

## **BILL ANALYSIS**

C.S.H.B. 312  
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Criminal Jurisprudence  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

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% are revoked to prison for failure to pay probation fines, or, in other words, are sentenced to prison for being poor. In 2006, the 12,440 probationers revoked to prison on technical violations are estimated to cost the state over \$1,058,394 for the next two years. These revocations reveal 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. C.S.H.B. 312 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 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*.

C.S.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 will ensure that a probationers inability to pay court costs due to economic constraints do not result in the costly and extraordinary sanction of prison.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

Committee Substitute to House Bill 312 amends Section 21(c), Article 42.12, Code of Criminal Procedure, to provide that in a community supervision revocation hearing where it is alleged that a defendant violated the conditions of community supervision for failure to pay compensation paid to appointed counsel, community supervision fees or court costs, the state must prove by a preponderance of the evidence that the defendant was able to pay and did not pay as ordered by the judge.

The change in law made by this Act applies only to a community supervision revocation hearing held on or after the effective date of this Act.

### **EFFECTIVE DATE**

September 1, 2007.

### **COMPARISON OF ORIGINAL TO SUBSTITUTE**

The substitute removes restitution or reparations from the list of fees or costs in which it is alleged that a defendant violated the conditions of community supervision for failure to pay. The

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substitute also provides that the state must prove by a preponderance of the evidence that the defendant was able to pay and did not pay as ordered by the judge; whereas, the original filed bill provided that the state must prove by a preponderance of the evidence that the defendant was able but unwilling to pay as ordered by the judge.