

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.