

SUBJECT: Procedures and administration in justice and municipal courts

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 6 ayes — Hinojosa, Dunnam, Garcia, Nixon, Smith, Talton
0 nays
3 absent — Green, Keel, Wise

WITNESSES: None

BACKGROUND: The Code of Criminal Procedure gives justice and municipal courts jurisdiction over offenses punishable by a fine only; offenses punishable by a fine and a sanction authorized by statute, if the sanction is not confinement; and alcohol offenses involving minors, if confinement is not a punishment. In addition, municipal courts' criminal jurisdiction includes violations of some municipal ordinances with fine-only punishments. Chapter 45 of the code establishes rules and guidelines for justice and municipal courts.

DIGEST: HB 2053 would revise Code of Criminal Procedure, chapter 45 by making most references to courts apply to both justice and municipal courts. The bill also would make many nonsubstantive changes, such as renumbering references, changing gender references to non-gender-specific words, and replacing archaic terms.

HB 2053 would authorize judges and justices to require defendants to make restitution to victims or to meet any other sanction in accordance with general Code of Criminal Procedure guidelines.

The bill would authorize judges and justices to proceed with adjudication of guilt without notice or hearing if a defendant had not complied with the requirements established for a deferred disposition. It also would outline judges' and justices' options if the state was not represented by counsel. Judges could postpone a trial, appoint an attorney pro tem to represent the state, or proceed with the trial and examine the witnesses themselves.

HB 2053 would add to chapter 45 substantially the same requirements for appeal bonds from justice and municipal courts that are outlined in Code of Criminal Procedure, chapter 44.

The bill would remove a current limit on how long judges can adjourn when a mistrial occurs. Instead of not being able to adjourn for more than 30 days before impaneling another jury, judges and justices could impanel another jury as soon as practicable.

The bill would make many other changes, including:

- ! stating that the rules of criminal evidence apply to justice and municipal court proceedings;
- ! outlining what has to be in an arrest warrant and a complaint for them to be sufficient;
- ! outlining what each justice and judge must keep in their criminal docket;
- ! allowing defendants to waive a jury trial orally or in writing;
- ! removing a prohibition against county attorneys receiving fees or other compensation if they act as prosecutor in a prosecution in a municipal court in their county;
- ! removing a prohibition against county attorneys having power to dismiss prosecutions pending in a municipal court unless approved by the judge;
- ! stating that it is the primary duty of a city prosecutor to see that justice is done, rather than to convict;
- ! allowing a court seal to be created by electronic means;
- ! eliminating a reference to unlimited jury preemptions by both prosecutors and defenders based on cause, leaving each with three challenges; and
- ! removing a prohibition against constables being allowed fees in misdemeanor cases that arise in precincts other than their own, except through an order of a commissioners court.

HB 2053 would repeal several sections that either would be replaced substantially by new provisions in HB 2053 or are governed by other provisions. The repealed provisions would include ones on criminal dockets, complaints, warrants, court seals, committing defendants to custody, prohibiting costs provided by ordinances, stating that jury fees in municipal courts are governed by the general code, authorizing governing bodies of cities to prescribe compensation and fees for certain city officials, contempt and bail, requiring causes to be tried without delay, requiring complaints to be

read to defendants, prohibiting defendants from being discharged because of informality in a complaint or warrant, referencing allowable special pleas, and requiring that judgments be rendered in open court.

HB 2053 would take effect September 1, 1999.

**SUPPORTERS
SAY:**

HB 2053 would clarify, streamline, and modernize Code of Criminal Procedure provisions dealing with justice and municipal courts. The bill would eliminate confusion by labeling provisions that apply to both courts and by removing provisions relating to procedures or rules that are governed by other broad Code of Criminal Procedure provisions. The provisions that would be repealed are covered by other provisions added by the bill or other provisions of the code.

HB 2053 would give justice and municipal courts clear authority to impose restitution, an authority that many think they already have under other Code of Criminal Procedure provisions. Placing justice and municipal courts under the code's general requirements for restitution would help ensure uniformity among courts and would not be burdensome. Restitution is often the best justice for victims and society for low-level, nonviolent offenses.

It is unnecessary for a justice or municipal court to have to provide notice and hearings if the court is proceeding with an adjudication of guilt in a deferred disposition case. Since these courts handle low-level, Class C misdemeanors only and defendants have signed a contract stating what would happen if certain requirements were not met, the courts should not have to provide notice of their actions. HB 2053 would not represent a major change, since currently there is no notice or hearing requirement, and some justices or judges sometimes hold hearings while others do not. It would be better to have one statewide, uniform practice of not holding hearings.

HB 2053 would give more flexibility to courts by expanding the current options of justices and judges if a prosecutor is not present. The bill would allow judges to postpone the trial or appoint an attorney pro tem, if that would be more appropriate than examining the witnesses themselves.

HB 2053 would not eliminate jury preemptions based on cause because these are allowed under other code provisions.

HB 2053 would remove a prohibition on constables being allowed fees in misdemeanor cases because this archaic provision is no longer necessary, since constables are paid by salaries.

**OPPONENTS
SAY:**

It could be unwise to place justice and municipal courts' authority for restitution under the general requirements of the Code of Criminal Procedure. These general provisions contain reporting requirements that could be burdensome and unnecessary for justice and municipal courts, which in most cases do not have a court reporter or other official record. In addition, these courts do not have enforcement mechanisms available to other courts, and there is no clear, simple way to appeal a restitution order by a justice or municipal court. At the least, HB 2053 should limit the amount of restitution that can be ordered to \$500, the maximum fine for a Class C misdemeanor.

HB 2053 should not give justices and judges authority to proceed with guilty adjudications without notice and hearing when defendants allegedly have not complied with requirements for a deferred disposition. As in all criminal matters, defendants deserve notice and true access to the courts when a judicial decision could affect them, especially if it is a finding of guilty.

Current authority for justices and judges to examine witnesses when a prosecutor is not present should not be included in the options laid out in HB 2053. This practice unwisely mixes the role of judge with that of prosecutor and should not be continued.

**OTHER
OPPONENTS
SAY:**

It would be best to move a provision allowing judges to charge juries as required by law from the municipal court sections to those covering both justice and municipal courts, since justice also charge juries.

NOTES:

The companion bill, SB 1230 by Ellis, passed the Senate on April 26 and has been referred to the House Criminal Jurisprudence Committee.