

BILL ANALYSIS

S.B. 1637
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Criminal Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

There are concerns that the various fines and costs imposed on defendants arrested for, charged with, or convicted of certain offenses may place an undue hardship on individuals lacking the necessary means to pay. S.B. 1637 seeks to address these concerns by, among other things, enabling certain defendants to request a hearing to determine whether a judgment imposes an undue hardship on the defendant and whether the applicable fine or costs may be satisfied through alternative means.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

S.B. 1637 amends the Code of Criminal Procedure to require an applicable court, in determining a defendant's ability to pay for any purpose in a criminal proceeding, to consider only the defendant's present ability to pay. The bill authorizes a judge or justice of a municipal or justice court to allow a defendant to appear by telephone or videoconference if the judge or justice determines that requiring the defendant to appear in person for a hearing relating to the reconsideration of a fine or costs or to certain *capias pro fine* matters with respect to failure to satisfy a rendered judgment would impose an undue hardship on the defendant. These provisions apply to a proceeding that commences before, on, or after the bill's effective date. The bill defines "cost" as any fee imposed on a defendant by a court, or the judge or justice of a municipal or justice court, at the time a judgment is entered, as applicable.

S.B. 1637 requires a court, on notification by a defendant that the defendant has difficulty paying a fine and costs in compliance with a judgment, to hold a hearing to determine whether the portion of the judgment relating to the fine or costs imposes an undue hardship on the defendant. The bill requires a judge or justice of a justice or municipal court, on such notification by a defendant, to hold a hearing to determine whether the judgment imposes such a hardship. The bill authorizes the defendant to notify the applicable court, judge, or justice by:

- voluntarily appearing and informing the court, judge, justice, or the clerk of the applicable court, in the manner established by the applicable court for that purpose;
- filing a motion with the court, judge, or justice;
- mailing a letter to the court, judge, or justice; or

- any other method established by the court, judge, or justice for the purpose of such notification.

S.B. 1637 requires the court, if the court determines at the hearing that the portion of the judgment regarding the fine and costs imposes an undue hardship on the defendant, and requires a judge or justice of a municipal or justice court, if the judge or justice determines at the hearing that the judgment imposes an undue hardship on the defendant, to consider whether the fine and costs should be required to be paid at a later date or in a specified portion at designated intervals, discharged by performing community service, waived in full or in part, or satisfied through any combination of those methods. The bill authorizes the court, judge, or justice to decline to hold a hearing if the court, judge, or justice previously held such a hearing with respect to the case and is able to determine without holding a hearing that the applicable judgment does not impose an undue hardship on the defendant or is able to determine without holding the hearing that the applicable judgment imposes an undue hardship on the defendant and the fine and costs should be satisfied through such applicable methods. The bill establishes that the applicable court, judge, or justice retains jurisdiction for the purpose of making a determination under these provisions. These provisions apply to a notification received by a court on or after the bill's effective date, regardless of whether the judgment of conviction was entered before, on, or after that date.

S.B. 1637, in provisions applicable to the waiver of payment of fines and costs for certain defendants and for certain children and applicable to a sentencing proceeding that commences before, on, or after the bill's effective date:

- authorizes an applicable court, in making a determination that alternative methods of discharging a fine would impose an undue hardship on the defendant, to consider, as applicable, the defendant's:
 - significant physical or mental impairment or disability;
 - pregnancy and childbirth;
 - substantial family commitments or responsibilities, including child or dependent care;
 - work responsibilities and hours;
 - transportation limitations;
 - homelessness or housing insecurity; and
 - any other factor the court determines relevant;
- establishes that the foregoing determination of undue hardship is in the court's discretion; and
- removes a determination by an applicable court that each alternative method of discharging costs imposed on a defendant would impose an undue hardship on the defendant as a condition on the authority of the court to waive payment of all or part of such costs.

The bill authorizes the court, with regard to a defendant placed on community supervision, including deferred adjudication community supervision, whose fine or costs are wholly or partly waived under these provisions, at any time during the defendant's period of community supervision and on the court's own motion or by motion of the attorney representing the state, to reconsider the waiver of the fine or costs. The bill authorizes the court to order such a defendant to pay all or part of the waived amount of the fine or costs after providing written notice and an opportunity for the defendant to present information relevant to the defendant's ability to pay and the court's determination that the defendant has sufficient resources or income to pay that amount.

S.B. 1637 authorizes a court, judge, or justice to allow a defendant to perform required community service to discharge fines or costs in the county in which the defendant resides. This requirement applies to a sentencing proceeding that commences before, on, or after the bill's effective date.

S.B. 1637 reenacts and amends Article 45.051(a-1), Code of Criminal Procedure, as amended by Chapters 227 (H.B. 350) and 777 (H.B. 1964), Acts of the 82nd Legislature, Regular Session, 2011, to conform to changes made by Chapter 227 and to authorize a judge to waive all or part of certain costs imposed on a defendant charged with one or more offenses as an alternative to requiring payment of such costs. These provisions apply to a sentencing proceeding that commences before, on, or after the bill's effective date.

S.B. 1637 amends Article 43.05(a-1) and Article 45.045(a-2), Code of Criminal Procedure, both as added by Chapter 1127 (S.B. 1913), Acts of the 85th Legislature, Regular Session, 2017, to revise the requirement that an applicable court hold a hearing before issuing a *capias pro fine* by specifying that the purpose of the requisite hearing is to determine whether the judgment imposes an undue hardship on the defendant and removing the specification that such a hearing is on the defendant's ability to satisfy the judgment.

S.B. 1637 amends the Code of Criminal Procedure to require the court, judge, or justice, on determining at that hearing that the judgment does not impose an undue hardship, to order the defendant to comply with the judgment not later than the 30th day after the date the determination is made and, with respect to the foregoing applicably amended and revised provisions, makes the defendant's failure to comply with that requirement one of the conditions under which the applicable court may issue the *capias pro fine*. The bill requires the applicable court, judge, or justice, on determining at such a hearing that the judgment imposes an undue hardship, to determine whether the fine and costs should be required to be paid at a later date or in a specified portion at designated intervals, discharged by performing community service, waived in full or in part, or satisfied through any combination of these methods. The bill establishes that the applicable court, judge, or justice retains jurisdiction for the purpose of making that determination of undue hardship.

S.B. 1637 revises the conditions triggering the required recall of a *capias pro fine* before its execution by requiring such recall if a hearing is set to reconsider a fine or costs on notification by a defendant, using a method authorized by the bill, that the defendant has difficulty paying the applicable fine and costs or if the defendant voluntarily appears and makes a good faith effort to resolve the *capias pro fine*.

S.B. 1637 amends the Transportation Code, with respect to the provision establishing conditions under which a county assessor-collector or the Texas Department of Motor Vehicles may refuse to register a motor vehicle:

- to establish that information concerning an outstanding warrant from a municipality for failure to appear or pay a fine expires on the second anniversary of the date the information was provided;
- to prohibit that information from being used to refuse registration of a motor vehicle after that date;
- to prohibit subsequent information about other warrants for failure to pay a fine that are issued before the second anniversary of the date the initial information was provided from being used, either before or after the second anniversary of that date, to refuse registration of a motor vehicle unless the motor vehicle is no longer subject to refusal of registration;
- to authorize a judge or justice of a municipal or justice court who has jurisdiction over the underlying offense that is the subject of the warrant to waive an additional fee imposed by a municipality that contracts for the provision of information used in

determining whether to refuse to register a motor vehicle if the judge or justice makes a finding that the defendant is economically unable to pay the fee or that good cause exists for the waiver; and

- prohibits such a municipality from imposing an additional fee on the defendant if the municipality is notified that the court having jurisdiction over the underlying offense has waived the fine that is the subject of the warrant due to the defendant's indigency.

S.B. 1637 repeals the following Code of Criminal Procedure provisions as added by Chapter 977 (H.B. 351), Acts of the 85th Legislature, Regular Session, 2017:

- Article 42.15(a-1)
- Article 43.05(a-1)
- Article 45.041(a-1)
- Article 45.045(a-2)

EFFECTIVE DATE

September 1, 2019.