

- SUBJECT:** Allowing low-risk defendants to substitute payments for community service
- COMMITTEE:** Criminal Jurisprudence — favorable, without amendment
- VOTE:** 6 ayes — Keel, Riddle, Ellis, P. Moreno, Pena, Talton
0 nays
3 absent — Denny, Dunnam, Hodge
- WITNESSES:** For — Larry Olivarez Sr., and Jimmy Rodriguez, Nueces County Sheriff's Department
Against — None
- BACKGROUND:** Code of Criminal Procedure, art. 42.036 allows a court to require a defendant to serve all or part of a jail sentence by performing community service, unless the sentence was imposed by a jury. A court cannot allow a defendant convicted of driving, boating, flying, or operating or assembling an amusement park ride while intoxicated, or convicted of intoxication assault or manslaughter, to perform community service in lieu of a jail sentence. The court must specify the number of hours of community service to be performed and the entity for which the defendant must work. A defendant may perform community service only for a governmental entity or nonprofit organization that provides services to the general public.
- Government Code, chapter 511 establishes the Commission on Jail Standards as a state agency. The commission's duties include adopting a classification system to assist sheriffs and judges in determining which defendants are low risk.
- DIGEST:** HB 754 would allow a judge to permit a low-risk defendant to make \$50 payments to a governmental entity that administers community service in Texas instead of performing community service. Only a defendant classified as a low-risk offender by the Commission on Jail Standards would be eligible. Each \$50 payment would be considered a substitute for serving one day in jail or performing eight hours of community service.

The bill would take effect on September 1, 2003, and apply to a defendant required to perform community service before, on, or after that date.

**SUPPORTERS
SAY:**

HB 754 would allow a judge to provide an alternative mechanism for low-risk defendants to satisfy community service requirements. Many defendants experience legitimate difficulties trying to complete their required community service hours. For instance, in isolated or rural areas it often is difficult to find qualifying opportunities to perform community service. Work or school schedules, medical conditions, or child-care requirements can create conflicts for defendants required to perform community service.

The bill would provide relief for overburdened community service supervision programs. With state and county jails full, alternative sentences, such as community service requirements, have become increasingly popular among judges. However, many programs do not have enough resources to accommodate the increasing number of participants. A sheriff's department could use revenue from the \$50 payments to expand its community supervision program and hire more officers.

HB 754 would benefit defendants at all income levels — not just wealthy defendants. Low-income defendants often work two or three jobs. Meeting their community service requirements could require them to forgo a vital source of income. Some low-income defendants would rather make \$50 payments than arrange time away from work or lose a job because of community service requirements.

The bill would permit the judge to decide whether to allow a defendant to make payments in lieu of community service. Thus, a wealthy defendant would not necessarily be able to avoid community service requirements by making \$50 payments. A judge who felt that performing community service was important to a defendant's rehabilitation could decide not to extend the option of substituting payments for community service.

**OPPONENTS
SAY:**

HB 754 unfairly would allow wealthier offenders to avoid community service while still requiring poorer ones to perform this service. Justice should not be based on one's ability to pay. Offenders with equal sentences should have to perform equal work to discharge those sentences.

The bill would take away valuable community service not only from the organizations that benefit from the work but also from the offenders who perform it. Paying a fee is not rehabilitative, but performing community service is.