

By: Zaffirini, et al.  
(Collier, Thompson of Harris)

S.B. No. 1637

A BILL TO BE ENTITLED

AN ACT

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.

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

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

4           (2) filing a motion with the court;

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

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

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

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

15           (1) previously held a hearing under that subsection  
16 with respect to the case and is able to determine without  
17 holding a hearing that the portion of the judgment regarding the  
18 fine and costs 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 applicable portion of the judgment  
23 imposes an undue hardship on the defendant; and

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

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

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

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

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

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

- 13 (1) [~~the defendant fails to~~] appear at the hearing; or  
14 (2) comply with an order issued under Subsection (a-3)  
15 as a result of the hearing [~~based on evidence presented at the~~  
16 ~~hearing, the court determines that the capias pro fine should be~~  
17 ~~issued~~].

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

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

27 (a-3) If the court determines at the hearing under

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

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

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

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

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

15 (f) A court may require a defendant who is unable to pay a  
16 fine or costs to discharge all or part of the fine or costs by  
17 performing community service. The court may allow a defendant to  
18 perform the required community service in the county in which the  
19 defendant resides.

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

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

26 (1) the defendant is indigent or does not have  
27 sufficient resources or income to pay all or part of the fine [~~or~~

1 ~~costs~~] or was, at the time the offense was committed, a child as  
2 defined by Article 45.058(h); and

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

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

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

11 (2) pregnancy and childbirth;

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

14 (4) work responsibilities and hours;

15 (5) transportation limitations;

16 (6) homelessness or housing insecurity; and

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

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

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

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

24 (d) This subsection applies only to a defendant placed on  
25 community supervision, including deferred adjudication community  
26 supervision, whose fine or costs are wholly or partly waived under  
27 this article. At any time during the defendant's period of

1 community supervision, the court, on the court's own motion or by  
2 motion of the attorney representing the state, may reconsider the  
3 waiver of the fine or costs. After providing written notice to the  
4 defendant and an opportunity for the defendant to present  
5 information relevant to the defendant's ability to pay, the court  
6 may order the defendant to pay all or part of the waived amount of  
7 the fine or costs only if the court determines that the defendant  
8 has sufficient resources or income to pay that amount.

9 SECTION 9. Subchapter A, Chapter 45, Code of Criminal  
10 Procedure, is amended by adding Article 45.004 to read as follows:

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

14 SECTION 10. Subchapter B, Chapter 45, Code of Criminal  
15 Procedure, is amended by adding Articles 45.0201 and 45.0445 to  
16 read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

27        (e) The justice or judge retains jurisdiction for the

1 purpose of making a determination under this article.

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

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

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

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

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

25 (a-4) If the justice or judge determines at the hearing  
26 under Subsection (a-2) that the judgment does not impose an undue  
27 hardship on the defendant, the justice or judge shall order the



1 defendant to comply with the judgment not later than the 30th day  
2 after the date the determination is made.

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

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

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

9 [~~(2) the amount owed is resolved in any manner~~  
10 ~~authorized by this chapter~~].

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

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

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

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

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

27 (2) discharging the fine [~~or costs~~] under Article

1 45.049 or as otherwise authorized by this chapter would impose an  
2 undue hardship on the defendant.

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

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

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

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

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

17 (2) pregnancy and childbirth;

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

20 (4) work responsibilities and hours;

21 (5) transportation limitations;

22 (6) homelessness or housing insecurity; and

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

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

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

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

5           SECTION 15. Article 45.051(a-1), Code of Criminal  
6 Procedure, as amended by Chapters 227 (H.B. 350) and 777 (H.B.  
7 1964), Acts of the 82nd Legislature, Regular Session, 2011, is  
8 reenacted and amended to read as follows:

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

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

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

19           (3) waive all or part of the court costs under Article  
20 45.0491(d); or

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

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

26           (b-1) Information that is provided to make a determination  
27 under Subsection (a) and that concerns an outstanding warrant from

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

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

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

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

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

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

1 complaint that involves the violation of a traffic law. The  
2 additional fee may be used only to reimburse the department or the  
3 county assessor-collector for its expenses for providing services  
4 under the contract, or another county department for expenses  
5 related to services under the contract.

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

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

16 SECTION 17. The following provisions of the Code of  
17 Criminal Procedure are repealed:

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

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

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

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

26 SECTION 18. Notwithstanding Section 32, Chapter 977 (H.B.  
27 351), and Section 28, Chapter 1127 (S.B. 1913), Acts of the 85th

1 Legislature, Regular Session, 2017, Section 706.006,  
2 Transportation Code, as amended by those Acts, applies to any fee  
3 assessed on or after the effective date of this Act, regardless of  
4 whether the offense, complaint, citation, or other violation giving  
5 rise to the fee occurred before, on, or after the effective date of  
6 this Act.

7 SECTION 19. Articles 1.053 and 45.0201, Code of Criminal  
8 Procedure, as added by this Act, apply to a proceeding that  
9 commences before, on, or after the effective date of this Act.

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

15 SECTION 21. The changes in law made by this Act to Articles  
16 43.09, 43.091, 45.049, 45.0491, and 45.051, Code of Criminal  
17 Procedure, apply to a sentencing proceeding that commences before,  
18 on, or after the effective date of this Act.

19 SECTION 22. The change in law made by this Act to Articles  
20 43.05 and 45.045, Code of Criminal Procedure, applies only to a  
21 capias pro fine issued on or after the effective date of this Act. A  
22 capias pro fine issued before the effective date of this Act is  
23 governed by the law in effect on the date the capias pro fine was  
24 issued, and the former law is continued in effect for that purpose.

25 SECTION 23. The changes in law made by this Act to Section  
26 702.003, Transportation Code, apply only to an offense committed on  
27 or after the effective date of this Act. An offense committed

1 before the effective date of this Act is governed by the law in  
2 effect on the date the offense was committed, and the former law is  
3 continued in effect for that purpose. For purposes of this section,  
4 an offense was committed before the effective date of this Act if  
5 any element of the offense occurred before that date.

6 SECTION 24. This Act takes effect September 1, 2019.