

Amend CSSB 346 (house committee report) as follows:

(1) Strike page 42, line 19, through page 43, line 5, and substitute the following:

(a-1) Notwithstanding any other provision of law, as an alternative to requiring a defendant charged with one or more offenses to make payment of all finances and court costs as required by Subsection (a), the judge may:

(1) allow the defendant to enter into an agreement for payment of those finances and costs in installments during the defendant's period of probation;

(2) require an eligible defendant to discharge all or part of those finances and costs by performing community service or attending a tutoring program under Article 45.049 or under Article 45.0492, as added by Chapter 227 (HB 350), Acts of the 82nd Legislature, Regular Session, 2011; [~~or~~]

(3) waive all or part of those finances and costs under Article 45.0491; or

(4) take any combination of actions authorized by Subdivision (1), [~~or~~] (2), or (3).

(2) On page 120, line 27, strike "The" and substitute "Except as otherwise provided by this Act, the".

(3) Add the following appropriately numbered SECTION to ARTICLE 4 of the bill and renumber subsequent SECTIONS of that ARTICLE accordingly:

SECTION 4.____. Article 45.051(a-1), Code of Criminal Procedure, as reenacted and amended by this Act, applies to a sentencing proceeding that commences before, on, or after the effective date of this Act.

(4) Add the following appropriately numbered ARTICLE to the bill and renumber subsequent ARTICLES and SECTIONS of the bill accordingly:

ARTICLE _____. ADMINISTRATIVE, CIVIL, AND CRIMINAL CONSEQUENCES
IMPOSED ON PERSONS ARRESTED FOR, CHARGED WITH, OR CONVICTED OF
CERTAIN CRIMINAL OFFENSES

SECTION _____.01. Chapter 1, Code of Criminal Procedure, is amended by adding Article 1.053 to read as follows:

Art. 1.053. PRESENT ABILITY TO PAY. Except as otherwise

specifically provided, in determining a defendant's ability to pay for any purpose, the court shall consider only the defendant's present ability to pay.

SECTION ____ .02. Article 43.015, Code of Criminal Procedure, is amended by adding Subdivision (3) to read as follows:

(3) "Cost" includes any fee imposed on a defendant by the court at the time a judgment is entered.

SECTION ____ .03. Chapter 43, Code of Criminal Procedure, is amended by adding Article 43.035 to read as follows:

Art. 43.035. RECONSIDERATION OF FINE OR COSTS. (a) If a defendant notifies the court that the defendant has difficulty paying the fine and costs in compliance with the judgment, the court shall hold a hearing to determine whether that portion of the judgment imposes an undue hardship on the defendant.

(b) For purposes of Subsection (a), a defendant may notify the court by:

(1) voluntarily appearing and informing the court or the clerk of the court in the manner established by the court for that purpose;

(2) filing a motion with the court;

(3) mailing a letter to the court; or

(4) any other method established by the court for that purpose.

(c) If the court determines at the hearing under Subsection (a) that the portion of the judgment regarding the fine and costs imposes an undue hardship on the defendant, the court shall consider whether the fine and costs should be satisfied through one or more methods listed under Article 42.15(a-1).

(d) The court may decline to hold a hearing under Subsection (a) if the court:

(1) previously held a hearing under that subsection with respect to the case and is able to determine without holding a hearing that the portion of the judgment regarding the fine and costs does not impose an undue hardship on the defendant; or

(2) is able to determine without holding a hearing that:

(A) the applicable portion of the judgment

imposes an undue hardship on the defendant; and

(B) the fine and costs should be satisfied through one or more methods listed under Article 42.15(a-1).

(e) The court retains jurisdiction for the purpose of making a determination under this article.

SECTION _____.04. The heading to Article 43.05, Code of Criminal Procedure, is amended to read as follows:

Art. 43.05. ISSUANCE AND RECALL OF CAPIAS PRO FINE [~~SHALL RECITE~~].

SECTION _____.05. Article 43.05(a-1), Code of Criminal Procedure, as added by Chapter 1127 (**SB 1913**), Acts of the 85th Legislature, Regular Session, 2017, is amended to read as follows:

(a-1) A court may not issue a capias pro fine for the defendant's failure to satisfy the judgment according to its terms unless the court holds a hearing to determine whether the judgment imposes an undue hardship on the defendant [~~on the defendant's ability to satisfy the judgment~~] and the defendant fails to:

(1) [~~the defendant fails to~~] appear at the hearing; or

(2) comply with an order issued under Subsection (a-3) as a result of the hearing [~~based on evidence presented at the hearing, the court determines that the capias pro fine should be issued~~].

SECTION _____.06. Article 43.05, Code of Criminal Procedure, is amended by amending Subsection (a-2) and adding Subsections (a-3) and (a-4) to read as follows:

(a-2) If the court determines at the hearing under Subsection (a-1) that the judgment imposes an undue hardship on the defendant, the court shall determine whether the fine and costs should be satisfied through one or more methods listed under Article 42.15(a-1). The court retains jurisdiction for the purpose of making a determination under this subsection.

(a-3) If the court determines at the hearing under Subsection (a-1) that the judgment does not impose an undue hardship on the defendant, the court shall order the defendant to comply with the judgment not later than the 30th day after the date the determination is made.

(a-4) The court shall recall a capias pro fine if, before

the capias pro fine is executed, the defendant:

(1) provides notice to the court under Article 43.035 and a hearing is set under that article; or

(2) [the defendant] voluntarily appears and makes a good faith effort to resolve the capias pro fine [amount owed, and

(2) the amount owed is resolved in any manner authorized by this code].

SECTION ____ .07. Article 43.091, Code of Criminal Procedure, is amended to read as follows:

Art. 43.091. WAIVER OF PAYMENT OF FINES AND COSTS FOR CERTAIN DEFENDANTS AND FOR CHILDREN. (a) A court may waive payment of all or part of a fine [~~or costs~~] imposed on a defendant if the court determines that:

(1) the defendant is indigent or does not have sufficient resources or income to pay all or part of the fine [~~or costs~~] or was, at the time the offense was committed, a child as defined by Article 45.058(h); and

(2) each alternative method of discharging the fine [~~or cost~~] under Article 43.09 or 42.15 would impose an undue hardship on the defendant.

(b) A determination of undue hardship made under Subsection (a)(2) is in the court's discretion. In making that determination, the court may consider, as applicable, the defendant's:

(1) significant physical or mental impairment or disability;

(2) pregnancy and childbirth;

(3) substantial family commitments or responsibilities, including child or dependent care;

(4) work responsibilities and hours;

(5) transportation limitations;

(6) homelessness or housing insecurity; and

(7) any other factor the court determines relevant.

(c) A court may waive payment of all or part of the costs imposed on a defendant if the court determines that the defendant:

(1) is indigent or does not have sufficient resources or income to pay all or part of the costs; or

(2) was, at the time the offense was committed, a child

as defined by Article 45.058(h).

(d) This subsection applies only to a defendant placed on community supervision, including deferred adjudication community supervision, whose fine or costs are wholly or partly waived under this article. At any time during the defendant's period of community supervision, the court, on the court's own motion or by motion of the attorney representing the state, may reconsider the waiver of the fine or costs. After providing written notice to the defendant and an opportunity for the defendant to present information relevant to the defendant's ability to pay, the court may order the defendant to pay all or part of the waived amount of the fine or costs only if the court determines that the defendant has sufficient resources or income to pay that amount.

SECTION _____.08. Subchapter A, Chapter 45, Code of Criminal Procedure, is amended by adding Article 45.004 to read as follows:

Art. 45.004. GENERAL DEFINITION. In this chapter, "cost" includes any fee imposed on a defendant by the justice or judge at the time a judgment is entered.

SECTION _____.09. Subchapter B, Chapter 45, Code of Criminal Procedure, is amended by adding Articles 45.0201 and 45.0445 to read as follows:

Art. 45.0201. APPEARANCE BY TELEPHONE OR VIDEOCONFERENCE. If the justice or judge determines that requiring a defendant to appear before the justice or judge in person for a hearing under Article 45.0445 or 45.045 would impose an undue hardship on the defendant, the justice or judge may allow the defendant to appear by telephone or videoconference.

Art. 45.0445. RECONSIDERATION OF FINE OR COSTS. (a) If the defendant notifies the justice or judge that the defendant has difficulty paying the fine and costs in compliance with the judgment, the justice or judge shall hold a hearing to determine whether the judgment imposes an undue hardship on the defendant.

(b) For purposes of Subsection (a), a defendant may notify the justice or judge by:

(1) voluntarily appearing and informing the justice or judge or the clerk of the court in the manner established by the justice or judge for that purpose;

(2) filing a motion with the justice or judge;
(3) mailing a letter to the justice or judge; or
(4) any other method established by the justice or judge for that purpose.

(c) If the justice or judge determines at the hearing under Subsection (a) that the judgment imposes an undue hardship on the defendant, the justice or judge shall consider whether to allow the defendant to satisfy the fine and costs through one or more methods listed under Article 45.041(a-1).

(d) The justice or judge may decline to hold a hearing under Subsection (a) if the justice or judge:

(1) previously held a hearing under that subsection with respect to the case and is able to determine without holding a hearing that the judgment does not impose an undue hardship on the defendant; or

(2) is able to determine without holding a hearing that:

(A) the judgment imposes an undue hardship on the defendant; and

(B) the fine and costs should be satisfied through one or more methods listed under Article 45.041(a-1).

(e) The justice or judge retains jurisdiction for the purpose of making a determination under this article.

SECTION ____ .10. Article 45.045(a-2), Code of Criminal Procedure, as added by Chapter 1127 (SB 1913), Acts of the 85th Legislature, Regular Session, 2017, is amended to read as follows:

(a-2) The court may not issue a *capias pro fine* for the defendant's failure to satisfy the judgment according to its terms unless the court holds a hearing to determine whether the judgment imposes an undue hardship on the defendant [~~on the defendant's ability to satisfy the judgment~~] and the defendant fails to:

(1) [~~the defendant fails to~~] appear at the hearing; or

(2) comply with an order issued under Subsection (a-4) as a result of the hearing [~~based on evidence presented at the hearing, the court determines that the *capias pro fine* should be issued~~].

SECTION ____ .11. Article 45.045, Code of Criminal

Procedure, is amended by amending Subsection (a-3) and adding Subsections (a-4) and (a-5) to read as follows:

(a-3) If the justice or judge determines at the hearing under Subsection (a-2) that the judgment imposes an undue hardship on the defendant, the justice or judge shall determine whether the fine and costs should be satisfied through one or more methods listed under Article 45.041(a-1). The justice or judge retains jurisdiction for the purpose of making a determination under this subsection.

(a-4) If the justice or judge determines at the hearing under Subsection (a-2) that the judgment does not impose an undue hardship on the defendant, the justice or judge shall order the defendant to comply with the judgment not later than the 30th day after the date the determination is made.

(a-5) The court shall recall a capias pro fine if, before the capias pro fine is executed, the defendant:

(1) provides notice to the justice or judge under Article 45.0445 and a hearing is set under that article; or

(2) [the defendant] voluntarily appears and makes a good faith effort to resolve the capias pro fine [amount owed; and
~~[(2) the amount owed is resolved in any manner authorized by this chapter].~~

SECTION _____.12. Article 45.0491, Code of Criminal Procedure, is amended to read as follows:

Art. 45.0491. WAIVER OF PAYMENT OF FINES AND COSTS FOR CERTAIN DEFENDANTS AND FOR CHILDREN. (a) A municipal court, regardless of whether the court is a court of record, or a justice court may waive payment of all or part of a fine [~~or costs~~] imposed on a defendant if the court determines that:

(1) the defendant is indigent or does not have sufficient resources or income to pay all or part of the fine [~~or costs~~] or was, at the time the offense was committed, a child as defined by Article 45.058(h); and

(2) discharging the fine [~~or costs~~] under Article 45.049 or as otherwise authorized by this chapter would impose an undue hardship on the defendant.

(b) A defendant is presumed to be indigent or to not have

sufficient resources or income to pay all or part of the fine or costs for purposes of Subsection (a) or (d) if the defendant:

(1) is in the conservatorship of the Department of Family and Protective Services, or was in the conservatorship of that department at the time of the offense; or

(2) is designated as a homeless child or youth or an unaccompanied youth, as those terms are defined by 42 U.S.C. Section 11434a, or was so designated at the time of the offense.

(c) A determination of undue hardship made under Subsection (a)(2) is in the court's discretion. In making that determination, the court may consider, as applicable, the defendant's:

(1) significant physical or mental impairment or disability;

(2) pregnancy and childbirth;

(3) substantial family commitments or responsibilities, including child or dependent care;

(4) work responsibilities and hours;

(5) transportation limitations;

(6) homelessness or housing insecurity; and

(7) any other factors the court determines relevant.

(d) A municipal court, regardless of whether the court is a court of record, or a justice court may waive payment of all or part of the costs imposed on a defendant if the court determines that the defendant:

(1) is indigent or does not have sufficient resources or income to pay all or part of the costs; or

(2) was, at the time the offense was committed, a child as defined by Article 45.058(h).

SECTION ____ .13. The following provisions of the Code of Criminal Procedure are repealed:

(1) Article 42.15(a-1), as added by Chapter 977 (HB 351), Acts of the 85th Legislature, Regular Session, 2017;

(2) Article 43.05(a-1), as added by Chapter 977 (HB 351), Acts of the 85th Legislature, Regular Session, 2017;

(3) Article 45.041(a-1), as added by Chapter 977 (HB 351), Acts of the 85th Legislature, Regular Session, 2017; and

(4) Article 45.045(a-2), as added by Chapter 977 (HB 351), Acts of the 85th Legislature, Regular Session, 2017.

SECTION _____.14. Notwithstanding Section 32, Chapter 977 (HB 351), and Section 28, Chapter 1127 (SB 1913), Acts of the 85th Legislature, Regular Session, 2017, Section 706.006, Transportation Code, as amended by those Acts, applies to any fee assessed on or after the effective date of this Act, regardless of whether the offense, complaint, citation, or other violation giving rise to the fee occurred before, on, or after the effective date of this Act.

SECTION _____.15. Articles 1.053 and 45.0201, Code of Criminal Procedure, as added by this article, apply to a proceeding that commences before, on, or after the effective date of this Act.

SECTION _____.16. Articles 43.035 and 45.0445, Code of Criminal Procedure, as added by this article, apply to a notification received by a court on or after the effective date of this Act, regardless of whether the judgment of conviction was entered before, on, or after the effective date of this Act.

SECTION _____.17. The changes in law made by this article to Articles 43.091 and 45.0491, Code of Criminal Procedure, apply to a sentencing proceeding that commences before, on, or after the effective date of this Act.

SECTION _____.18. The change in law made by this article to Articles 43.05 and 45.045, Code of Criminal Procedure, applies only to a capias pro fine issued on or after the effective date of this Act. A capias pro fine issued before the effective date of this Act is governed by the law in effect on the date the capias pro fine was issued, and the former law is continued in effect for that purpose.