

By: White

H.B. No. 465

Substitute the following for H.B. No. 465:

By: Pacheco

C.S.H.B. No. 465

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the administrative, civil, and criminal consequences,
3 including fines, fees, and costs, imposed on persons arrested for,
4 charged with, or convicted of certain criminal offenses.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

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

8 Art. 1.053. PRESENT ABILITY TO PAY. Except as otherwise
9 specifically provided, in determining a defendant's ability to pay
10 for any purpose, the court shall consider only the defendant's
11 present ability to pay.

12 SECTION 2. Article 15.17(b), Code of Criminal Procedure, is
13 amended to read as follows:

14 (b) After an accused charged with a misdemeanor punishable
15 by fine only is taken before a magistrate under Subsection (a) and
16 the magistrate has identified the accused with certainty, the
17 magistrate may require the accused to give a bond under Article
18 45.016 or release the accused without bond and order the accused to
19 appear at a later date for arraignment in the applicable justice
20 court or municipal court. The order must state in writing the time,
21 date, and place of the arraignment, and the magistrate must sign the
22 order. The accused shall receive a copy of the order on release.

23 ~~[If an accused fails to appear as required by the order, the judge~~
24 ~~of the court in which the accused is required to appear shall issue~~

1 ~~a warrant for the arrest of the accused. If the accused is arrested~~
2 ~~and brought before the judge, the judge may admit the accused to~~
3 ~~bail, and in admitting the accused to bail, the judge should set as~~
4 ~~the amount of bail an amount double that generally set for the~~
5 ~~offense for which the accused was arrested. This subsection does~~
6 ~~not apply to an accused who has previously been convicted of a~~
7 ~~felony or a misdemeanor other than a misdemeanor punishable by fine~~
8 ~~only.]~~

9 SECTION 3. Chapter 43, Code of Criminal Procedure, is
10 amended by adding Article 43.035 to read as follows:

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

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

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

21 (2) filing a motion with the court;

22 (3) mailing a letter to the court; or

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

25 (c) If the court determines at the hearing under Subsection
26 (a) that the portion of the judgment regarding the fine and costs
27 imposes an undue hardship on the defendant, the court shall

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

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

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

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

11 (A) the applicable portion of the judgment
12 imposes an undue hardship on the defendant; and

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

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

17 SECTION 4. The heading to Article 43.05, Code of Criminal
18 Procedure, is amended to read as follows:

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

21 SECTION 5. Article 43.05(a-1), Code of Criminal Procedure,
22 as added by Chapter 1127 (S.B. 1913), Acts of the 85th Legislature,
23 Regular Session, 2017, is amended to read as follows:

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

1 ~~ability to satisfy the judgment]~~ and the defendant fails to:

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

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

7 SECTION 6. Article 43.05, Code of Criminal Procedure, is
8 amended by amending Subsection (a-2) and adding Subsections (a-3)
9 and (a-4) to read as follows:

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

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

21 (a-4) The court shall recall a capias pro fine if, before
22 the capias pro fine is executed, the defendant:

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

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

27 ~~[(2) the amount owed is resolved in any manner~~

1 ~~authorized by this code].~~

2 SECTION 7. Article 43.09(f), Code of Criminal Procedure, is
3 amended to read as follows:

4 (f) A court may require a defendant who is unable to pay a
5 fine or costs to discharge all or part of the fine or costs by
6 performing community service. The court shall allow a defendant to
7 perform the required community service in the county in which the
8 defendant resides.

9 SECTION 8. Article 43.091, Code of Criminal Procedure, is
10 amended to read as follows:

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

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

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

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

25 (1) significant physical or mental impairment or
26 disability;

27 (2) pregnancy and childbirth;

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

3 (4) work responsibilities and hours;

4 (5) transportation limitations;

5 (6) homelessness or housing insecurity; and

6 (7) any other factor the court determines relevant.

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

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

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

13 SECTION 9. Subchapter B, Chapter 45, Code of Criminal
14 Procedure, is amended by adding Articles 45.0201 and 45.0445 to
15 read as follows:

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

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

27 (b) For purposes of Subsection (a), a defendant may notify

1 the justice or judge by:

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

5 (2) filing a motion with the justice or judge;

6 (3) mailing a letter to the justice or judge; or

7 (4) any other method established by the justice or
8 judge for that purpose.

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

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

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

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

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

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

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

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

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

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

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

14 SECTION 11. Article 45.045, Code of Criminal Procedure, is
15 amended by amending Subsection (a-3) and adding Subsections (a-4)
16 and (a-5) to read as follows:

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

24 (a-4) If the justice or judge determines at the hearing
25 under Subsection (a-2) that the judgment does not impose an undue
26 hardship on the defendant, the justice or judge shall order the
27 defendant to comply with the judgment not later than the 30th day

1 after the date the determination is made.

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

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

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

10 SECTION 12. Article 45.049, Code of Criminal Procedure, is
11 amended by adding Subsection (a-1) to read as follows:

12 (a-1) A justice or judge shall allow a defendant to perform
13 in the county in which the defendant resides any community service
14 required under this article.

15 SECTION 13. Article 45.0491, Code of Criminal Procedure, is
16 amended to read as follows:

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

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

26 (2) discharging the fine [~~or costs~~] under Article
27 45.049 or as otherwise authorized by this chapter would impose an

1 undue hardship on the defendant.

2 (b) A defendant is presumed to be indigent or to not have
3 sufficient resources or income to pay all or part of the fine or
4 costs for purposes of Subsection (a) or (d) if the defendant:

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

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

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

14 (1) significant physical or mental impairment or
15 disability;

16 (2) pregnancy and childbirth;

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

19 (4) work responsibilities and hours;

20 (5) transportation limitations;

21 (6) homelessness or housing insecurity; and

22 (7) any other factors the court determines relevant.

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

27 (1) is indigent or does not have sufficient resources

1 or income to pay all or part of the costs; or

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

4 SECTION 14. Article 45.051(a-1), Code of Criminal
5 Procedure, as amended by Chapters 227 (H.B. 350) and 777 (H.B.
6 1964), Acts of the 82nd Legislature, Regular Session, 2011, is
7 reenacted and amended to read as follows:

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

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

15 (2) require an eligible defendant to discharge all or
16 part of those costs by performing community service or attending a
17 tutoring program under Article 45.049 or 45.0492; ~~or~~

18 (3) waive all or part of the court costs under Article
19 45.0491(d); or

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

22 SECTION 15. Section 702.003, Transportation Code, is
23 amended by adding Subsections (b-1), (g), and (h) and amending
24 Subsections (c) and (e-1) to read as follows:

25 (b-1) Information that is provided to make a determination
26 under Subsection (a) and that concerns an outstanding warrant from
27 the municipality for failure to pay a fine expires on the second

1 anniversary of the date the information was provided and may not be
2 used to refuse registration after that date. Once information
3 about an outstanding warrant for failure to pay a fine is provided
4 under Subsection (b), subsequent information about other warrants
5 for failure to pay a fine that are issued before the second
6 anniversary of the date the initial information was provided may
7 not be used, either before or after the second anniversary of that
8 date, to refuse registration under this section unless the motor
9 vehicle is no longer subject to refusal of registration because of
10 notice received under Subsection (c).

11 (c) A municipality that has a contract under Subsection (b)
12 shall notify the county assessor-collector or the department
13 regarding a person for whom the county assessor-collector or the
14 department has refused to register a motor vehicle on:

15 (1) entry of a judgment against the person and the
16 person's payment to the court or other means of discharge,
17 including a waiver, of the fine for the violation and of all court
18 costs;

19 (2) perfection of an appeal of the case for which the
20 arrest warrant was issued; or

21 (3) dismissal of the charge for which the arrest
22 warrant was issued.

23 (e-1) Except as otherwise provided by this section, a [A]
24 municipality that has a contract under Subsection (b) may impose an
25 additional \$20 fee to a person who has an outstanding warrant from
26 the municipality for failure to appear or failure to pay a fine on a
27 complaint that involves the violation of a traffic law. The

1 additional fee may be used only to reimburse the department or the
2 county assessor-collector for its expenses for providing services
3 under the contract, or another county department for expenses
4 related to services under the contract.

5 (g) A municipal court judge or justice of the peace who has
6 jurisdiction over the underlying offense may waive an additional
7 fee imposed under Subsection (e-1) if the judge or justice makes a
8 finding that the defendant is economically unable to pay the fee or
9 that good cause exists for the waiver.

10 (h) If a municipality is notified that the court having
11 jurisdiction over the underlying offense has waived the fine that
12 is the subject of the warrant due to the defendant's indigency, the
13 municipality may not impose an additional fee on the defendant
14 under Subsection (e-1).

15 SECTION 16. The following provisions of the Code of
16 Criminal Procedure are repealed:

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

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

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

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

25 SECTION 17. Notwithstanding Section 32, Chapter 977 (H.B.
26 351), and Section 28, Chapter 1127 (S.B. 1913), Acts of the 85th
27 Legislature, Regular Session, 2017, Section 706.006,

1 Transportation Code, as amended by those Acts, applies to any fee
2 assessed on or after the effective date of this Act, regardless of
3 whether the offense, complaint, citation, or other violation giving
4 rise to the fee occurred before, on, or after the effective date of
5 this Act.

6 SECTION 18. Articles 1.053 and 45.0201, Code of Criminal
7 Procedure, as added by this Act, apply to a proceeding that
8 commences before, on, or after the effective date of this Act.

9 SECTION 19. The changes in law made by this Act to Article
10 15.17, Code of Criminal Procedure, and Section 702.003,
11 Transportation Code, apply only to an offense committed on or after
12 the effective date of this Act. An offense committed before the
13 effective date of this Act is governed by the law in effect on the
14 date the offense was committed, and the former law is continued in
15 effect for that purpose. For purposes of this section, an offense
16 was committed before the effective date of this Act if any element
17 of the offense occurred before that date.

18 SECTION 20. Articles 43.035 and 45.0445, Code of Criminal
19 Procedure, as added by this Act, apply to a notification received by
20 a court on or after the effective date of this Act, regardless of
21 whether the judgment of conviction was entered before, on, or after
22 the effective date of this Act.

23 SECTION 21. The changes in law made by this Act to Articles
24 43.09, 43.091, 45.049, 45.0491, and 45.051, Code of Criminal
25 Procedure, apply to a sentencing proceeding that commences before,
26 on, or after the effective date of this Act.

27 SECTION 22. The change in law made by this Act to Articles

1 43.05 and 45.045, Code of Criminal Procedure, applies only to a
2 capias pro fine issued on or after the effective date of this Act. A
3 capias pro fine issued before the effective date of this Act is
4 governed by the law in effect on the date the capias pro fine was
5 issued, and the former law is continued in effect for that purpose.

6 SECTION 23. This Act takes effect September 1, 2019.