

## BILL ANALYSIS

Senate Research Center

H.B. 312  
By: Turner (Whitmire)  
Criminal Justice  
5/5/2007  
Engrossed

### AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, half of probationers in Texas are revoked to prison based on a technical violation which is a violation of conditions of probation and is not considered a new criminal offense. Of these probationers, over 69 percent are revoked to prison for failure to pay probation fines, or, in other words, are sentenced to prison for being poor. The 12,440 probationers revoked to prison in 2006 on technical violations are estimated to cost the state over \$1,058,394 for the next two years. These revocations constitute an exorbitant cost to the state and further displace essential bed space for offenders with more specialized needs.

Recent court decisions provide added scrutiny to the current system. Presently in Texas, an order revoking probation must be supported by a preponderance of the evidence that credible evidence would create a reasonable belief that the defendant has violated a condition of his or her probation. This bill conforms the statute to the requirements of the Due Process Clause as interpreted by the United States Supreme Court in *Bearden v. Georgia*. In this opinion, the Supreme Court stated that "intentional" means that the nonpayment must reflect an unwillingness of the probationer to make efforts to pay, not inability. More recently, the Texas Court of Criminal Appeals has noted that Texas law "may be constitutionally questionable" in light of *Bearden v. Georgia*.

H.B. 312 allows consistency with current court opinions by providing that during a community supervision revocation hearing, the state must prove by a preponderance of the evidence that the defendant was able to pay but did not pay as ordered by the judge. The bill ensures that a defendant's inability to pay court costs due to economic constraints do not result in the costly and extraordinary sanction of prison.

### RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 21(c), Article 42.12, Code of Criminal Procedure, as follows:

(c) Requires the state, in a community supervision revocation hearing at which it is alleged only that the defendant failed to pay compensation paid to appointed counsel, community supervision fees, or court costs, but not restitution or reparations, to prove by a preponderance of evidence that the defendant was able to pay and did not pay as ordered by the judge. Deletes existing text providing that the failure by the defendant to pay certain fees is an affirmative defense to revocation, which the defendant must prove by a preponderance of evidence. Authorizes the court to order a community supervision and corrections department to obtain information pertaining to the factors listed under Article 42.037(h) (relating to factors to be considered by the court or parole panel in determining whether to revoke community supervision, parole, or mandatory supervision) of this code and include that information in the report required under Section 9(a) (relating to certain information required in a report prepared by a supervision officer for a judge in a misdemeanor case) of this article (Community Supervision) or a separate report, as the court directs.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: September 1, 2007.