

SUBJECT: Amending courts' handling of fines and costs for defendants unable to pay

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 7 ayes — Collier, Zedler, J. González, Hunter, P. King, Moody, Murr

0 nays

2 absent — K. Bell, Pacheco

SENATE VOTE: On final passage, May 10 — 30-1 (Schwertner)

WITNESSES: No public hearing.

DIGEST: SB 1637 would revise several provisions dealing with procedures that courts, including justice and municipal courts, use to assess fines and costs for criminal defendants who are indigent or unable to pay the amounts. The bill would require that when a court was determining a defendant's ability to pay, it would have to consider only the defendant's present ability to pay.

The bill generally would take effect September 1, 2019.

Reconsideration of fines or costs. SB 1637 would require courts to hold a hearing if a defendant notified the court that the defendant had difficulty paying court fines and costs. The hearing would be held to determine whether that portion of the judgment imposed an undue hardship on the defendant.

Defendants could notify the court by various methods, including:

- voluntarily appearing and informing the court;
- filing a motion with the court;
- mailing a letter to the court; or
- any other method established by the court.

If the court determined at the hearing that the fine and costs imposed an undue hardship on the defendant, the court would have to consider whether the fine and costs should be satisfied through an alternative method, including by waiving them or through a payment plan or community service.

Courts could decline to hold a hearing if they:

- previously held a hearing and could make a determination without another one that the judgment did not impose an undue hardship on the defendant; or
- could determine without holding a hearing that the judgment imposed an undue hardship on the defendant and that the fines and costs should be satisfied through an alternative method.

Capias pro fine. The bill would revise current provisions that prohibit a court from issuing a capias pro fine to arrest a defendant for failure to satisfy a judgment unless a hearing had been held and the defendant failed to appear or based on evidence from the hearing, the court had determined that the capias pro fine should be issued.

Instead, a hearing that would have to be held before a capias could be issued and would have to determine whether the judgment imposed an undue hardship on the defendant, rather than on the defendant's ability to pay. The capias could be issued only if the defendant failed to appear at the hearing or to comply with an alternative payment method previously established.

If a court determined at the hearing that the judgment imposed an undue hardship on the defendant, the court would have to determine whether the fine and costs should be satisfied through an alternative method. If the court determined that the judgment did not impose an undue hardship on the defendant, the court would have to order the defendant to comply with the judgment within 30 days of the determination.

The bill would modify the current provisions that a capias must be recalled. Under the bill, a capias would have to be recalled if, before the capias pro fine was executed, a defendant gave notice to a court that it was difficult to pay fines and costs and a hearing was set or if the defendant voluntarily appeared and made a good faith effort to resolve the capias.

Waiver of payment of fines and costs. SB 1637 would establish what types of information courts could consider as an undue hardship when determining whether to waive fines and costs for certain indigent defendants and children.

The bill would authorize courts to reconsider the waiving of fines or costs for defendants on community supervision. A court could order the defendant to pay all or part of the waived amount of the fine or costs only if the court determined that the defendant had sufficient resources or income to pay.

SB 1637 would authorize justice and municipal courts to allow defendants to appear before them by telephone or videoconference for certain hearings considering fines and costs if it would impose an undue hardship to appear in person for a hearing.

Other provisions. The bill would amend Transportation Code provisions allowing officials under certain circumstances to refuse to register a vehicle due to fines or fees related to traffic violations that were owed to cities. The bill would extend to cities provisions similar to those that apply to counties that make information about past due fines expire two years after the information was provided to the county or the Texas Department of Motor Vehicles. The information could not be used after that date to deny a vehicle registration. The bill would add a waiver as a way to resolve the charges, and justice and municipal court judges would be authorized to waive certain administrative fees that may be imposed by the cities in these cases.

The bill would repeal provisions dealing with court procedures to handle court costs and fines that were enacted by the 85th Legislature in HB 351

by Canalas, et al. and are similar to provisions also enacted by the 85th Legislature in SB 1913 by Zaffirini.

NOTES:

According to the Legislative Budget Board, the bill would have a negative, but indeterminate, fiscal impact because of anticipated decreases in revenue for an unknown number of defendants being unable to pay court costs or fees.