

By: Herrero

H.B. No. 3633

A BILL TO BE ENTITLED

AN ACT

relating to reimbursement for the costs of legal services provided to an indigent defendant in a criminal case.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article 26.05(g), Code of Criminal Procedure, is amended to read as follows:

(g) If the judge [~~court~~] determines that a defendant has financial resources that enable the defendant [~~him~~] to offset in part or in whole the costs of the legal services provided to the defendant in accordance with Article 1.051(c) or (d), including any expenses and costs, the judge [~~court~~] shall order the defendant to pay during the pendency of the charges or, if convicted, as court costs the amount that the judge [~~it~~] finds the defendant is able to pay. The defendant may not be ordered to pay an amount that exceeds:

(1) the actual costs, including any expenses and costs, paid by the county for the legal services provided by an appointed attorney; or

(2) if the defendant was represented by a public defender's office, the actual amount, including any expenses and costs, that would have otherwise been paid to an appointed attorney had the county not had a public defender's office.

SECTION 2. Sections 11(a) and (b), Article 42.12, Code of Criminal Procedure, are amended to read as follows:

(a) The judge of the court having jurisdiction of the case

1 shall determine the conditions of community supervision and may, at
2 any time during the period of community supervision, alter or
3 modify the conditions. The judge may impose any reasonable
4 condition that is designed to protect or restore the community,
5 protect or restore the victim, or punish, rehabilitate, or reform
6 the defendant. Conditions of community supervision may include,
7 but shall not be limited to, the conditions that the defendant
8 shall:

9 (1) Commit no offense against the laws of this State or
10 of any other State or of the United States;

11 (2) Avoid injurious or vicious habits;

12 (3) Avoid persons or places of disreputable or harmful
13 character, including any person, other than a family member of the
14 defendant, who is an active member of a criminal street gang;

15 (4) Report to the supervision officer as directed by
16 the judge or supervision officer and obey all rules and regulations
17 of the community supervision and corrections department;

18 (5) Permit the supervision officer to visit the
19 defendant at the defendant's home or elsewhere;

20 (6) Work faithfully at suitable employment as far as
21 possible;

22 (7) Remain within a specified place;

23 (8) Pay the defendant's fine, if one is assessed, and
24 all court costs whether a fine is assessed or not, in one or several
25 sums;

26 (9) Support the defendant's dependents;

27 (10) Participate, for a time specified by the judge,

1 in any community-based program, including a community-service work
2 program under Section 16 of this article;

3 (11) If the judge determines that the defendant has
4 financial resources that enable the defendant to offset in part or
5 in whole the costs of the legal services provided to the defendant
6 in accordance with Article 1.051(c) or (d), including any expenses
7 and costs, reimburse [~~Reimburse~~] the county in which the
8 prosecution was instituted for the costs of the legal services in an
9 amount that the judge finds the defendant is able to pay, except
10 that the defendant may not be ordered to pay an amount that exceeds:

11 (A) the actual costs, including any expenses and
12 costs, paid by the county for the legal services provided by an
13 appointed attorney; [~~compensation paid to appointed counsel for~~
14 ~~defending the defendant in the case, if counsel was appointed,~~] or

15 (B) if the defendant was represented by a public
16 defender's office, the actual [~~in an~~] amount, including any
17 expenses and costs, that would have otherwise been paid to an
18 appointed attorney had the county not had a public defender's
19 office;

20 (12) Remain under custodial supervision in a community
21 corrections facility, obey all rules and regulations of the
22 facility, and pay a percentage of the defendant's income to the
23 facility for room and board;

24 (13) Pay a percentage of the defendant's income to the
25 defendant's dependents for their support while under custodial
26 supervision in a community corrections facility;

27 (14) Submit to testing for alcohol or controlled

1 substances;

2 (15) Attend counseling sessions for substance abusers
3 or participate in substance abuse treatment services in a program
4 or facility approved or licensed by the Department of State Health
5 Services;

6 (16) With the consent of the victim of a misdemeanor
7 offense or of any offense under Title 7, Penal Code, participate in
8 victim-defendant mediation;

9 (17) Submit to electronic monitoring;

10 (18) Reimburse the compensation to victims of crime
11 fund for any amounts paid from that fund to or on behalf of a victim,
12 as defined by Article 56.32, of the defendant's offense or if no
13 reimbursement is required, make one payment to the compensation to
14 victims of crime fund in an amount not to exceed \$50 if the offense
15 is a misdemeanor or not to exceed \$100 if the offense is a felony;

16 (19) Reimburse a law enforcement agency for the
17 analysis, storage, or disposal of raw materials, controlled
18 substances, chemical precursors, drug paraphernalia, or other
19 materials seized in connection with the offense;

20 (20) Pay all or part of the reasonable and necessary
21 costs incurred by the victim for psychological counseling made
22 necessary by the offense or for counseling and education relating
23 to acquired immune deficiency syndrome or human immunodeficiency
24 virus made necessary by the offense;

25 (21) Make one payment in an amount not to exceed \$50 to
26 a crime stoppers organization as defined by Section 414.001,
27 Government Code, and as certified by the Texas Crime Stoppers

1 Council;

2 (22) Submit a DNA sample to the Department of Public
3 Safety under Subchapter G, Chapter 411, Government Code, for the
4 purpose of creating a DNA record of the defendant;

5 (23) In any manner required by the judge, provide
6 public notice of the offense for which the defendant was placed on
7 community supervision in the county in which the offense was
8 committed; and

9 (24) Reimburse the county in which the prosecution was
10 instituted for compensation paid to any interpreter in the case.

11 (b)(1) A judge may not order a defendant to make any
12 payments as a term or condition of community supervision, except
13 for:

14 (A) fines, court costs, and restitution to the
15 victim;

16 (B) reimbursement of a county as described by
17 Subsection (a)(11); [7] and

18 (C) other conditions related personally to the
19 rehabilitation of the defendant or otherwise expressly authorized
20 by law.

21 (2) A judge may not impose a condition of community
22 supervision requiring a defendant to reimburse a county for the
23 costs of legal services as described by Subsection (a)(11) if the
24 defendant has already satisfied that obligation under Article
25 26.05(g).

26 (3) The court shall consider the ability of the
27 defendant to make payments before [~~in~~] ordering the defendant to

1 make payments under this article.

2 SECTION 3. Section 21(c), Article 42.12, Code of Criminal
3 Procedure, is amended to read as follows:

4 (c) The court may not revoke the community supervision of a
5 defendant if, at the community supervision revocation hearing, the
6 court finds that the only evidence supporting the alleged violation
7 of a condition of community supervision is the uncorroborated
8 results of a polygraph examination. In a community supervision
9 revocation hearing at which it is alleged only that the defendant
10 violated the conditions of community supervision by failing to pay
11 ~~[compensation paid to appointed counsel]~~ community supervision
12 fees~~[7]~~ or court costs or by failing to pay the costs of legal
13 services as described by Section 11(a)(11), the state must prove by
14 a preponderance of the evidence that the defendant was able to pay
15 and did not pay as ordered by the judge. The court may order a
16 community supervision and corrections department to obtain
17 information pertaining to the factors listed under Article
18 42.037(h) and include that information in the report required under
19 Section 9(a) or a separate report, as the court directs.

20 SECTION 4. The change in law made by this Act applies only
21 to a criminal hearing or proceeding that commences on or after the
22 effective date of this Act, regardless of when the defendant
23 committed the underlying offense for which the defendant became
24 subject to the hearing or proceeding. A criminal hearing or
25 proceeding that commences before the effective date of this Act is
26 governed by the law in effect on the date the hearing or proceeding
27 commenced, and the former law is continued in effect for that

1 purpose.

2 SECTION 5. This Act takes effect September 1, 2015.