

BILL ANALYSIS

S.B. 1913
By: Zaffirini
Criminal Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Interested parties contend that low-income individuals throughout Texas are often unable to afford traffic tickets and other low-level, fine-only citations. The parties explain that, without an alternative means to discharge these fines, many of these defendants get caught in a cycle of debt and jail time. S.B. 1913 seeks to interrupt this cycle by providing more opportunities for these individuals to have fines and fees waived or discharged through community service.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

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

S.B. 1913 amends the Code of Criminal Procedure to include in the citation that a peace officer may issue to a person charged with a Class C misdemeanor other than a public intoxication offense as an alternative to taking the person before a magistrate information regarding the alternatives to the full payment of any fine or costs assessed against the person, if the person is convicted of the offense and is unable to pay that amount. The bill includes information regarding the alternatives to the full payment of any fine or costs assessed against the defendant, if the defendant is unable to pay that amount, in the contents of a court's required notice to a defendant who enters by mail or personal delivery a plea of "guilty" or "nolo contendere" and a waiver of jury trial for a charge involving a fine-only misdemeanor. The bill, for purposes of the court's notice to the defendant of any fine assessed in the case, requires such notice to include the amount of any costs assessed in the case.

S.B. 1913 authorizes a court, including a justice or municipal court, to impose a fine and costs at the punishment stage in a case in which the defendant entered a plea in open court only if the court makes a determination that the defendant has sufficient resources or income to pay all or part of the fine and costs. The bill requires the court, in making that determination, to consider the defendant's financial history and any other information relevant to the defendant's ability to pay. The bill prohibits a court, including a justice or municipal court, from issuing a capias pro fine for the defendant's failure to satisfy a judgment according to its terms unless the court holds a hearing on the defendant's ability to satisfy the judgment and the defendant fails to appear at the hearing or, based on evidence presented at the hearing, the court makes either of the following determinations: the defendant is not indigent and has failed to make a good faith effort to discharge the fine or costs or the defendant is indigent, has failed to make a good faith effort to discharge the fine or costs by performing community service, and could have discharged the

fine or costs by performing community service without experiencing any undue hardship. The bill requires the court to recall a capias pro fine if before the capias pro fine is executed the defendant voluntarily appears to resolve the amount owed.

S.B. 1913 raises the rate at which the length of a defendant's confinement in a county jail or manual labor in specified county programs and facilities is credited for the purposes of discharging a fine and costs that the defendant is unable to pay from \$50 for each day of confinement or day of such labor, as applicable, to \$100 for each such day. The bill raises the rate for calculating the time that a defendant who is placed in jail by a justice or municipal court for failure to pay a fine and costs must remain in jail to satisfy the fine and costs from \$50 for each period between eight and 24 hours, as specified by the convicting court, to \$100 for each such period. The bill raises the rate at which a defendant's performance of community service ordered by a justice or municipal court is considered to have discharged the defendant's fines or costs from \$50 for each eight hours of community service to \$100 for each eight hours of community service.

S.B. 1913 includes among the information a court, including a justice or municipal court, must specify in an order requiring the performance of community service the date by which the defendant must submit to the court documentation verifying the defendant's completion of the community service. The bill includes attending a work and job skills training program, preparatory class for the high school equivalency examination, or similar activity as an alternative method by which a court, including a justice or municipal court, may order a defendant to perform community service and includes a religious organization, a neighborhood association or group, or an educational institution among the authorized entities for which community service may be performed. The bill replaces the provision specifying that a nonprofit organization that provides services to the general public that enhance social welfare and the general well-being of the community is an authorized entity for which community service may be performed with a provision specifying that a nonprofit organization that provides such services or another organization that provides such services is determined by the applicable court. The bill specifies that the supervision of a defendant's community service that an entity receiving the service must agree to provide is either on-site or remote supervision. The bill revises the provision granting immunity from liability for damages arising from an act or failure to act in connection with manual labor performed by an inmate by including damages arising from an act or failure to act in connection with community service performed by a defendant and by granting such immunity to an entity that accepts such a defendant to perform community service.

S.B. 1913 revises provisions relating to a waiver of payment of fines and costs for certain defendants by authorizing a court, including a municipal court or a justice court, to waive payment of all or part of a fine or costs imposed on the defendant by removing the specification that the defendant is a defendant who defaults in payment and by extending the application of the waiver to a defendant who does not have sufficient resources or income to pay all or part of the fine or costs. The bill includes the condition that the court determines that the waiver is in the interest of justice as an alternative to the condition that the court make one of the specified determinations as to the circumstances of the defendant.

S.B. 1913 prohibits a justice or municipal court judge from issuing an arrest warrant for a defendant's failure to appear, including failure to appear as required by a citation issued by a peace officer charging a person with a Class C misdemeanor other than a public intoxication offense, unless the justice or judge provides a notice containing certain specified information to the defendant by telephone or regular mail and the defendant fails to appear before the justice or judge. The bill authorizes a defendant who receives such notice to request an alternative date or time to appear before the justice or judge if the defendant is unable to appear on the date and time included in the notice. The bill requires a justice or judge to recall an arrest warrant for the defendant's failure to appear if the defendant voluntarily appears and makes a good faith effort to resolve the arrest warrant before the warrant is executed.

S.B. 1913 replaces the authorization of a justice or judge to require a defendant to give bail to secure the defendant's appearance in accordance with state law with an authorization for such a justice or judge to require a defendant to give a personal bond to so secure the defendant's appearance but prohibits a court that requires a defendant to give such a personal bond from assessing a personal bond fee. The bill prohibits a justice or judge who requires a defendant to give a personal bond to secure the defendant's appearance from requiring the defendant to give a bail bond, either instead of or in addition to the personal bond, or requiring a surety or other security unless the defendant fails to appear in accordance with state law with respect to the applicable offense and the justice or judge determines that the defendant has sufficient resources or income to give a bail bond or that a surety or other security is necessary to secure the defendant's appearance. The bill requires the justice or judge to reconsider the requirement for a defendant to give the bail bond and presume that the defendant does not have sufficient resources or income to give the bond if before the expiration of a 48-hour period following the issuance of the applicable order a defendant for whom a bail bond or other surety or security requirement is not prohibited by the bill does not give a required bail bond. The bill authorizes the justice or judge in such an instance to require such a defendant to give a personal bond. The bill revises the authorization to hold a defendant who fails to give bail in custody by instead authorizing the defendant to be held in custody if the defendant refuses to give a personal bond or, except as provided by the bill, refuses or otherwise fails to give a bail bond. The bill replaces references to bail and bail bond with references to an appeal bond in provisions relating to an appeal from a justice or municipal court.

S.B. 1913 amends Article 45.0492, Code of Criminal Procedure, as added by Chapter 227 (H.B. 350), Acts of the 82nd Legislature, Regular Session, 2011, to revise provisions relating to community service in satisfaction of a fine or costs for certain juvenile defendants by making them consistent with provisions relating to community service ordered by a court, including a justice or municipal court, as amended by the bill. The bill revises provisions authorizing tutoring program attendance as an alternative method by which a court may order such a juvenile defendant to perform community service, in addition to the other alternatives provided by the bill that apply to community service in general. The bill repeals a provision relating to a tutoring program's supervision of and reporting on the work of a defendant.

S.B. 1913 amends Article 45.0492, Code of Criminal Procedure, as added by Chapter 777 (H.B. 1964), Acts of the 82nd Legislature, Regular Session, 2011, to revise provisions relating to community service in satisfaction of a fine or costs for certain juvenile defendants by making them consistent with provisions relating to community service ordered by a court, including a justice or municipal court, as amended by the bill.

S.B. 1913 includes among the required contents of a communication sent to an accused person under provisions relating to collection contracts regarding the amount of payment that is acceptable to the court under the court's standard policy for resolution of a case a statement that the person should contact the court regarding the alternatives to full payment that are available to resolve the case if the person is unable to pay the full amount of payment that is acceptable to the court.

S.B. 1913 amends the Transportation Code to establish that information of a past due fine, fee, or tax owed to a county by the owner of a motor vehicle that is provided to a county assessor-collector or to the Texas Department of Motor Vehicles (TxDMV) as grounds to refuse registration of the motor vehicle, if such information concerns the past due status of a fine or fee imposed for a criminal offense and owed to the county, expires on the second anniversary of the date the information was provided and may not be used to refuse registration after that date. The bill establishes that once information about a past due fine or fee is so provided subsequent information about other fines or fees that are imposed for a criminal offense and that become past due before the second anniversary of the date the initial information was provided may not be used, either before or after the second anniversary of that date, to refuse registration of the

motor vehicle unless the vehicle is no longer subject to refusal of registration because of notice received of the person's payment or other discharge of, or perfection of an appeal contesting, the past due fine, fee, or tax to which the initial information applied. The bill specifies that such a discharge includes a waiver and authorizes a municipal court judge or justice of the peace who has jurisdiction over the underlying offense to waive the county's additional fee if the judge or justice makes a finding that the defendant is economically unable to pay the fee or that good cause exists for the waiver. The bill prohibits the county from imposing the additional fee on the defendant if a county assessor-collector is notified that the court having jurisdiction over the underlying offense has waived the past due fine or fee due to the defendant's indigency.

S.B. 1913, for purposes of a provision establishing the conditions under which a county that has a contract to provide information affecting a person's eligibility for registration of a motor vehicle to TxDMV may impose an additional fee under certain circumstances, removes the provision restricting the use of the fee to reimbursement to TxDMV or the county for its expenses for providing services under the contract.

S.B. 1913 specifies that the requirement for a political subdivision to immediately notify TxDMV that there is no cause to continue to deny renewal of a person's driver's license based on the person's previous failure to appear or failure to pay or satisfy a judgment ordering the payment of a fine and cost on the person's payment of the fee and the dismissal of the charge for which the warrant of arrest was issued or judgment arose does not apply to a dismissal with prejudice by the appropriate prosecuting attorney for lack of evidence. The bill includes as a circumstance under which TxDMV is prohibited from continuing to deny the renewal of a person's driver's license receipt of notice that the charge on which the person failed to appear was dismissed with prejudice by the appropriate prosecuting attorney for lack of evidence.

S.B. 1913 expands the exceptions to the requirement that a person who fails to appear for a complaint or citation pay an administrative fee of \$30 for each such complaint or citation reported to TxDMV by a political subdivision as grounds to deny renewal of the person's driver's license to include the following circumstances: the charges on which the person failed to appear were dismissed with prejudice by the appropriate prosecuting attorney for lack of evidence, the failure to appear report was sent to TxDMV in error, or the case regarding the complaint or citation is closed and the failure to appear report has been destroyed in accordance with the applicable political subdivision's records retention policy. The bill specifies that the requirement that a person who is required to pay such an administrative fee do so on dismissal of the underlying offense excludes a dismissal with prejudice by the appropriate prosecuting attorney for lack of evidence. The bill prohibits a person from being required to pay such an administrative fee if the court having jurisdiction over the underlying offense makes a finding that the person is indigent and sets out the criteria under which a person is presumed to be indigent for those purposes.

S.B. 1913 provides for the applicability of its changes to specified Code of Criminal Procedure provisions to a sentencing proceeding that commences before, on, or after the bill's effective date and establishes that the bill takes effect only if a specific appropriation for the implementation of the bill is provided in a general appropriations act of the 85th Legislature.

S.B. 1913 repeals Article 45.0492(e), Code of Criminal Procedure, as added by Chapter 227 (H.B. 350), Acts of the 82nd Legislature, Regular Session, 2011.

EFFECTIVE DATE

September 1, 2017.