

Picking Your Poison: taxpayers' burden, jailed scofflaws

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EDINBURG — One solution to cutting expenses at Hidalgo County's overcrowded jail may be as simple as passing savings on to the offenders.

Facing an estimated \$2.25 million budget deficit for inmate housing this year, Sheriff Lupe Treviño is proposing a policy shift that would allow those paying off fines on multiple Class C misdemeanors through jail time to only serve time to address their largest single fee.

Currently, an inmate assessed multiple fines stemming from the same criminal act remains behind bars until all fees are paid back-to-back at a rate of \$100 per day in jail.

The change — which would first require buy-in from local judges and justices of the peace and approval from the Hidalgo County Commissioners' Court — still would inflict a punishment for these relatively minor crimes while avoiding the lengthy stacked-fine jail terms that can result from offenses like trespassing, writing a hot check, or public intoxication.

Most importantly, Treviño said, moving these minor offenders out of the jail more quickly would free up beds for those accused of more serious crimes.

But while a 2008 Texas appeals court decision seems to back the sheriff's proposal, the act of limiting jail terms to the highest fine — or running them concurrently — is still a matter of questioned law across the state.

"I'm law-and-order, and I want them to serve out their time," he said. "But the other side of me says I need to be very judicious about how we spend taxpayer money."

COST OF INCARCERATION

On any given day, more than 150 inmates at the jail are incarcerated while paying off fines for misdemeanor crimes they refuse to address in cash.

They're booked on a variety of offenses ranging from public intoxication to driving without insurance. But their presence behind bars costs the county about \$52 a day.

If they're serving time for multiple fines the cost of keeping them there can quickly add up — especially if other, more violent inmates have to be moved to other detention facilities to make space for misdemeanor scofflaws.

It can cost the county more than \$40 a day to house an inmate in another facility. Add that to the daily cost of housing a misdemeanant in the county jail, and the total nearly surpasses the \$100 daily credit those housed on Class Cs receive toward payment of their fines.

Earlier this year, 18-year-old Francisco de Luna was sentenced to more than four months behind bars to pay off fines associated with 21 separate charges he racked up for failing to appear at one court hearing in an Edinburg justice of the peace court.

But had he served out the full term, his incarceration could have cost county taxpayers as much as \$12,400 — \$1,100 more than his actual fines.

Had he paid off those fines concurrently, he would have spent less than a week in jail to address the largest single fee of \$537.

“If I could get the courts to agree to let him run them concurrent,” Treviño said. “It’s going to end up saving the county a lot of money.”

A FINE DEBATE

But the idea still remains a matter of hazy legal acceptability.

In 2008, the Texas Court of Criminal Appeals found that multiple fines assessed for the same criminal act should run together — in essence, allowing offenders to only pay off the largest of their fines.

The case before the justices involved an El Paso County attorney convicted on 13 counts of illegally soliciting clients. Although a judge assessed seven years of probation for each count and ordered each of those sentences to run at the same time, the state challenged a similar decision when it came to the \$10,000 fine the jury assessed for each count.

The appeals court’s decision allowing the lawyer to only pay one of those fines — instead of the \$130,000 cumulative total — reversed more than three decades of prior precedent, the dissenting judges on the court said at the time.

“A new day has dawned,” remarked Judge Cathy Cochran in her dissent. “Traffic-ticket scofflaws may rejoice.”

But it also sent lower courts across the state scrambling.

Municipal judges and justices of the peace — who deal primarily with fine-only offenses — suddenly found themselves having to divine what constituted multiple charges stemming from the same act and which fines were affected by the court’s opinion, said Bronson Tucker, general counsel for the Texas Justice Court Training Center in San Marcos, which trains justices of the peace on state law.

Tucker fielded frequent questions in the months after the decision such as whether a defendant stopped for speeding and then cited for not wearing a seat belt should only have to pay the highest of those fines.

And what happens to those who miss one court hearing in which multiple offenses are to be considered? Are the individual counts considered separate offenses or is the failure to appear in court considered a single criminal act making the fines assessed for each charge subject to the concurrent rule?

Those answers remain unclear, he said. But judges in these courts have not seen a significant number of appeals on their fine-based decisions they originally feared.

“The debate is still fairly undetermined,” Tucker said. “But the questions have settled down and courts haven’t let it affect them.”

DECISION UNCERTAIN

Ultimately, whether the county switches from a consecutive to a concurrent fine payment system for incarcerated Class C misdemeanants will depend on how the idea is accepted among local leaders, said Hidalgo County District Attorney Rene Guerra.

Guerra said he proposed the idea while looking into problems in Justice of the Peace Mary Alice Palacios' truancy court earlier this year, but it didn't get much traction.

"It's been something I've mulled over for years," he said. "We need to come up with some alternatives when it comes to punishments, but I never sensed anyone was interested."

But a federal court could weigh in on the matter before county leaders have a chance to make up their minds.

In July, the American Civil Liberties Union filed a lawsuit on behalf of two teenagers who claim they were improperly jailed to pay off Class C fines. Both were assessed multiple fees for failing to appear at hearings in Palacios' court resulting in multiweek jail terms

And while their suit primarily alleges that they were not advised of their rights before being sent to jail, the case raises serious questions on the way fine-based sentences are handled in Hidalgo County, Guerra said.

It prompted the sheriff's most recent suggestions and has since spurred other reforms such as an electronic tracking system to make sure those in jail for fines are released on time, said Treviño.

"In the end," he said. "We don't want to keep anyone here any longer than we have to."