

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION

May 27, 2017

TO: Honorable Dan Patrick, Lieutenant Governor, Senate
Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: SB1913 by Zaffirini (Relating to the administrative, civil, and criminal consequences, including fines, fees, and costs, imposed on persons arrested for, charged with, or convicted of certain criminal offenses.), **Conference Committee Report**

The bill would have a negative, but indeterminate, fiscal impact to the state due to anticipated revenue decreases resulting from an unknown number of defendants that would be determined to be indigent or unable to pay receiving a waiver or discharge from fines, fees, and court costs. In addition, the bill would take effect only if a specific appropriation for the implementation is provided.

The bill would amend the Code of Criminal Procedure and the Transportation Code to make changes to the assessment and collection of criminal court costs for defendants who are determined by a court to be financially unable to pay their fees.

The bill would require standard language in citations, complaints, and other notices regarding alternatives to payment to satisfy fines and court costs assessed against a defendant who is unable to pay. The bill would limit a court to the use of personal bonds for a defendant charged with certain misdemeanors, and a court would be prohibited from assessing a fee associated with that bond.

The bill would require a court to make a determination that a defendant has sufficient resources to pay all or part of assessed fines and costs before the court could assess such fines and costs. The bill would allow a court to waive all or part of a criminal fine and court costs at any time if the court determines the defendant is indigent or was a child at the time of the offense if any alternative to discharging the fines and costs would create an undue hardship for the defendant. The bill would provide a presumption of indigence for purposes of waiving payment of fines and court costs for children in the conservatorship of the Department of Family and Protective Services, homeless children, or an unaccompanied alien child.

The bill would require a court to conduct an inquiry about a defendant's ability to pay immediately during or after sentencing for defendant's entering a plea in open court if the defendant signs an affidavit attesting that the defendant lacks sufficient income or resources to immediately pay all or part of the fine or court costs. If the court determines that a defendant does not have the ability to pay the fine or costs immediately, the court would be able to utilize several existing options with respect to payment.

The bill would require a court, before issuing a *capias pro fine* for a defendant for failure to pay,

to hold a hearing. Only if the defendant failed to appear, if the defendant appears and the court makes a finding that the defendant's failure to pay has been willful, or if, based on evidence presented at the hearing, the court determines the *capias pro fine* should be issued would the court be allowed to issue a *capias pro fine*. If the defendant voluntarily appears to resolve the matter before the *capias pro fine* is executed in a matter permitted by statute, the court would be required to recall the *capias pro fine*.

The bill would increase the amount of credit provided to defendants who satisfy payment of their fine and court costs through confinement in jail or community service. The credit for confinement in jail would increase from \$50 per day to \$100 per day, and the credit for community service would increase from \$50 to \$100 for every eight hours of service performed. The bill would also expand the types of work authorized under community service to include work for a religious organization, a neighborhood association or group, or an educational institution. Defendants would also be able to attend a job skills training program or GED preparatory class to complete their community service requirements.

The bill would require a court to notify a defendant before issuing an arrest warrant for the defendant's failure to appear at the initial court setting and would specify the contents and form of the notification. The bill would allow a court to waive the \$20 Scofflaw fee and the \$30 Omnibase fee if the court determines that a defendant is unable to pay or if good cause exists to waive the fees.

The bill would take effect September 1, 2017.

According to the Office of Court Administration and Comptroller of Public Accounts, the amount of revenue loss that would occur as a result of the waiver or discharge of fines, fees, and court costs by justices or judges from a person that is indigent or unable to pay would not be significant because it is assumed that any waiver would likely be given to only those defendants who are currently not paying their court fines or costs; however, the additional discretion provided to judges when considering a waiver for fines and costs may result in a significant, but indeterminate, negative fiscal impact to the state.

This estimate assumes duties and responsibilities associated with implementing the remaining provisions of the bill that pertain to these agencies could be accomplished using existing resources.

Local Government Impact

According to the Office of Court Administration (OCA), local governments are not anticipated to see a significant decrease in fine or court cost collections because judicial waiver of costs/fines will only occur in cases where defendants are not currently paying the fines/costs. The overall impacts of the bill will vary by county and municipality based upon the volume of cases.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 405
Department of Public Safety, 608 Department of Motor Vehicles, 304
Comptroller of Public Accounts

LBB Staff: UP, KJo, MW, GDz, FR, PBO, JGA