

By: White

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 the judgment imposes an
15 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;

20 (2) filing a motion with the court;

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

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

24 (c) If the court determines at the hearing under Subsection
25 (a) that the judgment imposes an undue hardship on the defendant,
26 the court shall consider whether the fine and costs should be
27 satisfied through one or more methods listed under Article

1 [42.15\(a-1\)](#).

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

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

8 (2) is able to determine without holding a hearing
9 that the fine and costs should be waived in full or in part under
10 Article [43.091](#).

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

13 SECTION 4. The heading to Article [43.05](#), Code of Criminal
14 Procedure, is amended to read as follows:

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

17 SECTION 5. Article [43.05\(a-1\)](#), Code of Criminal Procedure,
18 as added by Chapter 1127 (S.B. 1913), Acts of the 85th Legislature,
19 Regular Session, 2017, is amended to read as follows:

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

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

26 (2) comply with an order under Subsection (a-4) [~~based~~
27 ~~on evidence presented at the hearing, the court determines that the~~

1 ~~capias pro fine should be issued].~~

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

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

7 (1) the defendant provides notice to the court under
8 Article 43.035 and a hearing is set under that article [~~voluntarily~~
9 ~~appears to resolve the amount owed~~]; or [~~and~~]

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

12 (a-3) If the court determines at the hearing under
13 Subsection (a-1) that the judgment imposes an undue hardship on the
14 defendant, the court shall determine whether the fine and costs
15 should be satisfied through one or more methods listed under
16 Article 42.15(a-1). The court retains jurisdiction for the purpose
17 of making a determination under this subsection.

18 (a-4) If the court determines at the hearing under
19 Subsection (a-1) that the judgment does not impose an undue
20 hardship on the defendant, the court shall order the defendant to
21 comply with the judgment not later than the 30th day after the date
22 the determination is made.

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

25 (f) A court may require a defendant who is unable to pay a
26 fine or costs to discharge all or part of the fine or costs by
27 performing community service. A defendant may elect to perform

1 community service required under this subsection in the county in
2 which the defendant resides.

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

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

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

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

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

19 (1) significant physical or mental impairment or
20 disability;

21 (2) pregnancy and childbirth;

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

24 (4) work responsibilities and hours;

25 (5) transportation limitations;

26 (6) homelessness or housing insecurity; and

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

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

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

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

7 SECTION 9. Article 45.014, Code of Criminal Procedure, is
8 amended by adding Subsection (h) to read as follows:

9 (h) A defendant who voluntarily appears before a justice or
10 judge to resolve an unpaid fine or cost may not be arrested, during
11 or immediately before or after the defendant's appearance, on a
12 warrant or capias pro fine issued under this chapter.

13 SECTION 10. 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 would impose an undue
19 hardship on the defendant, the justice or judge shall allow the
20 defendant to appear by telephone or videoconference.

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

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

1 (1) voluntarily appearing and informing the justice or
2 judge or the clerk of the court;

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

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

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

7 (c) If the justice or judge determines at the hearing under
8 Subsection (a) that the judgment does not impose an undue hardship
9 on the defendant, the justice or judge shall consider whether to
10 allow the defendant to satisfy the fine and costs through one or
11 more methods listed under Article 45.041(a-1).

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

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

18 (2) is able to determine without holding a hearing
19 that the fine and costs should be waived in full or in part under
20 Article 45.0491.

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

23 SECTION 11. Article 45.045(a-2), Code of Criminal
24 Procedure, as added by Chapter 1127 (S.B. 1913), Acts of the 85th
25 Legislature, Regular Session, 2017, is amended to read as follows:

26 (a-2) The court may not issue a *capias pro fine* for the
27 defendant's failure to satisfy the judgment according to its terms

1 unless the court holds a hearing to determine whether the defendant
2 is able to comply with the judgment without an undue hardship [~~on~~
3 ~~the defendant's ability to satisfy the judgment]~~ and the defendant
4 fails to:

- 5 (1) [~~the defendant fails to~~] appear at the hearing; or
6 (2) comply with an order under Subsection (a-5) [~~based~~
7 ~~on evidence presented at the hearing, the court determines that the~~
8 ~~capias pro fine should be issued)].~~

9 SECTION 12. Article 45.045, Code of Criminal Procedure, is
10 amended by amending Subsection (a-3) and adding Subsections (a-4)
11 and (a-5) to read as follows:

12 (a-3) The court shall recall a capias pro fine if, before
13 the capias pro fine is executed:

14 (1) the defendant provides notice to the justice or
15 judge under Article 45.0445 and a hearing is set under that article
16 [~~voluntarily appears to resolve the amount owed]; or [and]~~

17 (2) the amount owed is resolved in any manner
18 authorized by this chapter.

19 (a-4) If the justice or judge determines at the hearing
20 under Subsection (a-2) that the judgment imposes an undue hardship
21 on the defendant, the justice or judge shall determine whether the
22 fine and costs should be satisfied through one or more methods
23 listed under Article 45.041(a-1). The justice or judge retains
24 jurisdiction for the purpose of making a determination under this
25 subsection.

26 (a-5) If the justice or judge determines at the hearing
27 under Subsection (a-2) that the judgment does not impose an undue

1 hardship on the defendant, the justice or judge shall order the
2 defendant to comply with the judgment not later than the 30th day
3 after the date the determination is made.

4 SECTION 13. Article 45.049, Code of Criminal Procedure, is
5 amended by adding Subsection (a-1) to read as follows:

6 (a-1) A defendant may elect to perform community service
7 required under this article in the county in which the defendant
8 resides.

9 SECTION 14. Article 45.0491, Code of Criminal Procedure, is
10 amended to read as follows:

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

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

20 (2) discharging the fine [~~or costs~~] under Article
21 45.049 or as otherwise authorized by this chapter would impose an
22 undue hardship on the defendant.

23 (b) A defendant is presumed to be indigent or to not have
24 sufficient resources or income to pay all or part of the fine [~~or~~
25 ~~costs~~] if the defendant:

26 (1) is in the conservatorship of the Department of
27 Family and Protective Services, or was in the conservatorship of

1 that department at the time of the offense; or

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

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

8 (1) significant physical or mental impairment or
9 disability;

10 (2) pregnancy and childbirth;

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

13 (4) work responsibilities and hours;

14 (5) transportation limitations;

15 (6) homelessness or housing insecurity; and

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

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

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

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

25 SECTION 15. Article 45.051(a-1), Code of Criminal
26 Procedure, as amended by Chapters 227 (H.B. 350) and 777 (H.B.
27 1964), Acts of the 82nd Legislature, Regular Session, 2011, is

1 reenacted and amended to read as follows:

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

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

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

12 (3) waive all or part of the court costs under Article
13 45.0491(d); or

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

16 SECTION 16. Section 702.003, Transportation Code, is
17 amended by adding Subsections (b-1), (g), and (h) and amending
18 Subsections (c) and (e-1) to read as follows:

19 (b-1) Information that is provided to make a determination
20 under Subsection (a) and that concerns an outstanding warrant from
21 the municipality for failure to pay a fine expires on the second
22 anniversary of the date the information was provided and may not be
23 used to refuse registration after that date. Once information
24 about an outstanding warrant for failure to pay a fine is provided
25 under Subsection (b), subsequent information about other warrants
26 for failure to pay a fine that are issued before the second
27 anniversary of the date the initial information was provided may

1 not be used, either before or after the second anniversary of that
2 date, to refuse registration under this section unless the motor
3 vehicle is no longer subject to refusal of registration because of
4 notice received under Subsection (c).

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

9 (1) entry of a judgment against the person and the
10 person's payment to the court or other means of discharge,
11 including a waiver, of the fine for the violation and of all court
12 costs;

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

15 (3) dismissal of the charge for which the arrest
16 warrant was issued.

17 (e-1) Except as otherwise provided by this section, a [A]
18 municipality that has a contract under Subsection (b) may impose an
19 additional \$20 fee to a person who has an outstanding warrant from
20 the municipality for failure to appear or failure to pay a fine on a
21 complaint that involves the violation of a traffic law. The
22 additional fee may be used only to reimburse the department or the
23 county assessor-collector for its expenses for providing services
24 under the contract, or another county department for expenses
25 related to services under the contract.

26 (g) A municipal court judge or justice of the peace who has
27 jurisdiction over the underlying offense may waive an additional

1 fee imposed under Subsection (e-1) if the judge or justice makes a
2 finding that the defendant is economically unable to pay the fee or
3 that good cause exists for the waiver.

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

9 SECTION 17. Section 706.005(a), Transportation Code, is
10 amended to read as follows:

11 (a) A political subdivision shall immediately notify the
12 department that there is no cause to continue to deny renewal of a
13 person's driver's license based on the person's previous failure to
14 appear or failure to pay or satisfy a judgment ordering the payment
15 of a fine and cost in the manner ordered by the court in a matter
16 involving an offense described by Section 706.002(a), on payment of
17 a fee as provided by Section 706.006 and:

18 (1) the perfection of an appeal of the case for which
19 the warrant of arrest was issued or judgment arose;

20 (2) the dismissal of the charge for which the warrant
21 of arrest was issued or judgment arose, other than a dismissal with
22 prejudice by motion of the appropriate prosecuting attorney for
23 lack of evidence;

24 (3) the posting of bond or the giving of other security
25 to reinstate the charge for which the warrant was issued;

26 (4) the payment or discharge of the fine and cost owed
27 on an outstanding judgment of the court; [~~or~~]

1 (5) if the denial of renewal of the person's driver's
2 license is based on the person's previous failure to appear, the
3 person's appearance in court with respect to the underlying offense
4 before conviction; or

5 (6) any other [suitable] arrangement to satisfy [pay]
6 the fine and cost, including through a payment plan or through
7 community service [within the court's discretion].

8 SECTION 18. Section 706.006, Transportation Code, is
9 amended by amending Subsections (a) and (b) and adding Subsection
10 (e) to read as follows:

11 (a) Except as provided by Subsection (d) and subject to
12 Subsection (e), a person who fails to appear for a complaint or
13 citation for an offense described by Section 706.002(a) shall be
14 required to pay an administrative fee of \$30 [~~for each complaint or~~
15 ~~citation reported to the department under this chapter~~], unless:

16 (1) the person is acquitted of the charges for which
17 the person failed to appear;

18 (2) the charges on which the person failed to appear
19 were dismissed with prejudice by motion of the appropriate
20 prosecuting attorney for lack of evidence;

21 (3) the failure to appear report was sent to the
22 department in error; or

23 (4) the case regarding the complaint or citation is
24 closed and the failure to appear report has been destroyed in
25 accordance with the applicable political subdivision's records
26 retention policy.

27 (b) Except as provided by Subsection (d) and subject to

1 Subsection (e), a person who fails to pay or satisfy a judgment
2 ordering the payment of a fine and cost in the manner the court
3 orders shall be required to pay an administrative fee of \$30.

4 (e) The department may not require a person to pay more than
5 one administrative fee for each political subdivision that submits
6 information to the department under this chapter, regardless of the
7 number of complaints or citations reported by that political
8 subdivision or any subsequent reports that are submitted by that
9 political subdivision during that same period in which the person's
10 license may not be renewed.

11 SECTION 19. The following provisions of the Code of
12 Criminal Procedure are repealed:

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

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

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

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

21 SECTION 20. Notwithstanding Section 32, Chapter 977 (H.B.
22 351), and Section 28, Chapter 1127 (S.B. 1913), Acts of the 85th
23 Legislature, Regular Session, 2017, Section 706.006,
24 Transportation Code, as amended by those Acts, applies to any fee
25 assessed on or after the effective date of this Act, regardless of
26 whether the offense, complaint, citation, or other violation giving
27 rise to the fee occurred before, on, or after the effective date of

1 this Act.

2 SECTION 21. Articles 1.053 and 45.0201, Code of Criminal
3 Procedure, as added by this Act, apply to a proceeding that
4 commences before, on, or after the effective date of this Act.

5 SECTION 22. The changes in law made by this Act to Article
6 15.17, Code of Criminal Procedure, and Section 702.003,
7 Transportation Code, apply only to an offense committed on or after
8 the effective date of this Act. An offense committed before the
9 effective date of this Act is governed by the law in effect on the
10 date the offense was committed, and the former law is continued in
11 effect for that purpose. For purposes of this section, an offense
12 was committed before the effective date of this Act if any element
13 of the offense occurred before that date.

14 SECTION 23. Articles 43.035 and 45.0445, Code of Criminal
15 Procedure, as added by this Act, apply to a notification received by
16 a court on or after the effective date of this Act, regardless of
17 whether the judgment of conviction was entered before, on, or after
18 the effective date of this Act.

19 SECTION 24. The changes in law made by this Act to Articles
20 43.09, 43.091, 45.049, 45.0491, and 45.051, Code of Criminal
21 Procedure, apply to a sentencing proceeding that commences before,
22 on, or after the effective date of this Act.

23 SECTION 25. The change in law made by this Act to Articles
24 43.05 and 45.045, Code of Criminal Procedure, applies only to a
25 capias pro fine issued on or after the effective date of this Act. A
26 capias pro fine issued before the effective date of this Act is
27 governed by the law in effect on the date the capias pro fine was

1 issued, and the former law is continued in effect for that purpose.

2 SECTION 26. The change in law made by this Act to Article
3 [45.014](#), Code of Criminal Procedure, applies to a voluntary court
4 appearance that occurs on or after the effective date of this Act.

5 SECTION 27. This Act takes effect September 1, 2019.