

SUBJECT: Revising procedural requirements for justice and municipal courts

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 6 ayes — Keel, Riddle, Ellis, Hodge, Pena, Talton

0 nays

3 absent — Denny, Dunnam, P. Moreno

WITNESSES: For — Robert J. Barfield, Texas Municipal Court Association

Against — None

On — Shannon Edmonds, Texas District and County Attorneys Association;  
Judge Patricia Ott, Justice of the Peace and Constables Association of Texas;  
Ryan Kellus Turner, Texas Municipal Courts Education Center

BACKGROUND: Under Code of Criminal Procedure, art. 4.11, justices of the peace have original jurisdiction in criminal cases that are punishable by fine only or punishable by a fine and a sanction not consisting of confinement or imprisonment.

Under art. 4.14, a municipal court has exclusive original jurisdiction within the territorial limits of the municipality in all criminal cases that arise under ordinances of the municipality and are punishable by a fine not to exceed \$2,000 for cases involving fire safety, zoning, or public health and sanitation, or \$500 in all other cases. The municipal court shares jurisdiction with the justice of the peace court in some situations.

**Attorney pro tem.** Art. 2.07(d) defines “attorney for the state” as a county, district, or criminal district attorney. When an attorney for the state is absent from the county or district or in any instance where there is no attorney for the state, the judge of the court may appoint any competent attorney to perform the duties of the office during the absence of the state’s attorney.

**Arrest for out-of-county offense.** Under art. 15.18, when a person is arrested under a warrant issued in a county other than the county where the person was arrested, the person must be taken before a county magistrate where the arrest took place. The magistrate must:

- take bail, if allowed by law, and immediately transmit the bond taken to the court having jurisdiction of the offense; or
- in the case of a person arrested under warrant for an offense punishable by fine only, accept a written plea of guilty or nolo contendere, set a fine, determine costs, accept payment of the fine and costs, give credit for time served, determine indigency, or, on satisfaction of the judgment, discharge the defendant.

Before the 11th business day after the date a magistrate accepted a written plea of guilty or nolo contendere in the case of a person arrested under warrant for an offense punishable by fine only, the magistrate must transmit to the court having jurisdiction of the offense the written plea, any orders entered in the case, and the fine or costs collected in the case.

**Commitment.** Under art. 45.046, when a judgment and sentence have been entered against a defendant and the defendant defaults in the discharge of the judgment, the judge may order the defendant confined in jail until discharged by law if the judge determines that:

- the defendant intentionally failed to make a good-faith effort to discharge the judgment; or
- the defendant is not indigent.

Art. 43.091 authorizes a municipal or justice court to waive payment of a fine or cost imposed on a defendant who defaults in payment if the court finds that the defendant is indigent and that the defendant can satisfy the judgment by confinement or by working in the county jail industries program, workhouse, county farm, or on public improvements and maintenance projects.

In 1971, the U.S. Supreme Court ruled in *Tate v. Short*, 401 U.S. 395, that it is a denial of equal protection to limit punishment to payment of a fine for those who are able to pay it but to convert the fine to imprisonment for those who cannot pay it.

**DIGEST:** CSHB 3241 would amend several provisions of the Code of Criminal Procedure related to prosecution and adjudication of offenses in justice and municipal courts.

**Attorney pro tem.** The bill would include a city attorney in the definition of attorney for the state.

**Arrest for out-of-county offense.** Before entering a final judgment, accepting a plea, setting a fine, giving credit for time served, or otherwise disposing of the case, the magistrate of the county where the defendant was arrested first would have to obtain approval from the court that had issued the warrant. This requirement would not apply to defendants arrested on *capias pro fine* warrants, issued when the defendant is not in custody at the time of judgment or issued because the defendant failed to satisfy a judgment.

**Commitment.** A justice of the peace or municipal judge could confine a defendant if the defendant defaulted in paying a fine and the judge determined that:

- the defendant was not indigent and had failed to make a good-faith effort to discharge the fine and costs; or
- the defendant was indigent and had failed to make a good-faith effort to pay the fine and costs or to serve community service, in lieu of a fine, that a judge required.

CSHB 3241 would allow a municipal or justice court to waive payment of a fine or cost imposed on a defendant who defaulted in payment if the court determined that the defendant was indigent and that community service would impose an undue hardship on the defendant. The court's decision would be final. The bill would repeal Code of Criminal Procedure, art. 43.091.

The bill would take effect September 1, 2003.

**SUPPORTERS SAY:** CSHB 3241 would provide needed clarifications to reduce confusion and help ensure consistency in the application of criminal law by judges.

Some have challenged the authority of city attorneys and city attorneys pro-tem to prosecute in municipal courts on the state's behalf. These challenges

have resulted in time-consuming disorder, objections, and appeals. By defining attorney for the state to include a city attorney, the bill would help eliminate confusion surrounding the authority of city attorneys to prosecute in municipal courts.

The bill properly would require the warrant-issuing judge or court to give approval before the judge of another county could render a judgment or dispose of a case. Disparities in the treatment of defendants between courts of differing counties create an incentive for an offender from one county to leave that county and arrange his or her own arrest in a county that is known to order lesser fines or other penalties. CSHB 3241 would ensure that the county where a defendant committed an offense would determine the judgment against the defendant, thus removing a chance that an offender could benefit from a lesser judgment by leaving the county where the offense occurred. The change also would bolster a judge's confidence in approving a plea agreement and would diminish the chance that an offender could be re-arrested inadvertently once the offender returned to the county where he or she had committed an offense.

The bill also would conform state law to the U.S. Constitution, preventing judges from issuing easily unconstitutional orders. In particular, it would curtail mistakes by municipal judges and justices of the peace who otherwise might apply an unconstitutional state law that authorizes a judge to confine an indigent defendant for committing an offense, in lieu of collecting an ordered fine.

CSHB 3241 properly would end a judge's power to confine a nonindigent defendant for defaulting on the discharge of a judgment, whether or not the defendant makes a good-faith effort to satisfy the judgment. A defendant should be subject to confinement for defaulting on a judgment only if the defendant fails to make a good-faith effort to discharge the fine and costs. The bill would apply that standard.

**OPPONENTS  
SAY:**

By requiring the warrant-issuing court to approve a final judgment or make another disposition of a case against a defendant who appeared in the court of another county, CSHB 3241 would create inconvenience for courts and would delay defendants in concluding their cases. Judges have busy dockets that normally require almost all of their time and attention. Judges do not need the

added responsibility of considering and approving the decisions of judges in other counties. Also, judges sometimes leave town on vacation or undertake work assignments that make them unavailable. Delay caused by the additional communication the bill would require between judges or courts in different counties could result in a unnecessarily longer period of confinement for a defendant.

**NOTES:**

The committee substitute would define attorney for the state to include a city attorney, while the original bill used the term “municipal prosecutor.” Also, the committee substitute added the stipulation that a justice or municipal court’s decision would be final in regard to confinement of a defendant for defaulting on a judgment.