

- SUBJECT:** Making judicial determinations of indigence at initial sentencing
- COMMITTEE:** Criminal Jurisprudence — favorable, without amendment
- VOTE:** 7 ayes — Moody, Hunter, Canales, Gervin-Hawkins, Hefner, Lang, Wilson
0 nays
- WITNESSES:** For — Margaret "Peggy" Cook and Chas Moore, Austin Justice Coalition; Ted Wood, Harris County Public Defender's Office; Mary Mergler, Texas Appleseed; Emily Gerrick, Texas Fair Defense Project; Haley Holik, Texas Public Policy Foundation; Chris Howe; (*Registered, but did not testify*: Nicholas Hudson, American Civil Liberties Union of Texas; Goodman Holiday, Austin Justice Coalition; Charles Reed, Dallas County Commissioners Court; Jesse Ozuna, City of Houston Mayor's Office; Kathryn Freeman, Texas Baptist Christian Life Commission; David Gonzalez, Texas Criminal Defense Lawyers Association; Kathy Mitchell, Texas Criminal Justice Coalition; Deanna L. Kuykendall, Texas Municipal Courts Association; Rachel Malone)
Against — None
- BACKGROUND:** Code of Criminal Procedure, art. 43.09(f) provides that a judge may assign community service to a criminal defendant who is unable to pay the court fines or costs. For a defendant who defaults on fines or costs, art. 43.091 allows a judge to waive all or part of the fines or costs assessed if the defendant is indigent or under the age of 17 and alternative methods would yield undue hardship to the defendant.
- DIGEST:** HB 351 would allow judges to assess community service in lieu of fines or court costs at initial sentencing or any subsequent time regardless of whether the defendant had defaulted on assessed fees or costs.
A judge could waive all or part of the fines or costs assessed without first waiting for the defendant to default.

The bill would take effect September 1, 2017.

**SUPPORTERS
SAY:**

HB 351 would clarify the intended purpose of current law, which is that judges should consider criminal defendants' ability to pay fines and court costs before sentencing them. Currently, in some circumstances an indigent criminal defendant must default before the court rules that the individual is truly unable to pay. This bill would help put the justice system's time and resources to more efficient use by determining indigence at the initial sentencing, rather than waiting for the defendant to default, possibly get arrested, and come back before the judge again.

Local governments would not lose revenue as a result of this change and could save money by avoiding the costs of housing and feeding in jail those people who could least afford a disruption in their ability to earn.

This bill could reduce indigent defendants' apprehension about dealing with the court system by addressing their inability to pay fines or court costs earlier in the process. Many indigent defendants are afraid to go to court, either because of work and family obligations or because they do not think they will be able to afford whatever they are asked to pay. This can result in further criminal sanctions that can be more severe than the initial charge, leading to even more involvement in the criminal justice system.

Concerns about a negative impact on the justice system are misplaced. The bill simply would clarify that indigent defendants are protected under state law from confinement solely for their inability to pay a fine without first being provided a realistic alternative.

**OPPONENTS
SAY:**

HB 351 is unnecessary because under current law when indigent defendants are unable to pay a fine, in most cases they can explain their situation to a court and the court will work with them.

The criminal justice system relies primarily on fines to deter low-level offenses. Even incremental changes could contribute to a culture in which

there is decreased incentive to comply with the law. Localities also could lose money used to help cover the costs associated with some convictions.