



EXECUTIVE SUMMARY

Driving Texans to Debt:

The Use of Texas' Failure to Appear/Pay Program in El Paso

March 2024

OVERVIEW

Through Texas' Failure to Appear/Pay (FTAP) Program, participating municipal and justice of the peace courts can place a hold on a person's ability to renew their driver's license if they are unable to pay fines and fees associated with low-level, fine-only offenses (e.g., traffic tickets). Among Texas cities, El Paso is one of the heaviest users of the FTAP Program (aka the "OmniBase Program," named after the private vendor that operates it – OmniBase Services of Texas (OST)).¹

Denying access to a valid license due to financial hardship not only criminalizes poverty, but is counterproductive to the OmniBase program's purported goal – to increase appearance/payment. People need a valid driver's license to get to and from court, work, childcare to secure or retain employment and services to help pay for the debt in question. As the City of El Paso works to sustain a vibrant regional economy, it must eliminate counterproductive barriers to employment - like the OmniBase Program - for the region's residents to truly thrive.

RESEARCH SUPPORTING POLICY CHANGE

- The El Paso Municipal Court has almost 70,000 active holds on people's driver's licenses.²
- El Paso County Justice of the Peace courts have over 1,500 holds.³
- 76% of the El Paso residents drive to work alone, and 12% of residents drive to work with others.⁴
- Black residents disproportionately receive FTAP holds, representing 6% of total current holds and only 3% of the El Paso population.⁵
- The seven El Paso zip codes with the highest concentration of holds have an average median household income of \$34,778, while the median household income for El Paso is \$53,424.⁶
- On average, a person with holds from the El Paso Municipal Court has three OmniBase holds – meaning three unresolved tickets for which fines and fees are owed before each hold is lifted.⁷
- The main arguments used to support this program are that it ensures the collection of fines/fees owed to a jurisdiction, and that it serves as an alternative to issuing warrants for one's arrest.
 - Warrant data reveals that the El Paso Municipal Court administers *causas* and Class C warrants at a rate of 4.9 and 2.8 times *higher* than the statewide average of courts that do not use the program.⁸
 - Additional analyses also show no significant difference in the amount collected per criminal case between municipal courts using the FTAP Program and those that do not.⁹

RECOMMENDATIONS

Restoring driver's licenses can contribute to citywide economic growth. Research shows that having a driver's license makes it twice as likely for a person to have earnings above the poverty level.¹⁰ To ensure El Paso residents have this same opportunity to reach financial stability, the city should exit the OmniBase Program, just like the cities of Dallas and Austin, and Harris County have all voted to do over the last three years. Analysis of court collections for Austin and Harris County after they opted to terminate their contracts with OmniBase showed no significant difference in collections.¹¹ The wealth of statewide data on court collections shows no financial incentive for courts to continue to use this program. Lifting these holds could save thousands of hours of law enforcement time, instead allowing police to focus on actual safety risks.¹²

Instead, the City should implement research- and evidence-based policies that help people quickly resolve debt and avoid long-term financial distress.¹³ Some evidenced-based alternatives include redesigning court summons forms, using text messages or other reminders for court dates, prioritizing the tailoring of fines to one's income level, allowing for community service to be completed instead of payment, applying time served credit to the amount owed, and dismissing older cases and forgiving the associated debt.^{14,15} By choosing to terminate their contract with OST, the City of El Paso can assist thousands of its residents in getting back on the road and back to work.

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REFERENCES & ENDNOTES

¹ Established pursuant to Chapter 706 of the Texas Transportation Code, the program is officially called the "Failure to Appear/Pay Program." The Texas Department of Public Safety has contracted with a private vendor, OmniBase Services of Texas, to work with courts to administer the holds, leading to the program commonly referred to as the "OmniBase Program."

² Data obtained from the El Paso Municipal Court and Texas Department of Public Safety, on file with author. The number reflected here indicates the number of active holds on licenses as of June 2023. As the number of holds can vary greatly between time periods it's possible that this number is no longer the number on record at the time of publication. For example, the last time El Paso data was examined by Texas Appleseed the number of holds were near 47,000, and that was in April of 2022. The number provided to Texas Appleseed in June of 2023, reflects a near 50% increase in the number of holds applied by El Paso Municipal court in over a year's period.

³ Data obtained from the Department of Public Safety, 2021 and 2022, on file with the author. At the end of 2021 El Paso JP Courts had a total of 2,451 holds on record, in 2022, that number dropped to 622. Because the placement of holds can vary greatly throughout the year, it's not uncommon to see a change in the number of holds from one year to the next, though this drop is indeed quite noticeable. The average between these two years is 1,537, thus the "over 1,500 holds" statistic. Additionally, El Paso County is home to 18 cities, a review of only four of those cities – Anthony (17 holds), Clint (47), Horizon City (1,437) and Socorro (3,048) – shows that thousands of holds are being placed in the surrounding areas of El Paso.

⁴ U.S. Census Bureau, American Community Survey (ACS), 2022 1-Year Estimates, Table DP03. Retrieved from <https://data.census.gov/table/ACSDP1Y2022.DP03?q=dp03&g=160XX00US4824000Year+Estimates+Data+Profiles&tid=ACSDP1Y2021.DP03>.

⁵ U.S. Census Bureau, Quick Facts El Paso City, Texas. Retrieved from <https://www.census.gov/quickfacts/fact/table/elpasocitytexas/PST045222>.

⁶ US Census Bureau, Quick Facts, El Paso City, Texas, Median Household Income (in 2021 dollars), 2017-2021. Retrieved from <https://www.census.gov/quickfacts/fact/table/elpasocitytexas/INC110221>.

⁷ Data obtained from the El Paso Municipal Court, on file with author.

⁸ 2021 Capias and Class C warrant data collected from the Office of Court Administration, datasets on file with the author. (The capias warrant difference was statistically significant while the class C warrant difference was not.)

⁹ Texas Appleseed & Texas Fair Defense Project, Driven by Debt: The Failure of the OmniBase Program. (2021). Retrieved from <https://www.texasappleseed.org/sites/default/files/OmniBaseRevenueReport-Aug11-Final.pdf>.

¹⁰ John Pawasarat & Frank Stetzer, The EARN (Early Assessment and Retention Network) Model for Effectively Targeting WIA and TANF Resources to Participants, U. OF WIS. EMP. & TRAINING INST., 2007, available at <https://www4.uwm.edu/eti/2007/EARNModel.pdf>. See also Jon A. Carnegie & Alan M. Voorhees, Transportation Center at Rutgers, State Univ. of New Jersey, Driver's License Suspensions, Impacts & Fairness (2007), available at <https://www.nj.gov/transportation/business/research/reports/FHWA-NJ-2007-020-V1.pdf> (Large study of drivers with suspended licenses in New Jersey found that 42% lost their jobs when their license was suspended, and the impact was even greater on drivers with household incomes below \$30,000: 64% of these drivers lost their jobs and 51% could not find another job).

¹¹ Texas Appleseed & Texas Fair Defense Project, Driven by Debt: The Failure of the OmniBase Program. (2021). Retrieved from <https://www.texasappleseed.org/sites/default/files/OmniBaseRevenueReport-Aug11-Final.pdf>. (The Graphs on page 4 of the Driven by Debt report show that revenue per criminal case disposed increased slightly after eliminating the contract with OmniBase).

¹² One Washington state amnesty program for drivers with suspended licenses saved 4,500 hours of patrol officers' time (see <https://www.acslaw.org/wp-content/uploads/2019/03/License-Suspension-Issue-Brief-Final.pdf>). A Florida study estimated that adjudicating cases involving debt-based license suspensions cost Florida state courts more than \$40 million annually, resulting in a "costly debtor's prison" (see <https://finesandfeesjusticecenter.org/content/uploads/2019/11/florida-fines-fees-drivers-license-suspension-driving-on-empty.pdf>).

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¹⁴ Here is an example of a redesigned summons form that Harris County has created in partnership with Ideas42: https://www.ideas42.org/project/increasing-harris-county-court-appearances-by-adapting-tested-solutions/?utm_source=Safety+%26+Justice+%7C+ideas42&utm_campaign=208a2462aaEMAIL_CAMPAIGN_2023_11_02_02_00&utm_medium=email&utm_term=0_-208a2462aa-%5BLIST_EMAIL_ID%5D&mc_cid=208a2462aa&mc_eid=9adee68691; see also Cooke, B., Dip, B. Z., Fishbane, A., Hayes, J., Ouss, A., & Shah, A. (2018) Using behavioral science to improve criminal justice outcomes. University of Chicago Crime Lab Report.

¹⁵ Bornstein, B. H., Tomkins, A. J., Neeley, E. M., Herian, M. N., & Hamm, J. A. (2013). Reducing courts' failure-to-appear rate by written reminders. *Psychology, Public Policy, and Law*, 19(1), 70.