

- SUBJECT:** Recovering costs for legal services from certain defendants
- COMMITTEE:** Criminal Jurisprudence — favorable, without amendment
- VOTE:** 6 ayes — Moody, Hunter, Gervin-Hawkins, Hefner, Lang, Wilson
0 nays
1 absent — Canales
- WITNESSES:** For — (*Registered, but did not testify:* Jim Allison, County Judges and Commissioners Association of Texas; John Dahill, Texas Conference of Urban Counties; Joseph Green, Travis County Commissioners Court)
Against — (*Registered, but did not testify:* Darwin Hamilton)
On — Emily Gerrick, Texas Fair Defense Project
- BACKGROUND:** Under Code of Criminal Procedure, art. 26.05(g), a judge may order defendants to offset the costs of legal services while their charges are pending or as part of court costs assessed if they are convicted. This order may occur if the judge determines that a defendant has the resources to pay all or part of the costs incurred for legal services.
Art. 26.04(m) outlines what courts may consider when determining if a defendant is indigent.
- DIGEST:** HB 2071 would allow a judge to order certain defendants at any time during their sentence of confinement or period of probation to pay the unpaid portion of legal services provided to them if the judge determined they had the financial resources to pay the additional portion. The bill would apply to defendants who at their time of sentencing or placement on probation did not have the financial resources to pay the maximum amount for legal services provided to them.
In determining whether a defendant had the financial resources for unpaid

legal services, the judge could only consider the information a court or designee may consider when determining indigence under Code of Criminal Procedure, art. 26.04(m).

The bill would take effect September 1, 2017.

**SUPPORTERS
SAY:**

HB 2071 would ease the financial burden counties bear prosecuting criminal cases while still protecting the defendant's right to due process. Defendants should bear the costs of their defense if they are able to do so. The fact that a defendant could not pay at one point in time should not mean that counties should never be able to seek reimbursement if circumstances change. The bill would apply only to a defendant who was incarcerated or on probation, and once the sentence was completed, courts would lose the authority to collect on any windfalls to previously indigent defendants.

Defendants on community supervision are required to submit pay stubs and other documentation to their probation officers as proof that they are working faithfully and supporting their dependents. Probation officers already collect the information that courts would need to determine a defendant's ability to pay as part of their routine duties, so this bill would not create any additional burdens on courts or county resources.

**OPPONENTS
SAY:**

HB 2071 could lead to an unfair imbalance between counties and defendants. If defendants had to pay more after an increase in their ability to pay, they also should be allowed to pay less after a decrease. Currently, if a defendant can pay initially but subsequently loses a job, there is no way for that person to seek relief prior to a revocation hearing. This is especially difficult for defendants who are on probation and facing employment barriers as a result of their convictions. Taking money from individuals who are already in a vulnerable position is counterproductive to rehabilitation and reform.

The bill would give no guidance to judges or counties on how to track the defendant's ability to pay. Currently, indigence is determined at a specific point in time, usually at sentencing, after the defendant has filled out a

financial information questionnaire about his or her immediate financial situation. The bill would place the burden of continuously monitoring defendants' financial situation on courts that are already overburdened and underfunded.

NOTES:

A companion bill, SB 527 by Birdwell, was scheduled for a public hearing of the Senate Committee on Criminal Justice today.