Instructions and Information Regarding Reconsideration of a Defendant's Ability to Pay and the Standardized Form to Request Reconsideration

If at any time while you are on community supervision your ability to pay any fine, fee, program cost, or other payment ordered by the court, other than restitution, changes and you cannot afford to pay, you have the right to request that the court review your payments and consider changing or waiving your payments. You can use this form to make a request for a change in your payments. You cannot use this form to request a change in restitution payments.

Ability to Pay

If the court places a defendant on community supervision, including deferred adjudication community supervision, the law requires the court to consider the defendant's ability to pay before ordering the defendant to make any payment, excluding restitution.
(See Code of Criminal Procedure Art. 42A.655(a) and (c))

What is Community Supervision?

"Community supervision" includes probation and deferred adjudication community supervision.
(See Code of Criminal Procedure Art. 42A.001(1))

Reconsideration of Defendant's Ability to Pay

A defendant's ability to pay may change during the period of community supervision. House Bill No. 385, an enactment of the 87th Legislature, requires the Office of Court Administration of the Texas Judicial System (OCA) to adopt not later than January 1, 2022 a standardized form that a defendant can use to request reconsideration of the defendant's ability to pay if his or her financial circumstances change. The included form will allow a defendant to request

reconsideration of his or her ability to pay. ***A defendant may not request reconsideration of his or her ability to pay restitution.***
(See Code of Criminal Procedure Art. 42A.655(h))

When and How Can a Defendant Request Reconsideration?

The defendant may request reconsideration any time during the period of community supervision by completing and filing OCA's standardized form with the clerk of the court.
(See Code of Criminal Procedure Art. 42A.655(e))

Are There Any Limits on How Many Times the Defendant Can Request Reconsideration?

Yes
The defendant can make only 1 request within a 6-month period, unless there is a substantial and compelling reason for making an additional request during that time period.
(See Code of Criminal Procedure Art. 42A.655(e))

Can the Court Reconsider The Payment of Restitution?

The court does not have to consider or reconsider a defendant's ability to pay restitution.
(See Code of Criminal Procedure Art. 42A.655(c))

What is the Supervision Officer Obligated to Do?

On defendant's request, a supervision officer must promptly provide the defendant with a copy of OCA's standardized form. We recommend providing a copy of the instructions, too.
(See Code of Criminal Procedure Art. 42A.655(i))

What is the Court Obligated to Do?

On the defendant's request, the court must promptly provide the defendant with a copy of OCA's standardized form. We recommend providing a copy of the instructions, too.
(See Code of Criminal Procedure Art. 42A.655(i))

At any hearing for an alleged violation of a condition of community supervision, the court must reconsider the defendant's ability to make payments.
(See Code of Criminal Procedure Art. 42A.655(d))

On receiving a **proper request** for reconsideration, the court must determine whether the defendant's financial status or ability to make required payments has changed so much so that the defendant's ability to make a payment has been substantially hindered. If the court finds there is substantial hinderance, the court

must then determine whether all or part of the required payments should be satisfied by an alternative method.
(See Code of Criminal Procedure Art. 42A.655(e))

What Payments Shall the Court Reconsider?

The court can reconsider any fee, fine, reimbursement cost, court cost, rehabilitation cost, program cost, service cost, counseling cost, ignition interlock cost, assessment cost, testing cost, education cost, treatment cost, payment required under Article 42A.652 (Monthly Reimbursement Fee), or other payment or cost authorized or required as a condition of community supervision.
(See Code of Criminal Procedure Art. 42A.655(b), (e))

What Alternative Methods are Available to the Court?

The court may require payments to be made at a later date or in a specified portion at designated times (*e.g., defer any payment or payments for several months, order payment of a reduced amount per month, order bimonthly payments, or impose a payment plan*), waive all or part of payments in total or for a specified period of time then reevaluate *(e.g., 1 month, 3 months, 6 months)*, require the completion of community service instead of payments, if applicable, or require any combination of the aforementioned methods.
(See Code of Criminal Procedure Art. 42A.655(f))

Are There Any Filing Fees on Filing the Request?

No

Criminal filing fees are assessed on "conviction" only. The request for reconsideration does not result in a conviction, adjudication, or a finding of guilt. The clerk should not assess filing fees on the filing of OCA's standardized form.

Does the Court Have to Hold a Hearing?

No

The court does not have to hold a hearing, but the court must notify the defendant and the attorney representing the state of the court's decision and whether the court will allow an alternative method of payment.
(See Code of Criminal Procedure Article 42A.655(e))

What Happens if the Defendant's Financial Status or Ability to Pay Improves During the Period of Community Supervision?

The court may order the defendant to pay all or part of any payment waived if the court later determines that the defendant has the financial means or resources to make the payment. The court must provide notice and an opportunity for the defendant to be heard before ordering the payment of any amount waived.
(See Code of Criminal Procedure Article 42A.655(j))

REQUEST FOR RECONSIDERATION OF ABILITY TO PAY

IF AT ANY TIME WHILE YOU ARE ON COMMUNITY SUPERVISION YOUR ABILITY TO PAY ANY FINE, FEE, PROGRAM COST, OR OTHER PAYMENT ORDERED BY THE COURT, OTHER THAN RESTITUTION, CHANGES AND YOU CANNOT AFFORD TO PAY, YOU HAVE THE RIGHT TO REQUEST THAT THE COURT REVIEW YOUR PAYMENTS AND CONSIDER CHANGING OR WAIVING YOUR PAYMENTS. YOU CAN USE THIS FORM TO MAKE A REQUEST FOR A CHANGE IN YOUR PAYMENTS. YOU CANNOT USE THIS FORM TO REQUEST A CHANGE IN RESTITUTION PAYMENTS.

_____ (1)
Date

The Honorable _____ (2) (Name of Judge)
_____ (3) (Name of Court)
c/o Clerk of the Court

Re: Criminal Cause No. _____ (4) (Case No.)

To the Honorable Court,

I, _____ (5), respectfully request the court to reconsider my ability to make the required payments, excluding restitution, in this case, including but not limited to the payment of any fee, including the monthly supervision fee required under Article 42A.652, Code of Criminal Procedure, fine, reimbursement cost, court cost, rehabilitation cost, program cost, service cost, counseling cost, ignition interlock cost, assessment cost, testing cost, education cost, or treatment cost. Currently, I am required to make a total monthly payment of $_____. (6)

As of _____ (7), I no longer have or had sufficient resources or income to make required payments. Consequently, I am behind in payments by approximately $_____, and currently, I can afford to pay only $_____ per Day)

The court originally or last considered my ability to pay on _____ (9). Following the court's consideration, my financial status or ability to pay changed in such a way that my ability to make a payment is

or has been substantially hindered by one or more of the following reasons indicated on Exhibit A, which is attached.

I have not submitted a request for reconsideration within the last six-month period, or if I have, I am asking the court to find that a substantial and compelling reason exists for making an additional request because

(10).

For the reasons stated above and indicated in Exhibit A, I respectfully request the court to order the payment satisfied by an alternative method provided under Article 42A.655(f), which includes determining whether all or a portion of the payment should be paid at a later date or in a lesser amount at designated intervals, waived in part or in full, discharged by performing community service, or satisfied by any combination of the aforementioned methods. In light of my current financial status or ability to pay, I respectfully request the court to

(11).

WHEREFORE, I pray the court will grant my request.

I ☐have ☐have not notified my supervision officer of this request. (12)

Respectfully submitted,

_____(13)
Defendant's Signature

Defendant's Declaration

I declare under penalty of perjury that the foregoing, including the information in Exhibit A, is true and correct.

My name is _____(14).

My address is _____(15).
Street City State Zip Code

_____(16) signed on __/__/____/(17) in _____(18) County, _____(19)
Defendant's Signature Month/Day/Year County Name State

INSTRUCTIONS FOR COMPLETING THE REQUEST FORM

1. Enter the date, preferably the date that you complete and sign the request.
2. Enter the name of the judge for the court in which your case was heard *(e.g., "Kevin Thomas" or "Judge," if you do not know the name).*
3. Enter the name of the court *(e.g., 450th District Court, County Court at Law #7, Justice of the Peace, Precinct 1).*
4. Enter the cause number of your case. If you don't know it ask your community supervision officer or the clerk of the court.
5. Enter your name as it appears on the community supervision or court's papers.
6. Enter the total amount of payments that you have been ordered to pay on a monthly basis.
7. Enter the date that you could no longer pay all or could only pay part of the required payment.
8. Enter the total amount overdue and tell the court how much you can afford to pay on a monthly or weekly basis. Enter zero if you cannot afford to pay anything.
9. Enter the date that the court last considered your ability to pay. If you don't remember ask your community supervision officer.
10. You are limited to one request every six months. If it has <u>not</u> been six months since the court (**not your community supervision officer**) last considered your ability to pay, you must enter the reason why you think you are eligible to make an additional request. If the court does <u>not</u> think your reason is substantial and compelling, your request will <u>not</u> be considered. You must wait six months after the court's last consideration before making a/another request.
11. Tell the court what you want and why. Be as specific as you can *(e.g., waive all payments or waive them for a specific period of time- 3 months, 6 months, 9 months, reduce payments by $50.00, give me 10 more days to pay, put me on a payment plan where I pay $20.00 a month for 8 months or until I get a job)* and provide specific reasons as to why you are unable to make all or part of your payments *(e.g., job loss, income loss, health issue).* Look at **Exhibit A** for other suggestions.
12. Check the appropriate box to indicate whether you told your community supervision officer of your intent to file the request. The law does not require you to notify your community supervision officer, but it could speed up things if you notify your community supervision officer as the court may need your community supervision officer to verify your information or provide some input.

13. Sign the request.
14. Enter your name again.
15. Enter your address.
16. Sign your declaration. Please verify that the information in your request is correct before you sign the declaration.
17. Enter the date on which you signed the declaration.
18. Enter the county in which you signed the declaration.
19. Enter the state in which you signed the declaration.

Exhibit A

Cause No. _____ (1)

Following the court's initial or last determination of my ability to pay, my ability to make a payment has been substantially hindered by one or more of the following:

- ☐ loss of employment on _____, (2)
- ☐ loss of income in the amount of $_____ on _____ due to _____ (3),
- ☐ loss of a public benefit or government entitlement in the amount of $_____ (4),
- ☐ loss of residence or place to live (if residing with a family member) on _____, (5)
- ☐ loss or lack of transportation as of _____, (6)
- ☐ loss of real estate or personal property in the amount of $_____ (7)
- ☐ a court entered an order withholding my wages in the amount of $_____on _____ (attach a copy of the court's order), (8)
- ☐ I begin paying child support in the amount of $_____ on _____ (9) (Attach the court's order of child support, if applicable, and proof of payments),
- ☐ my child support payments increased from $_____ to $_____ on _____ (10) (Attach the court's order of child support, if applicable, and proof of payments),
- ☐ my mortgage or rent payment increased from $_____ to $_____ on _____ (Attach proof of mortgage or rental agreement), (11)
- ☐ additional expenses have been incurred in the amount of $_____ for medical, dental, or other reason. List the additional expenses incurred _____. (Attach proof of such expenses), (12)
- ☐ my number of dependents increased from _____ to _____ on _____when _____ , (13)
- ☐ I was incarcerated or in custody at _____ for _____ days, (14)
- ☐ there are limitations on my ability to work or earn money, such as _____ (15), or
- ☐ I am unable to pay for the following other reasons:

(16).

INSTRUCTIONS FOR COMPLETING EXHIBIT A

1. Enter the cause number of the case. If you don't know it ask your community supervision officer or the clerk of the court.
2. Check this box if you lost your job or other source of employment income **after** the court last determined your ability to pay. Include the date that you lost your job or other employment.
3. Check this box if you lost a source of income **after** the court last determined your ability to pay. Examples of such income include but are not limited to retirement or pension income, social security income, income from child or spousal support, income from tips or bonuses, disability or worker's compensation income, income from dividends, interest or royalties, income from unemployment benefits, your spousal's income, and income from another member of your household. Include the amount of the loss, the date of the loss, and a brief explanation of what income was lost and under what circumstances.
4. Check this box if you lost a public benefit or government entitlement **after** the court last determined your ability to pay. Examples of such benefit or entitlement include but are not limited to food stamps/SNAP, TANF, Medicaid, Public or Section 8 housing, Supplemental Security Income (SSI), Need based VA pension, WIC, and Emergency or General Assistance.
5. Check this box if you lost your home, apartment, room, or other place of residence **after** the court last determined your ability to pay. Include the date that you lost your residence or other place to live.
6. Check this box if you lost your car, ride, or other mode of transportation **after** the court last considered your ability to pay. Include the date that transportation was no longer available. You can include the loss of public assistance for transportation (e.g., bus pass or transportation subsidy).
7. Check this box if you no longer have real estate *(e.g., home, rental property)* or some personal property (*e.g., cash, bank accounts, vehicles, jewelry, stocks, boats*) that you had when the court **last considered** your ability to pay. Include the amount of the loss.
8. Check this box if another court entered a judgment and order withholding all or part of your wages or employment income **after** the court last considered

your ability to pay. You must attach a copy of the court order authorizing the withholding. Include the amount withheld and the date the withholding started.

9. Check this box if you started paying child support payments **after** the court last considered your ability to pay. Include the amount and the date that you started making the payments. You must attach proof of payments.
10. Check this box if your child support payments increased **after** the court last considered your ability to pay and you have been making the increased payments. You must attach proof of payments. Include the amount of the old and new payments and the date on which the increased amount started.
11. Check this box if your mortgage or rent increased **after** the court last considered your ability to pay. Include the old and new amounts and the date on which the increased amount started. Attach proof of the new mortgage or rental amount.
12. Check this box if you incurred any additional expense or expenses **after** the court last considered your ability to pay. You should include anything that is making it difficult for you make required payments.
13. Check this box if the number of your dependents increased **after** the court last considered your ability to pay. This includes parents who are dependent on you as well.
14. Check this box if you were held in custody, confined, or imprisoned **after** the court last considered your ability to pay. Include the name of the facility where you were in custody, confined, or imprisoned and the number of days of such custody, confinement, or imprisonment.
15. Check this box if you have been unable to work **since** the court last considered your ability to pay (e.g., limited driving privileges, no available childcare, poor health, or other limit). Attach proof, if possible.
16. Check this box if none of the other boxes apply, or if you want to provide your own explanation.