

BILL ANALYSIS

C.S.H.B. 465
By: White
Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

There are concerns that the various fines and costs imposed on defendants arrested for, charged with, or convicted of certain offenses may place an undue hardship on individuals lacking the necessary means to pay. C.S.H.B. 465 seeks to address these concerns by, among other things, enabling certain defendants to request a hearing to determine whether a judgment imposes an undue hardship on the defendant and whether the applicable fine or costs may be satisfied through alternative means.

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

C.S.H.B. 465 amends the Code of Criminal Procedure to require an applicable court, in determining a defendant's ability to pay for any purpose in a criminal proceeding, to consider only the defendant's present ability to pay. The bill authorizes a judge or justice of a municipal or justice court to allow a defendant to appear by telephone or videoconference if the judge or justice determines that requiring the defendant to appear in person for a hearing relating to the reconsideration of a fine or costs or to certain *capias pro fine* matters with respect to failure to satisfy a rendered judgment would impose an undue hardship on the defendant. These provisions apply to a proceeding that commences before, on, or after the bill's effective date.

C.S.H.B. 465 requires a court, on notification by a defendant that the defendant has difficulty paying a fine and costs in compliance with a judgment, to hold a hearing to determine whether the portion of the judgment relating to the fine or costs imposes an undue hardship on the defendant. The bill requires a judge or justice of a justice or municipal court, on such notification by a defendant, to hold a hearing to determine whether the judgment imposes such a hardship. The bill authorizes the defendant to notify the applicable court, judge, or justice by:

- voluntarily appearing and informing the court, judge, justice, or the clerk of the applicable court, in the manner established by the applicable court for that purpose;
- filing a motion with the court, judge, or justice;
- mailing a letter to the court, judge, or justice; or
- any other method established by the court, judge, or justice for the purpose of such notification.

C.S.H.B. 465 requires the court, if the court determines at the hearing that the portion of the judgment regarding the fine and costs imposes an undue hardship on the defendant, and requires a judge or justice of a municipal or justice court, if the judge or justice determines at the hearing that the judgment imposes an undue hardship on the defendant, to consider whether the fine and costs should be required to be paid at a later date or in a specified portion at designated intervals, discharged by performing community service, waived in full or in part, or satisfied through any combination of those methods. The bill authorizes the court, judge, or justice to decline to hold a hearing if the court, judge, or justice previously held such a hearing with respect to the case and is able to determine without holding a hearing that the applicable judgment does not impose an undue hardship on the defendant or is able to determine without holding the hearing that the applicable judgment imposes an undue hardship on the defendant and the fine and costs should be satisfied through such applicable methods. The bill establishes that the applicable court, judge, or justice retains jurisdiction for the purpose of making a determination under these provisions. These provisions apply to a notification received by a court on or after the bill's effective date, regardless of whether the judgment of conviction was entered before, on, or after that date.

C.S.H.B. 465, in provisions applicable to the waiver of payment of fines and costs for certain defendants and for certain children and applicable to a sentencing proceeding that commences before, on, or after the bill's effective date:

- authorizes an applicable court, in making a determination that alternative methods of discharging a fine would impose an undue hardship on the defendant, to consider, as applicable, the defendant's:
 - significant physical or mental impairment or disability;
 - pregnancy and childbirth;
 - substantial family commitments or responsibilities, including child or dependent care;
 - work responsibilities and hours;
 - transportation limitations;
 - homelessness or housing insecurity; and
 - any other factor the court determines relevant;
- establishes that the foregoing determination of undue hardship is in the court's discretion; and
- removes a determination by an applicable court that each alternative method of discharging costs imposed on a defendant would impose an undue hardship on the defendant as a condition on the authority of the court to waive payment of all or part of such costs.

C.S.H.B. 465 requires a court, judge, or justice to allow a defendant to perform required community service to discharge fines or costs in the county in which the defendant resides. This requirement applies to a sentencing proceeding that commences before, on, or after the bill's effective date.

C.S.H.B. 465 reenacts and amends Article 45.051(a-1), Code of Criminal Procedure, as amended by Chapters 227 (H.B. 350) and 777 (H.B. 1964), Acts of the 82nd Legislature, Regular Session, 2011, to conform to changes made by Chapter 227 and to authorize a judge to waive all or part of certain costs imposed on a defendant charged with one or more offenses as an alternative to requiring payment of such costs. These provisions apply to a sentencing proceeding that commences before, on, or after the bill's effective date.

C.S.H.B. 465 amends Article 43.05(a-1) and Article 45.045(a-2), Code of Criminal Procedure, both as added by Chapter 1127 (S.B. 1913), Acts of the 85th Legislature, Regular Session, 2017, to revise the requirement that an applicable court hold a hearing before issuing a *capias pro fine* by specifying that the purpose of the requisite hearing is to determine whether the judgment imposes an undue hardship on the defendant and removing the specification that such a hearing is on the defendant's ability to satisfy the judgment.

C.S.H.B. 465 amends the Code of Criminal Procedure to require the court, judge, or justice, if the court, judge, or justice determines at that hearing that the judgment does not impose an undue hardship, to order the defendant to comply with the judgment not later than the 30th day after the date the determination is made and, with respect to the foregoing applicably amended and revised provisions, makes the defendant's failure to comply with that requirement one of the conditions under which the applicable court may issue the *capias pro fine*. The bill requires the applicable court, judge, or justice, if the court, judge, or justice determines at such a hearing that the judgment imposes an undue hardship, to determine whether the fine and costs should be required to be paid at a later date or in a specified portion at designated intervals, discharged by performing community service, waived in full or in part, or satisfied through any combination of these methods. The bill establishes that the applicable court, judge, or justice retains jurisdiction for the purpose of making that determination of undue hardship.

C.S.H.B. 465 revises the conditions triggering the required recall of a *capias pro fine* before its execution by requiring such recall if a hearing is set to reconsider a fine or costs on notification by a defendant, using a method authorized by the bill, that the defendant has difficulty paying the applicable fine and costs or if the defendant voluntarily appears and makes a good faith effort to resolve the *capias pro fine*.

C.S.H.B. 465 authorizes a magistrate to require an accused person who is taken before the magistrate and charged with a fine-only misdemeanor to give a personal bond, in addition to ordering the accused to appear at a later date for arraignment in the applicable municipal or justice court. The bill removes the requirement for a judge of such a court in which the accused is required to appear to issue a warrant for the arrest of the accused who fails to appear as ordered and removes the authorization for the judge to admit the arrested accused to bail. The bill removes language excluding an accused person charged with a fine-only misdemeanor who has been previously convicted of a felony or a misdemeanor other than a fine-only misdemeanor from the applicability of provisions relating to the magistrate's authority regarding pretrial release and an order for the accused to appear at a later date for arraignment.

C.S.H.B. 465 amends the Transportation Code, with respect to the provision establishing conditions under which a county assessor-collector or the Texas Department of Motor Vehicles may refuse to register a motor vehicle:

- to establish that information concerning an outstanding warrant from a municipality for failure to appear or pay a fine expires on the second anniversary of the date the information was provided;
- to prohibit that information from being used to refuse registration of a motor vehicle after that date;
- to prohibit subsequent information about other warrants for failure to pay a fine that are issued before the second anniversary of the date the initial information was provided from being used, either before or after the second anniversary of that date, to refuse registration of a motor vehicle unless the motor vehicle is no longer subject to refusal of registration;
- to authorize a judge or justice of a municipal or justice court who has jurisdiction over the underlying offense that is the subject of the warrant to waive an additional fee imposed by a municipality that contracts for the provision of information used in

determining whether to refuse to register a motor vehicle 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; and

- prohibits such a municipality from imposing an additional fee on the defendant if the municipality is notified that the court having jurisdiction over the underlying offense has waived the fine that is the subject of the warrant due to the defendant's indigency.

C.S.H.B. 465 repeals the following Code of Criminal Procedure provisions added by Chapter 977 (H.B. 351), Acts of the 85th Legislature, Regular Session, 2017:

- Article 42.15(a-1)
- Article 43.05(a-1)
- Article 45.041(a-1)
- Article 45.045(a-2)

EFFECTIVE DATE

September 1, 2019.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 465 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute clarifies that the hearing an applicable court is required to hold to reconsider fines or costs is a hearing to determine whether the portion of a judgment regarding fines and costs imposes an undue hardship.

The substitute revises the bill provision regarding a defendant's appearance in a justice or municipal court by telephone or videoconference if appearance in person imposes an undue hardship by:

- removing the requirement for a judge or justice of a justice or municipal court to allow such an appearance;
- authorizing such a judge or justice to allow such an appearance; and
- clarifying that the authorized appearance is for a hearing relating to the reconsideration of a fine or costs or to certain *capias pro fine* matters with respect to failure to satisfy an imposed judgment.

The substitute, with respect to the bill's provisions regarding an applicable court's authority to require community service for a defendant who is unable to discharge all or part of a fine or costs, does not include the authorization for a defendant to elect to perform community service in the county in which the defendant resides but includes a requirement for a court, judge, or justice to allow the defendant to perform the required community service in the county in which the defendant resides.

The substitute revises the conditions triggering the recall of a *capias pro fine* before its execution.

The substitute does not include provisions:

- requiring a political subdivision to notify the Department of Public Safety (DPS) that there is no cause to deny renewal of a person's driver's license based on the person's

previous failure to appear in court with respect to the underlying offense before conviction or satisfaction of a fine and cost through a payment plan or through community service;

- prohibiting DPS from requiring a person to pay more than one administrative fee for each political subdivision that submits information to DPS for purposes of denying the renewal of a driver's license for failure to appear for a complaint or citation or to pay or satisfy a judgment; and
- prohibiting the arrest of a defendant who voluntarily appears in the applicable court to resolve an unpaid fine or cost.