

SUBJECT: Courts' handling of fines and costs for defendants with inability to pay

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 6 ayes — Moody, Canales, Gervin-Hawkins, Hefner, Lang, Wilson

0 nays

1 absent — Hunter

SENATE VOTE: On final passage, May 3 — 25-6 (Bettencourt, Creighton, Huffman, Schwertner, L. Taylor, V. Taylor)

WITNESSES: No public hearing

DIGEST: SB 1913 would revise provisions dealing with courts' procedures to assess fines and costs for criminal defendants who are indigent or unable to pay the amounts. The bill would make other changes, including revising requirements for notifying defendants about those procedures and assessments and expanding courts' options for imposing community service.

The bill would generally take effect September 1, 2017, and would apply only to offenses committed on or after that date. Several provisions dealing with sentencing proceedings would apply to proceedings that commenced before, on, or after the bill's effective date. The bill would take effect only if an appropriation for it was included in the general appropriations act.

**Imposing, waiving court fines, costs.** SB 1913 would allow courts, including justice and municipal courts, to impose fines and costs at the punishment stage of a case in which the defendant entered a plea in open court only if the court determined that the defendant had sufficient resources or income to pay the fines and costs. To make the determination, courts would have to consider the defendant's financial history and other relevant information.

The bill would revise provisions dealing with when and how courts, including justice and municipal courts, may waive payment of fines and costs. Defendants no longer would have to be in default for the fines and costs to be waived. Currently, fines and costs may be waived if a defendant is indigent, and the bill would allow waivers for those with insufficient resources or income to pay fines or costs. Courts would be allowed to waive fines and costs if the waiver was in the interest of justice, instead of also having to make findings related to indigency, resources, and hardships.

**Capias pro fine.** Courts, including justice and municipal courts, would be prohibited from issuing a capias pro fine to bring a defendant to court for a defendant's failure to pay a judgment for fines and costs unless the court held a hearing on the defendant's ability to pay and certain conditions were met. The defendant would have to have failed to appear at the hearing or, based on evidence presented at the hearing, the court would have to make certain determinations about the defendant's good faith efforts to pay the fines and costs and his or her indigency. The court would have to recall a capias pro fine if the defendant voluntarily appeared and resolved the amount owed. These provisions would apply to capias pro fines issued on or after the bill's effective date.

**Arrest warrants, bonds in justice and municipal courts.** Justice and municipal courts would be prohibited from issuing arrest warrants for defendant's failure to appear in court, including failure to appear after a cite-and-summons, unless certain conditions were met. A warrant could be issued only if the defendant was given notice that included specific information outlined in SB 1913, including information about alternatives to the full payment of fines and costs. Defendants who got the notice would be able to request an alternative court date. An arrest warrant would have to be withdrawn if a defendant voluntarily appeared and made a good faith effort to resolve the a warrant.

The bill would revise provisions dealing with justice and municipal courts issuance of bonds, which currently authorize these courts to require

defendants to give bail to secure their appearance in court. Instead, courts would be authorized to give defendants personal bonds and could require bail bonds only under certain circumstances. These courts could require bail bonds, sureties, or other securities only if the defendant failed to appear as required and the court determined that defendant had sufficient resources or income to give a bail bond or that a surety or other security was necessary to secure a defendant's appearance in court.

Courts would have to reconsider the requirement for the bail bond if 48 hours after requiring the bond, the defendant had not given the bond. In these situations, the court would presume the defendant did not have sufficient resources or income for the bond and could require a personal bond. Defendants could be held in custody if they refused to give a personal bond or, except for the circumstances established by the bill, refused to give a bail bond. The bill would prohibit courts from assessing a personal bond fee when requiring a defendant to give a person bond.

These provisions would apply only to bonds executed on or after the bill's effective date.

**Notice about alternatives to full payment.** The bill would amend several provisions to require that defendants be given information about alternatives to the full payments of fines and costs, if an individual is unable to pay. SB 1913 would require information about such alternatives to be on citations that under some circumstances may be issued by peace officer issue in lieu of an arrest. The information about alternatives to full payments also would have to be sent to defendants with certain notices about the disposal of fine-only misdemeanors after a guilty or no contest plea made through the mail.

SB 1913 would expand what must be in a notice that entities collecting unpaid debts for counties and cities send to defendants to include a statement that if the person was unable to pay the amount that was acceptable to the court, the person should contact the court about alternatives to full payment.

**Community service options.** The bill would expand options for court-ordered community service. Courts could order community service through attending a work and job skills training program, preparatory classes for the high school equivalency exam, or similar activities. The bill also would allow community service to be done for religious organizations, neighborhood associations, or educational institutions. Similar provisions would be applied to community service ordered by justice and municipal courts for certain juvenile defendants to satisfy fines and costs.

SB 1913 would revise provisions granting immunity from liability to certain entities concerning labor performed by inmates. The immunity would be extended to entities that accepted defendants for community service and would apply to the performance of community service.

**Other provisions.** SB 1913 contains several other provisions, including ones about discharging fines with jail time and work and Transportation Code provisions dealing with registering vehicles and denying driver's licenses.

*Rates for discharging fines with jail, work.* The bill would raise the rates at which certain defendants are credited for jail time and labor at certain work programs to discharge fines and costs.

*Refusal to registering vehicles, denying driver's license.* The bill would amend Transportation Code provisions that allow counties and the Texas Department of Motor Vehicles (TxDMV) to refuse to register vehicles if the owner owes the county past due fines or fees or has failed to appear in a court for a criminal proceeding. Information about past due fines and fees related to a crime would expire two years after the information was provided to the county or TxDMV. The information could not be used after that date to deny a vehicle registration. Information about other fines or fees that became past due during that same two-year period could not be used to refuse to register a vehicle before or after the two years. The bill would add a waiver as a way to resolve the charges.

Justice and municipal court judges would be authorized to waive a currently authorized administrative fee that may be imposed by a county in these cases.

SB 1913 would amend several Transportation Code provisions about the denial of the renewal of a driver's license by the TxDMV based on a report from a city or county that a person failed to appear in a court or failed to pay court fines and costs. These include provisions relating to when TxDMV may not continue to deny a license.

The bill would revise the conditions under which persons who fail to appear or who fail to pay court fines and costs must pay a \$30 administrative fee to TxDMV. In the case of those who fail to pay court fines or costs, persons determined by a court to be indigent would not have to pay the fee, and the bill would establish conditions under which a person would be presumed to be indigent. The bill would expand the conditions under which persons who fail to appear in a court would not be required to pay the fee to the department.

**SUPPORTERS  
SAY:**

SB 1913 would revise the way courts may handle low-income defendants who cannot pay court costs and fines so that they could be held accountable in a fair way that would not further a cycle of debt and involvement with the criminal justice system. Many courts in Texas already implement provisions of the bill, but SB 1913 would export these best practices statewide.

Currently, when low-income Texans do not have the ability to pay court fines and costs assessed for traffic tickets and other low-level, fine-only offense, they can become trapped in a cycle of debt, arrest warrants, jail time, license suspensions, and more. This can result in job losses and harm to family and educational obligations. While current law has provisions for handling defendants who are indigent, the timing of those provisions, lack of knowledge about the criminal justice system, and apprehension about dealing with the court system can result in the fines and costs being assessed and then not being paid. SB 1913 would address these issues by giving courts more options for dealing with these

defendants and by providing defendants information about alternative ways to pay their debts and resolve their cases. The changes in SB 1913 would increase compliance with the law, which is intended to consider a criminal defendant's ability to pay fines and costs. This could increase payments of fines and would reserve criminal justice resources for other cases.

The bill would make several changes so that a person's ability to pay court costs and fines were considered up front and throughout the criminal justice process. Judges would be required to determine that a person had the resources to pay court fines and costs before imposing them. This would help put the justice system's time and resources to more efficient use by determining indigence early in the process, rather than waiting for the defendant to default on something he or she never had the ability to pay, possibly leading to arrest and triggering other consequences. The bill only would require that a judge inquire about resources, not that a proceeding be held.

Courts would receive additional tools to satisfy costs and fines, including more options when waiving fines and costs. However, judges would retain their discretion in making such determinations. The bill would expand community service options as a way for defendants to take care of their responsibilities. The bill would require standard language in notices from courts so that defendants knew there were non-monetary options to satisfy fines and costs.

SB 1913 would encourage defendants to come to court to clear up traffic tickets and other obligations by prohibiting arrest warrants for failure to appear unless certain conditions were met and requiring arrest warrants to be withdrawn upon voluntary appearance and a good faith effort to answer to the court. The bill also would require courts to have a hearing before issuing *capias pro fines* so that defendants had a chance to explain their situation and could receive alternatives to paying fines and costs. Other changes would encourage justice and municipal courts to require personal bonds of defendants, rather than bail bonds, so that defendants are not kept in jail because they could not pay fees and costs.

Other provisions of the bill would focus on helping defendants keep driving legally even if they could not pay court fines and costs, allowing them to maintain work, school, and family obligations.

OPPONENTS  
SAY:

Under current law, in most cases, indigent defendants can explain to a court that they are unable to pay fines, and the court normally will work with them and may order community service. Even incremental changes to this system could contribute to a culture in which there was decreased incentive to comply with the law.

OTHER  
OPPONENTS  
SAY:

SB 1913 could impose burdens on some courts. For example, the bill's requirement for courts to make an up-front determination that a defendant had sufficient resources to pay fines and costs could result in courts having to hold proceedings in all cases to make the determinations.

The bill's allowance for courts to waive fines and fees in the interest of justice could give judges too much discretion in these cases. It would be better to outline or define situations that would allow such a waiver.

NOTES:

The Legislative Budget Board's fiscal note estimates that bill would have an indeterminate cost to the state.