revenue collected per case overall. This result is likely due to a commonly acknowledged fact in the private debt collection industry: Reduced debt allows people to pay what they can afford because there is a "light at the end of the tunnel." Debt collection letters often incentivize payment with reductions.

The same principle appears to be true in the court context, as is shown by examining the results of legislation passed in 2017 and 2019 to expand access to community service and waivers. The Texas Legislature passed important fines and fees reform bills in 2017 with SB 1913 (Zaffirini/Thompson) and HB 351 (Canales/Hinojosa) and in 2019 with SB 346 (Zaffirini/Leach). These bills were passed with the goal of reducing jail time and warrants and increasing waivers and community service for Class C and other offenses. At the time, there was a concern that these reforms would have a negative fiscal impact, which proved to be unfounded.

DOLLARS PER CASE UP, WAIVERS AND COMMUNITY SERVICE UP
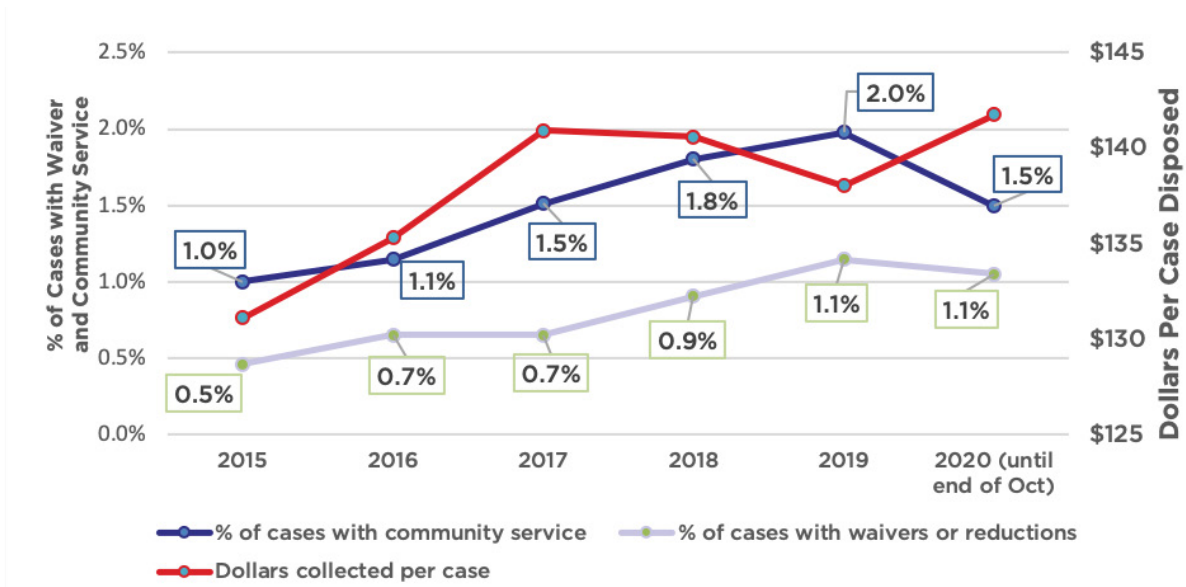
The above chart was made using data that was self-reported by Texas courts to the Office of Court Administration (OCA). It shows that overall, as waiver and community service increased, so did the amount of funds collected per case.

CONCLUSION

The OmniBase program burdens the administration of local courts in that the program prioritizes revenue collection over public safety. It also creates additional, unnecessary hardship for poor Texans; exacerbates inequitable law enforcement practices; and disproportionately harms Black and Brown communities. The unjust outcomes caused by OmniBase license holds along with the failure to fulfill its very mission — increasing collection rates — is a damning indictment of the program. Local governments should immediately opt out of their participation in the OmniBase program.

Continuing to rely on punitive approaches to unpaid fines and fees results in a cycle of ever-increasing debt and jail time for those unable to pay. Jurisdictions working to increase court compliance and public safety should instead reduce barriers to resolving tickets by providing accessible avenues for fine and fee waivers, reductions, and alternatives to payment like community service. They should also redesign court forms to provide clarity about people's obligations and opportunities for relief.

ENDNOTES

1. Chapter 706 of the Texas Transportation Code
2. Active courts are defined as courts that had at least one active criminal case in 2019, and had at least one criminal case disposed in 2019.
3. United States Department of Justice Civil Rights Division (2015). Investigation of the Ferguson Police Department. Source: https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf
4. Id.
5. Id.
6. Id.
7. ArchCity Defenders: Municipal Courts White Paper, March 2019, Source: https://www.archcitydefenders.org/wp-content/uploads/2019/03/ArchCity-Defenders-Municipal-Courts-Whitepaper.pdf
8. Texas Department of Public Safety (2021). Failure to Appear, Failure to Pay Program. Source: https://www.dps.texas.gov/section/driver-license/failure-appearfailure-pay-program
9. For a detailed data methodology and analysis, please see Appendix.
10. State of Texas Judicial Branch (2014). Texas Courts: A Descriptive Summary. Source: https://www.txcourts.gov/media/994672/Court-Overview.pdf
11. See Appendix for analysis of courts that have more than 10 active cases.
12. Harris County voted to cancel their contract with OmniBase in July 2020, whereas Austin voted to cancel their contact with OmniBase in May 2020, with the official end date of July 16th, 2020.
13. These numbers should be considered with some degree of caution, however, since both jurisdictions ended their participation during the height of the COVID-19 pandemic, a period during which many courts paused dockets and changed many administrative practices. Fines, court costs, and other amounts collected, and criminal disposed cases were gathered from the Office of Court Administration Court Activity Reporting Directory System. Austin Community Court totals were added to the city of Austin totals.
14. For more information on the data in these maps and for an in-depth look at Dallas and Houston, see our previous report on Dallas, available at: https://texasappleseed.org/sites/default/files/Driven%20By%20Debt%20Dallas.pdf and Houston, available at: https://texasappleseed.org/sites/default/files/DrivenByDebt-Houston-July2020.pdf
15. Map was created in ArcMap. Median household income and population taken from US Census Bureau American Community Survey 2012-2016 5-Year Estimates. Driver's licenses holds data taken from open records request to the Department of Public Safety.
16. Map was created in ArcMap. Highway shapefile taken from TxDOT. Median household income and population taken from US Census Bureau, 2014-2018 American Community Survey 5-Year Estimates. Driver's license holds data taken from open records requests to Houston Municipal Court.
17. 2018 DPS data. See also our previous report, Driven by Debt: Dallas, available at: https://texasappleseed.org/sites/default/files/Driven%20By%20Debt%20Dallas.pdf
18. Andrea Marsh (2017). Rethinking Driver's License Suspensions for Nonpayment of Fines and Fees. National Center for State Courts. Source: http://ncsc.contentdm.oclc.org/cdm/ref/collection/accessfair/id/787
19. Based on analysis of Office of Court Administration's Post-implementation Collection Rate (PICR) Review for 16 different Texas jurisdictions (2013). Data on file with authors and available upon request.
20. City of Dallas, Impact of Fines and Fees Community Survey Summary (December 2020)
21. Class C misdemeanors are punishable by a fine of no more than $500 and Arrest for class C warrants in court is forbidden. Tex. Gov't Code Ann. § 29.003 (West 2013).

APPENDIX: DATA METHODOLOGY

Data Collection

The total number of OmniBase cases data was pulled from a public information request to the Department of Public Safety. Data was received by the department on December 10th, 2019, and indicated the total number of open offenses and outstanding fees by jurisdiction. The municipal court data was pulled from the Office of Court Administration Court Activity Reporting Directory System. Specifically, the municipal court activity and additional activity by city was pulled for the 2019 calendar year.

Data Cleaning/Preparation

All cleaning and analyses were conducted in R or Excel. The three datasets (OmniBase data, municipal court activity, and municipal court additional activity) were merged based on the city. Instances where cities did not match (e.g., "Midland" in the OmniBase data and "Midland, city of" in the municipal court data) were manually matched. Austin Community Court, Mabank Police Department, and Marble Falls Municipal Court totals were added to Austin, Mabank, and Marble Falls cities, respectively. Data was dropped in instances where we could not determine whether a jurisdiction matched a city (e.g., Oak Ridge (North), Oak Ridge, City of, Oak Ridge, Town of).

In these analyses, any Justice of the Peace or county-level data was excluded; therefore, the final dataset represents the number of OmniBase cases and municipal court activity by city. Ninety cities were dropped from the final dataset because they were missing court data (i.e., the court data had blanks; if the court had inputted a 0, it was included in the final dataset). These ninety cities had 37,952 OmniBase cases. An additional 87 cities were dropped from the final dataset because they had either no active criminal cases in 2019 or had no criminal cases disposed; these cities had 7,303 OmniBase cases.

From the final city dataset, we calculated several additional variables:
  • Uses OmniBase: A city was determined as not using the OmniBase program if it had blank data in the OmniBase fields (i.e., we did not receive any OmniBase information from DPS for that city)
  • Revenue collected per criminal case disposed: This variable was calculated as the total fines and court costs divided by the total number of criminal cases disposed per each city

Data Analysis

To determine whether there were any differences in court revenue collected by OmniBase use, a series of analyses were conducted. First, t tests were conducted to determine whether there were any differences in the average amount collected between cities that use OmniBase and cities that do not use OmniBase. Results revealed there were no significant differences in the average amount collected for cities that use OmniBase (M = \$187.70, sd = \$135) compared to cities that do not use OmniBase (M = \$233.14, sd = \$386), t(141) = 1.35, p = 0.18.

In order to account for potential outliers and to account for non-normal distributions, additional Wilcoxon Mann-Whitney tests were conducted. Wilcoxon Mann-Whitney tests are a non-parametric statistic and analyze whether distribution shapes and medians differ. Results revealed that there were no significant differences in the distribution shapes (and median ranks) of the amount collected for cities that use OmniBase (Mdn = \$169) compared to the distribution of cities that do not use OmniBase (Mdn = \$158), W = 40,706, p = 0.06.

Cities with Small Counts of Criminal Cases and Criminal Cases Disposed

The earlier analyses examined cities that had at least one active criminal case in 2019 and one criminal case disposed. However, there were 109 cities that had 10 or fewer active criminal cases and 10 or fewer criminal cases disposed. These cities had 9,191 OmniBase cases.

REVENUE COLLECTED PER CRIMINAL CASE DISPOSED BY OMNIBASE USE: CITIES WITH >10 CRIMINAL CASES AND CRIMINAL CASES DISPOSED (2019)
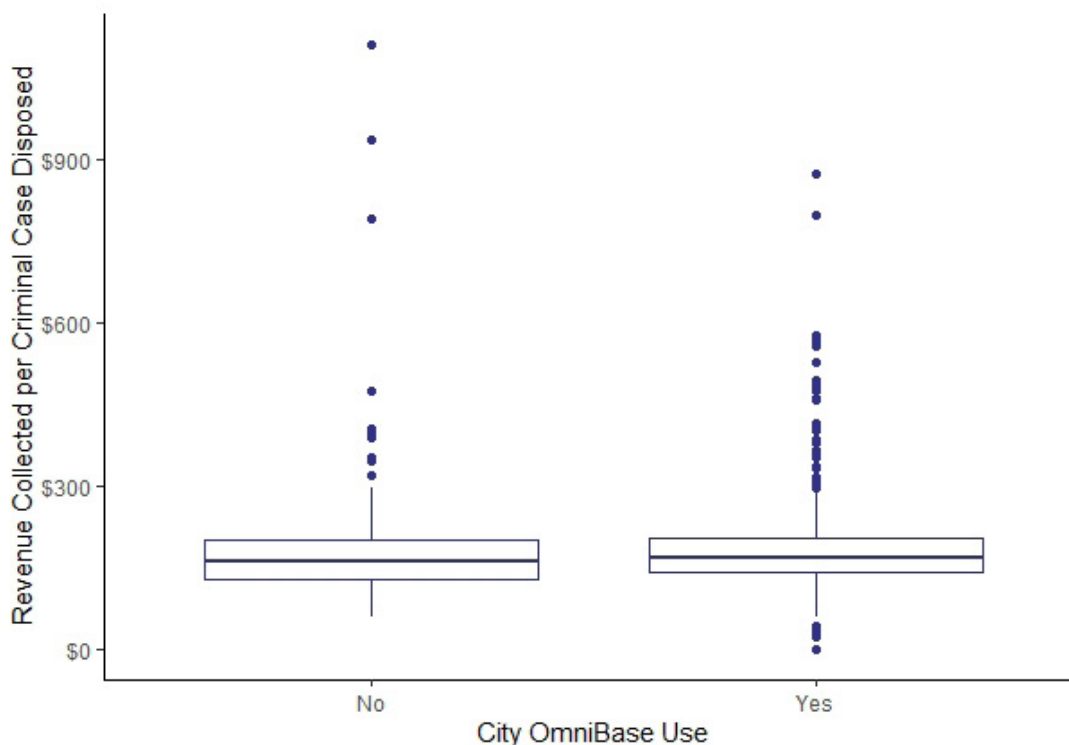
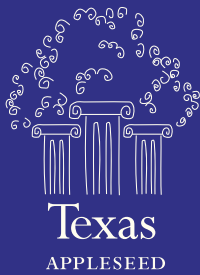| City OmniBase Use	Count of Cities	Average Revenue Collected*	Median Revenue Collected*	Total Criminal Cases Disposed	Total Revenue Collected	Total Population
No	121	$191	$162	1,108,051	$161,250,634	5,446,957
Yes	663	$181	$169	3,266,582	$442,180,991	15,313,856

* Per criminal case disposed

In order to determine whether these cities exerted an undue influence on the average amount collected (e.g., one city had just six criminal cases disposed and eight active criminal cases, resulting in $3,511 collected per case), additional t tests were conducted where these cities were removed from the analyses. Results revealed similar conclusions, namely that even when cities with few cases are excluded, there is no statistical difference in the average amount collected in cities that use OmniBase (M = $181, sd = $79.70) compared to cities that do not use OmniBase (M = $191, sd = $142), $t(134)$ = 0.76, p = 0.45.

Additionally, using a non-parametric approach, results revealed that there is no significant difference in the distribution of costs collected between cities that use OmniBase (Mdn = $169) compared to the distribution of cities that do not use OmniBase (Mdn = $162), W = 36,719, p = 0.14.

REVENUE COLLECTED PER CRIMINAL CASE DISPOSED BY OMNIBASE USE (CITIES WITH >10 CASES)