

SUBJECT: Requiring alternative payment methods for certain misdemeanor fines

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 9 ayes — Gallego, Hartnett, Aliseda, Burkett, Carter, Christian, Y. Davis, Rodriguez, Zedler
0 nays

WITNESSES: For — Chris Cunico, Texas Criminal Justice Coalition; (*Registered, but did not testify*: Jodyann Dawson, Texans Care for Children; David Gonzalez, Texas Criminal Defense Lawyers Association; Andrew Rivas, Texas Catholic Conference)
Against — None
On — Ted Wood, Office of Court Administration

BACKGROUND: When a defendant is convicted and fined, a court may direct a defendant to pay the entire fine and costs at sentencing or at a later date or to pay a portion of the fine and costs at designated intervals. A court also may require a defendant who is unable to pay a fine or costs to discharge all or part of the fine or costs by performing community service.

A judge may send a nonindigent defendant to jail if the defendant has failed to make a good-faith effort to discharge the fine and costs and may send an indigent defendant to jail if the defendant has failed to make a good-faith effort to discharge the fine and costs through community service and could have done so without undue hardship.

DIGEST: CSHB 27 would require courts to allow a defendant in a misdemeanor case who was deemed incapable of paying a fine or costs to make the payment in specified portions at designated intervals or to perform community service as payment.

The bill also would make a conforming change to the Code of Criminal Procedure provision allowing a judge to send an indigent defendant to jail if the defendant has failed to make a good-faith effort to discharge the fine and costs through community service.

The bill would take effect September 1, 2011, and would apply to an offense committed on or after that date.

**SUPPORTERS
SAY:**

Current law allows, but does not require, a judge to create an installment payment plan for fines and costs and allows, but does not require, a judge to mandate community service when a defendant is unable to pay a fine or costs. CSHB 27 would require judges to offer installment plans or community service in lieu of payment when the defendant was unable to pay in misdemeanor cases and cases in municipal courts or justice of the peace courts.

Payment of court costs and fines can easily overburden a low-income individual. Providing options such as making payments in selected installments would increase the likelihood of the defendant paying off the fine. The option to pay in installments also would make it easier for a defendant to provide for a family and make restitution to a victim. Performing community service would benefit the community when the individual is unable to pay immediately or even over time. The bill would encourage defendants to participate in the judicial process, since an inability to pay fines and costs can deter a defendant from appearing in court. The bill also would prevent defendants from being thrown in jail for nonpayment.

The bill would not have a negative fiscal impact because judges are already permitted, but not required, to offer similar options. Most courts already offer the two options that this bill would require. Community service would only be an available alternative to defendants who are unable to pay, meaning no loss of revenue to the state.

**OPPONENTS
SAY:**

Allowing defendants to perform community service instead of paying fines and costs would cause the state to lose revenue. Expanding the availability of community service as a payment option would remove an incentive for defendants to find a way to pay fines and costs.

The bill would allow special treatment for defendants who are temporarily unable to pay but have the means to pay fines and costs. Temporary cash flow problems should not make defendants eligible for an installment plan. Requiring these defendants to pay the entire fine and costs at a later date would be preferable.

NOTES:

The committee substitute differs from the original by referring to defendants who are unable to pay fines and costs rather than to indigent defendants. The committee substitute also added language allowing the performance of community service for certain defendants.