

SUBJECT: Allowing charitable contribution in lieu of community service

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 6 ayes — Hinojosa, Dunnam, Green, Kitchen, Martinez Fischer, Shields  
0 nays  
1 present, not voting — Garcia  
2 absent — Keel, Talton

WITNESSES: For — Eddie Gonzalez, Nueces County Community Supervision and Corrections Department; Judge Robert Vargas, Nueces County; *Registered but did not testify*: Juan Villarreal  
  
Against — None  
  
On — Caroline Rickaway, Brazoria County Community Supervision and Corrections Department and Texas Probation Association

BACKGROUND: Under Code of Criminal Procedure (CCP), art. 42.12, sec. 16, a judge must require as a condition of community supervision that the defendant work a specific number of hours performing community service for an organization approved by the judge and designated by the community supervision and corrections department. An exception is made if the defendant is physically or mentally incapable of participating in the project, if participation in the project would be a hardship on the defendant or his or her dependents, if the defendant is sentenced to a substance-abuse punishment facility, or if other good cause is shown. The statute specifies the maximum number of hours and amount of any fine. The defendant is not considered a state employee while serving required community service hours. In some cases, the judge can order the defendant to perform community service that primarily serves the person or group that was the defendant's target.

**DIGEST:** CSHB 1541 would allow a judge to permit a defendant to substitute a one-time contribution to a nonprofit or governmental program for community service that otherwise would have been required. The program would have to include as participants or recipients people younger than 17 and regularly provide athletic, civic, cultural, or educational activity. The defendant would be entitled to one hour of credit against required community service for every amount contributed that equaled the federal minimum wage, up to a maximum of 20 hours.

The community supervision and corrections department would have to collect the contribution and forward it to the program as directed by the judge. If a judge allowed a defendant to make this payment, the judge would have to admonish the defendant that the payment would not qualify as a charitable contribution for the purposes of federal tax law.

This bill would take effect September 1, 2001, and would apply to defendants placed on community supervision before, on, or after that date.

**SUPPORTERS SAY:** CSHB 1541 would benefit Texas youth by allowing probationers to help pay for programs that would help them become productive citizens. Probationers in some counties already contribute to programs such as Boys and Girls Clubs, Campfire Boys and Girls, and programs to buy eyeglasses, clothing, school supplies, toys, and even haircuts for needy children. These programs would benefit from additional funds that would not have been available to them without probationers' contributions.

The bill also would benefit probationers by allowing them to contribute to worthwhile programs they might not otherwise be able to assist. Because of their location or the nature of their crime, some probationers might be unable to perform community service for the children's organizations to which they could make a monetary contribution. Also, the bill would help probationers complete their required community service. Some probationers find it difficult to fulfill their community service requirements because of problems with accessibility, health, or child care. Nueces County has noted that probationers allowed to give a contribution were more successful than others in completing their probation.

CSHB 1541 would formalize a practice already being used in many parts of the state and would allow judges across the state to provide an alternative method of restorative justice. The bill would not create a new burden on community supervision and corrections departments because these entities already have methods set up to collect, distribute, and account for fees.

CSHB 1541 would not allow probationers to get out of community service. On average, probationers are sentenced to 80 to 120 hours of community service. Those who chose to donate money in lieu of performing some of their hours still would have to do 60 to 100 hours of work. Also, the decision to allow a probationer to substitute a donation for hours would be left to the judge's discretion. The bill would not force probationers to donate money to charity but would allow them to substitute a contribution for community service hours.

**OPPONENTS  
SAY:**

CSHB 1541 unfairly would allow wealthier probationers to avoid community service while still requiring poorer ones to perform this service. Justice should not be based on one's ability to pay. Probationers 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 probationers who perform it. Paying a fine is not rehabilitative, but performing community service is. If the Legislature intends to help programs that benefit children, it would make better sense to require probationers to help those programs through community service.

**OTHER  
OPPONENTS  
SAY:**

CSHB 1541 should specify that defendants could not substitute contributions for more than half of their required community service hours. A probationer convicted of a Class B misdemeanor could be sentenced to as few as 24 hours, meaning that he or she would need to perform only four hours' work after donating the maximum amount to an approved organization.

This bill would create an unfunded mandate for community supervision and corrections departments. The departments would have to collect and disburse new monies. Many charities and governmental organizations would be eligible under this bill, requiring departments to set up additional bookkeeping procedures to track where the money went. The bill should

provide a method of funding to pay for this additional administrative cost to counties and should limit eligible charities and organizations to a list defined by the Legislature.

NOTES:

HB 1541 as filed would have allowed a judge to allow a defendant to substitute for community service that otherwise would have been required a one-time contribution of no more than \$20 to a nonprofit or governmental program. Each dollar contributed would have entitled the defendant to one hour's credit against required community service. The defendant could not have received credit for more than one-half of the required hours of community service.