The Bill Blackwood Law Enforcement Management Institute of Texas

The Texas Department of Public Safety
Failure to Appear Program
Does the Program Work?
How Efficient is the Program?

An Administrative Research Paper Submitted in Partial Fulfillment Of the Requirements for Graduation from the Leadership Command College

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Shenandoah Police Department Shenandoah, Texas April, 2004

ABSTRACT

The author in composing this paper had decided from the onset of his research that the " police community" would not be receptive to change. The Failure to Appear Program has been proven thru the author's own "proving grounds" that this "tool" the legislature that the State of Texas has given to us works daily! The Texas Legislature has given any and all police agencies within the state, the readily access to collect thousands if not millions of dollars that we lose vearly from uncollected, non-payment of fines. When the 74th legislature convened in September 1995 this gave every police agency whether large or small the "tool" to collect with little effort again thousands if not millions dollars lost yearly. The Texas Department of Public Safety's Failure to Appear program includes all offenses for the violator failure to appear that are within the jurisdiction of the court. This legislation allows the department (TDPS) to contract with a private vendor to implement the system with the state. This vendor is Omnibase, located in Austin, Texas. The political subdivision is required to compensate the private vendor for services rendered. The most important part of this bill in today's "sue happy" setting is that it establishes immunity from suit and any damages for the state and the political subdivision .In September of 2001 the legislature gave each political subdivision even greater flexibility by including offenses for which an individual fails to pay or even satisfy the judgment of a court order. This amendment applies to all offenses that fall within the municipal or justice courts jurisdiction to include both traffic and non-traffic violations. This program applies only to nonpayment of fines associated with a Class C misdemeanor violation. I feel through my personal knowledge and research it is proven that the Failure to Appear Program thru the Texas Department of Public Safety is very successful. This program will enhance our budgets with little cost to our agencies, but will reap thousands, if not millions lost yearly through uncollected non-payment of fines.

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INTRODUCTION

The 74th Legislature of the Texas Senate gave all political subdivisions an answer through the Texas Department of Public Safety in 1995, a program to collect non-payment of fines. The Texas Senate created a "Failure to Appear" program. Does the program work? How efficient is it?

Does a police agency in the State of Texas within today's budgetary settings realize the thousands, if not millions of dollars they lose yearly from uncollected non-payment of fines on misdemeanor violations? The Texas Department of Public of Safety offers a "failure to appear" program to all police agencies within the State of Texas. This program offers a solution to a political subdivision of its uncollected loss revenue. The program gives the political subdivision an avenue of travel to deny a defendant his or her right to the renewal of their Texas Department of Public Safety driver's license. Through research this author has found that between 95% and 98% of all failure to appear offenders, will eventually comply with the political subdivision. This author feels that this problem within all police entities, whether large or small, is money that is disappearing through doors that can easily be closed, if only educated about this program.

The author's purpose of this research is to better educate police agencies in how easy this program can be adopted and its low cost to an agency. Because the program is such a low-cost to any agency, it is not perceivable why any, if not all police agencies within the state are not enrolled in this program within the foreseeable future. The author, through personal research, has seen how this program can work on both traffic and non-traffic violations. To advise all agencies through Chapter 706 of the Texas Transportation Code, a *traffic violation* will regulate a driver's conduct while they are operating a motor vehicle on a street, road or highway in the State of Texas. A non-traffic violation, which are laws found within the Texas Penal Code, and any associated state laws and/or city ordinances can be applied to this program.

The method of inquiry will be personal interviews, the Texas Transportation Code, Chapter 706, the Transportation Code 521.457, Title 37, the Texas Administration Code, Chapter 15-Driver's License Rules, Failure to Appear (effective 1-10-02), various books and a Attorney General's opinion. The author intends to show what can be done and how easily this program can be adopted with little cost to a police agency.

The author's intended outcome will be to show all police entities an avenue to travel at a very low cost to it's budget, how readily assessable this program is to implement. The monies spent on this program are monies well spent because the overall outcome will outweigh the initial cost. The author, through twenty plus years as a police officer within the state, has participated on thousands of warrants, whether misdemeanor or felony. The author's intention is to stay unbiased on this subject, but to hopefully better educate fellow officers within the state about the Failure to Appear Program offered through the Department of Public Safety.

The author feels the implications of this research to the law enforcement community should be a large impact on their budget. He will show through research, data collected the last 3-5 years, and personal interviews, how this program is easily adaptable. The author feels that through education, such as this research paper, the police entities of the state would boost their revenue economically through stagnant uncollected funds. Through this program, hopefully, it will show a police entity in today's budgetary settings how we are losing thousands, if not millions of dollars through our own uneducated personnel.

REVIEW OF LITERATURE

In researching the Texas Department of Public Safety's, Failure to Appear Program, it will be necessary to review the very brief history that this program has. The Texas Department of Public Safety with the help of the Texas Legislature created this program in September 1995.

The Texas Legislature, during the 74th session, created this Failure to Appear Program with the intent of a defendant or violator to appear before the originating court or jurisdiction, for a final disposition on the charges (Class C misdemeanor) that he/she is facing. The 74th legislature created House Bill 1504, Texas Transportation Code, Chapter 706 (formally known as Vernon's Civil Statue, 6687d), authorizing the Department of Public Safety to contract with each political subdivision the right to deny renewal of an defendant's driver license for failure to appear on certain traffic violations on or after September 1, 1995.

The Texas Transportation Code, Chapter 706, is specific about the denial of one's driver's license for Failure to Appear. Chapter 706 breaks down the definition of a driver's license, what is a political subdivision, and what ia a motor vehicle. Chapter 706 defines what language should be on the citation when given to the defendant by any peace officer of this state. It defines the contract, and what will be in each contract for the political subdivision to provide to the Department of Public Safety. The author feels that one of the most important aspects of Chapter 706 is that Section 706.011 reviews the liability of this act to both the State of Texas and the political subdivision. No action or damages may be brought against the political subdivision or the State of Texas. In today's society, this a very welcomed pleasure within the municipal or county setting, let alone the state. The Texas Department of Public Safety also offers in Title 37, Texas Administrative Code, Chapter 15, Failure to Appear, approximately nine subsections that deal with Failure to Appear for traffic violations. It gives the political subdivision the right to contract with the Department of Public Safety through an interlocal agreement. The Texas Department of Public Safety has contracted with only one outside vendor to specifically implement the provisions of the Texas Transportation Code, Chapter 706. Once the defendant has failed to appear or to satisfy the judgment the originating court will notify the Texas Department of Public Safety. The court is required to provide data to the Department of Public

Safety. Local ordinances/violations may also be included if the Department of Public Safety can prove, through data and other criteria, that they meet all the requirements for this chapter. The Texas Penal Code, Chapter 38.10, Bail Jumping and Failure to Appear, will also be used in this research to solidify this author's research. A defendant is one who is released from custody or detained, as stated in this law. Technically, the person is in custody while the citation is being written. The defendant signs the citation, promising to appear at the arraignment date on the said citation. The defendant violates this law when he/she intentionally or knowingly fails to appear at the arraignment date on the citation. Hence, the failure to appear charge is processed on the defendant.

"Under the Texas Transportation Code, Section 543.009, compliance with or violation of promise to appear this law states that the defendant may comply with a written promise to appear in said court, given as provided by this subchapter, commits a misdemeanor regardless of the disposition of the charge on which the person was arrested." When a defendant violates this written promise to appear, he/she commits a misdemeanor crime.

The Texas Transportation Code, Subsection 521.457, Driving while License Invalid, states that the defendant will be convicted for Driving while License Invalid, if the defendant operates a motor vehicle on any said road, street, or highway during which time their license not renewed under Chapter 706 of the Texas Transportation Code. The penalty for this offense can range from a \$100.00 to \$500.00 fine in restitution. The defendant may be confined in the county jail facility for a period of not less than 72 hours to period not to exceed 6 months. The penalty for Driving while License Invalid can get more stringent according to Subchapter L, Effect of Suspension, Subchapter 601.371, Operation of a Motor Vehicle in Violation of Suspension offense. The law states if the defendant operates a motor vehicle on a highway in the state and has been previously charged of an offense under section 521.457, the offense then is

punishable as a Class A misdemeanor with much more severe consequences.

In the 76th Legislative Session, House Bill 2802 amended the Texas Transportation Code, Chapter 706, to include <u>all</u> offenses for which the violator fails to appear, that are within the jurisdiction of the court. The bill has seven main parts:

- 1. The Department of Public Safety will contract with a private vendor to advise the defendant of said political subdivision who has denied their renewal for their driver license.
 - 2. The political subdivision will pay the private vendor for services rendered.
- 3. There will be a \$ 30.00 administrative fee assessed to each defendant for each offense complaint filed.
- 4. There will be immunity from suit for both the State of Texas and the political subdivision.
- 5. The Department of Public Safety can and will adopt rules to authorize the department to provide rule changes of the bill when necessary.
- 6. When a peace officer is giving a citation to the defendant, there must be a written warning on the said citation or on a separate piece of paper about the political subdivision having the right to deny the defendant's right to renew their driver's license if the defendant fails to appear for their arraignment date.
- 7. All offenses that occur on or after September 1, 1999 will apply to this house bill."
 (P.1) According to The Texas Department of Public of Safety Pamphlet.

During the 77th Legislative Session, the Senate passed Senate Bill 1371. This bill gave the court the full scope to include offenses that a defendant failed to pay or to even satisfy a judgment from the said court. This bill was enacted on September 1, 2001. The Texas Transportation Code, Chapter 706, allowed the bill to include all offenses that occur in a

municipal or a justice of the peace courts jurisdiction. It includes traffic and non-traffic violations.

The author knows that every man, woman, or child within the State of Texas does not realize that a driver's license within this state is a privilege. A source to solidify this statement is as follows: "A driver's license is a privilege not a property right." Cases are appealable from the county courts to the courts of appeal, per Case Law 203 SW 2d 950, DPS vs Robertson, TX Civ.App-Eastland 1947." Texas Court Decisions on Drivers License cases and A.G. Opinions/Texas Department of Public Safety (P3500.8 C 835D-1992).

METHODOLOGY

The author, in order to conduct his research, will review the Department of Public Safety's pamphlet, various traffic laws that affect the Failure to Appear Program, and personal interviews. The interviews will be with fellow officers who can verify how the program can and does work from their own personal findings and results. The author feels that because of the short time that this program has been in existence, the data collected will be limited, but through a longer time period, additional data will be processed.

Does this program work? Just how efficient is it? In the present day settings of warrant service for a police officer, if you have a recovery rate of 25%-30%, the officer is doing a great job!

The Texas Department of Public Safety offers a solution to serve the political subdivision by denying the renewal of a driver's license for Failure to Appear or failure to pay or satisfy a judgment ordered by a court. It is estimated that between 95%-98% of the failure to appear offenders will comply with the political subdivisions that contract with the Department of Public Safety. The intent of the Failure to Appear Program is directed towards a system that requires the

violator to appear before the originating court for a final disposition." <u>Texas Department of</u> Public Safety Pamphlet (p.1).

The author hopes to utilize the municipal and the county entities within the state, to prove without reasonable doubt, the thousands if not millions of dollars that political subdivisions lose vearly. Through my 20 plus years as a police officer, I realize some agencies will always be set in their ways! In today's police settings some of us that are considered older, and are often referred to as "dinosaurs." But, a modern police agency also has to change with the times. Through written correspondence and numerous phone conversations with Mr. Charles Brothers, President, Omnibase Services, Inc (the private vendor appointed by the Department of Public Safety), the author has come to learn of numbers generated by the vendor of total political subdivisions on this program in this state. I have seen by my political subdivision's numbers alone that this program has only reached "the tip of the iceberg" within this state. County and municipal agencies within the state need to be "educated" about this opportunity. The cost of the software for this program is free to the political subdivision. With the survey conducted, just the geographic size of this state alone, should be a common denominator to show how agencies are so uneducated about this program. The method of inquiry will show, by my own municipality's Proforma averaged annual revenue, how the monies with in my city have quadrupled in four short years.

FINDINGS

In researching this topic, two "Proforma Averaged Revenues" were reviewed from Omnibase, Services of Texas. From a municipal standpoint the city of Shenandoah, Texas, shows how much money was brought in within a 4-5 year period. The second Proforma was conducted on a countywide basis in Montgomery County, showing the amount of monies

brought within the same time period. Looking at these attached findings, one will see how a municipality or a county can at least quadruple their monies received from this program. (See Attachments A and B)

Following this page is a sample letter that is sent to the defendant from the private vendor. Upon notification from the justice or municipal court, the defendant has failed to appear for his/her arraignment date. This letter advises the defendant to contact the said jurisdiction to clear the offenses from their record. (See Sample letter from private vendor)

CONCLUSION

While researching this study, it became quite apparent that there isn't a vast refuge of resources written specifically about this program. Data was gathered from The Texas Department of Safety pamphlet, information I could gather from the private vendor (Omnibase Services of Texas), and from personal interviews or surveys from fellow officers. The purpose of this study was to better educate fellow officers of the vast amount of dollars lost annually from uncollected nonpayment of fines.

This author provided data to support his hypothesis: The Failure to Appear program is efficient and does work for political subdivisions within this state. To support the findings on this research, the municipal Proforma chart concluded that one would collect 1/6 of the expected revenues on failure to appear program every year. Within the state of Texas, a person has to renew their driver's license every six years. With the number of violations written per year, at least 33% will become delinquent violations. Using a base figure of \$100.00 per violation, one can multiply that by the total number of delinquent violations, to arrive at a total dollar amount expected to be collected. In the Texas Department of Public Safety pamphlet, it was stated that an entity could expect to collect between 95%-98% of failure to appear monies owed.

The findings of this research, and fellow officers experiences, support the original hypothesis. This program can and does work with **little** or **no maintenance** needed. The findings of this research would be an economical boom for some agencies in this economical slowdown. This program can't help but boost incoming uncollected nonpayment of fine's associated with all Class C misdemeanors within a political entity.

The author felt that little data has been created for this program; there were limitations on research. The author through his own personal experience with the program feels this was a plus. This research was collected through many hours of reading, tedious researching of the transportation code laws, which to the author seemed repetitious and run together. The data had to be read and reread.

In conclusion, this author has shown that the "number's don't lie!" Each and every political subdivision that is uneducated about this program stands to lose thousands of dollars, and on a larger scale such as a county, millions of dollars. This research was not intended for this author to proclaim how great the Department of Public Safety is or to promote Omnibase Services of Texas, only better educate my fellow officers within this great state that we protect -

TEXAS!

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Sgt. A. Tamborello, Survey, March, 2003

Attachment A

FAILURE TO APPEAR PROGRAM

PROFORMA

AVERAGED ANNUAL REVENUE

City of Shenandoah

		YEAR 1		
# of Violations	Total Delinquent	Total Revenue	Expected 1/6 of Revenue	
	Violations	Delinquent Violations	17% of Violators getting	
	(33% per year)	(Using \$100/ea)	License Renewed) + \$4.00	
			FTA Fee	
6,161	2,033	\$ 203,313.00	\$ 35,945.74	
		YEAR 2		
# of Violations	Total Delinquent	Total Revenue	Expected 1/6 of Revenue	
	Violations	Delinquent Violations	17% of Violators getting	
	(33% per year	(Using \$100/ea)	License Renewed) + \$4.00	
			FTA Fee	
6,161	3,721	\$ 372,052.00	\$ 65,778.79	
		YEAR 3		
# of Violations	Total Delinquent	Total Revenue	Expected 1/6 of Revenue	
	Violations	Delinquent Violations	17% of Violators getting	
	(33% per year	(Using \$100/ea)	License Renewed) + \$4.00	
			FTA Fee	
6,161	5,122	\$ 512,156.00	\$ 90,549.18	
		YEAR 4		
# of Violations	Total Delinquent	Total Revenue	Expected 1/6 of Revenue	
	Violations	Delinquent Violations	17% of Violators getting	
	(33% per year	(Using \$100/ea)	License Renewed) + \$4.00	
			FTA Fee	
6,161	6,284	\$ 628.439.00	\$ 111,108.02	
		YEAR 5		
# of Violations	Total Delinquent	Total Revenue	Expected 1/6 of Revenue	
	Violations	Delinquent Violations	17% of Violators getting	
	(33% per year	(Using \$100/ea)	License Renewed) + \$4.00	
			FTA Fee	
6,161	7,249	\$ 724,855.00	\$ 128,159.67	
		YEAR 6		
# of Violations	Total Delinquent	Total Revenue	Expected 1/6 of Revenue	
	Violations	Delinquent Violations	17% of Violators getting	
	(33% per year	(Using \$100/ea)	License Renewed) + \$4.00	
			FTA Fee	
6,161	8,050	\$ 804,980.00	\$ 142,320.46	

FAILURE TO APPEAR PROGRAM - PROFORMA - AVERAGED ANNUAL REVENUE

METHOD OF CALCULATION

This proforma is an estimate of the revenues that your jurisdiction could expect to receive from participation in the Failure to Appear Program. Certain assumptions are made in the calculations and the results may vary considerably for your jurisdiction. The only number which is specific to your jurisdiction is the number of offenses. This number is taken from the annual accounting of the number of cases filed which you reported to the Texas Office of Court Administration in 2001.

Assumptions made in the calculation are:

- (1) number of offenses each year will remain constant;
- (2) 33% of all violations will become delinquent each year (statewide experience);
- (3) the average fine collected for each offenses is \$100; and
- (4) 1/6 of all drivers license will be renewed each year (6-year drivers license)

With these assumptions, the columns reflect the following:

• # of Violations total offenses reported from your

jurisdiction each year (non-parking traffic,

state law violations, & city ordinances)

Total Delinquent Violations:
 33% of total offenses each year plus the

balance of delinquent violations carried over

from the previous year

■ Total Revenue Delinquent Violations: all delinquent violations multiplied by

average fine of \$100

■ Expect 1/6 of Revenue: collection of \$100 per delinquent violator

who renews driver's license each year plus

your portion of the FTA fee (\$4)

Attachment B

FAILURE TO APPEAR PROGRAM **PROFORMA**

AVERAGED ANNUAL REVENUE

Montgomery County (no report for Precinct #3)

		YEAR 1		
# of Violations	Total Delinquent	Total Revenue Expected 1/6 of Revenue		
" of violations	Violations	Delinquent Violations	17% of Violators getting	
	(33% per year)	(Using \$100/ea)	License Renewed) + \$4.00	
	(55% per jeur)	(0 5 mg \$ 100 / ca)	FTA Fee	
50,497	16,664	\$ 1,666,401.00	\$ 294,619.70	
	,	YEAR 2		
# of Violations	Total Delinquent	Total Revenue	Expected 1/6 of Revenue	
	Violations	Delinquent Violations	17% of Violators getting	
	(33% per year	(Using \$100/ea)	License Renewed) + \$4.00	
			FTA Fee	
50,497	30,495	\$ 3,049,513.00	\$ 539,153.90	
		YEAR 3		
# of Violations	Total Delinquent	Total Revenue	Expected 1/6 of Revenue	
	Violations	Delinquent Violations	17% of Violators getting	
	(33% per year	(Using \$100/ea)	License Renewed) + \$4.00	
			FTA Fee	
50,497	41,975	\$ 4,197,486.00	\$ 742,115.52	
		YEAR 4		
# of Violations	Total Delinquent	Total Revenue	Expected 1/6 of Revenue	
	Violations	Delinquent Violations	17% of Violators getting	
	(33% per year	(Using \$100/ea)	License Renewed) + \$4.00	
			FTA Fee	
50,497	51,503	\$ 5,150,326.00	\$ 910,577.64	
		YEAR 5		
# of Violations	Total Delinquent	Total Revenue	Expected 1/6 of Revenue	
	Violations	Delinquent Violations	17% of Violators getting	
	(33% per year	(Using \$100/ea)	License Renewed) + \$4.00	
			FTA Fee	
50,497	59,412	\$ 5,941,150.00	\$ 1,050,395.32	
		YEAR 6		
# of Violations	Total Delinquent	Total Revenue	Expected 1/6 of Revenue	
	Violations	Delinquent Violations	17% of Violators getting	
	(33% per year	(Using \$100/ea)	License Renewed) + \$4.00	
70.15=		h	FTA Fee	
50,497	65,976	\$ 6,597,597.00	\$ 1,166,455.15	

FAILURE TO APPEAR PROGRAM - PROFORMA - AVERAGED ANNUAL REVENUE

METHOD OF CALCULATION

This proforma is an estimate of the revenues that your jurisdiction could expect to receive from participation in the Failure to Appear Program. Certain assumptions are made in the calculations and the results may vary considerably for your jurisdiction. The only number which is specific to your jurisdiction is the number of cases filed. This number is taken from the annual accounting of the number of cases filed which you reported to the Texas Office of Court Administration in 2001.

Assumptions made in the calculation are:

- (5) number of offenses each year will remain constant;
- (6) 33% of all violations will become delinquent each year (statewide experience);
- (7) the average fine collected for each offenses is \$100; and
- (8) 1/6 of all drivers license will be renewed each year (6-year drivers license)

With these assumptions, the columns reflect the following:

of Violations
 total traffic and non-traffic cases reported

from your jurisdiction each year (does not

include civil suits)

Total Delinquent Violations:
 33% of total offenses each year plus the

balance of delinquent violations carried over

from the previous year

■ Total Revenue Delinquent Violations: all delinquent violations multiplied by

average fine of \$100

■ Expect 1/6 of Revenue: collection of \$100 per delinquent violator

who renews driver's license each year plus

your portion of the FTA fee (\$4)

TEXAS DEPARTMENT OF PUBLIC SAFETY



1 (800) 686-0570



SAMPLE

NOTICE OF DENIAL OF RENEWAL OF TEXAS DRIVER LICENSE

Acting under contract with the Texas Department of Public Safety, OmniBase has received a report that you have been cited for an offense under the jurisdiction of the justice or municipal court listed below and have subsequently violated a promise to appear in court or failed to pay or satisfy the judgement for the violation.

Pursuant to Chapter 706 of the Texas Transportation Code, the Department of Public Safety will deny renewal of your driver license until the originating court identified below has electronically cleared the following offense(s) from the database:

City	Offense	Docket	Offense	Fines, Cost
Or County _	Date	Number	Description	and Fees

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	con
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In the event renewal of your driver license is denied, you would then be prohibited from operating a motor vehicle on a public street or highway in this state. Violation would constitute a misdemeanor punishable by a fine of up to \$500.00 and/or confinement for up to six months. Please note that the Department of Public Safety will not clear your driver record or renew your driver license without authorization from the court(s) identified at the

You must resolve the outstanding violations before the Department of Public Safety will be able to renew your license. You should contact the court listed to confirm the amount of the fines, costs, and fees. If you want to contest the above report, or if you desire to request trial on the charge(s) filed against you, you should call or write the court listed above. You may retain an attorney at your own expense.

An offense will be cleared from the failure to appear or pay database within three (3) business days from the date payment is secured and reported to OmniBase by the originating court. For information on how to contact the court, you may call either of the following numbers:

(800) 686-0570 (toll free), or (512) 342-0915 in Austin

COURTESY • SERVICE • PROTECTION

Survey- Does the DPS-Failure to Appear Program Work?

1. In your agency's opinion does the failure to appear program work?

YES! MY AGENCY'S OPINION OF THE PROGRAM IS

2. What is your/ agency's opinion on the program?

OUR OPINION OF THE PROGRAM IS THAT IT WORKS VERY WELL:

- 3. How long has your agency, been on this program?

 MY AGENCY HAS BEEN ON THE PROGRAM FOR APPX.

 6 Y RS.
- 4. Is the program cost effective to your agency?

YES; THE PROGRAM'S COST IS FAR OUT WEIGHTED BY THE MONEY'S IT ASSIST US IN GETTE

5. Would you recommend the program to another agency?

YES! I WOULD RECOMMEND THE PROBRAM TO

ANY OTHER AGENCY WHO IS LOOKING FOR HELI

IN COLLECTING MONEY'S ON THE F.T-A'S.

as Tomborelle sgr. montgomery P. D.