

By: Zaffirini

S.B. No. 1637

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, after which the clerk of the court may  
20 require the defendant to follow any methods established under  
21 subsection (4);

22 (2) filing a motion with the court;

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

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

26 (c) If the court determines at the hearing under Subsection  
27 (a) that the judgment imposes an undue hardship on the defendant,

1 the court shall consider whether the fine and costs should be  
2 satisfied through one or more methods listed under Article  
3 42.15(a-1).

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

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

10 (2) is able to determine without holding a hearing  
11 that the judgment does impose an undue hardship on the defendant and  
12 that the fines and costs should be satisfied through one or more  
13 methods listed under Article 42.15(a-1).

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

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

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

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

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

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

5           SECTION 6. Article 43.05, Code of Criminal Procedure, is

6 amended by amending Subsection (a-2) and adding Subsections (a-3)

7 and (a-4) to read as follows:

8           (a-2) The court shall recall a capias pro fine if, before

9 the capias pro fine is executed:

10           (1) the defendant provides notice to the court under

11 Article 43.035 and a hearing is set under that article ~~[voluntarily~~

12 ~~appears to resolve the amount owed]; or ~~[and]~~~~

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

14 ~~authorized by this code~~ the defendant voluntarily appears and makes

15 a good faith effort to resolve the capias pro fine.

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

17 Subsection (a-1) that the judgment imposes an undue hardship on the

18 defendant, the court shall determine whether the fine and costs

19 should be satisfied through one or more methods listed under

20 Article 42.15(a-1). The court retains jurisdiction for the purpose

21 of making a determination under this subsection.

22           (a-4) If the court determines at the hearing under

23 Subsection (a-1) that the judgment does not impose an undue

24 hardship on the defendant, the court shall order the defendant to

25 comply with the judgment not later than the 30th day after the date

26 the determination is made.

27           SECTION 7. Article 43.09(f), Code of Criminal Procedure, is

1 amended to read as follows:

2 (f) A court may require a defendant who is unable to pay a  
3 fine or costs to discharge all or part of the fine or costs by  
4 performing community service. A judge or justice shall allow a  
5 defendant to perform community service required under this  
6 subsection in the county in which the defendant resides.

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

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

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

17 (2) each alternative method of discharging the fine  
18 and cost under Article 43.09 or 42.15 would impose an undue hardship  
19 on the defendant.

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

23 (1) significant physical or mental impairment or  
24 disability;

25 (2) pregnancy and childbirth;

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

- 1           (4) work responsibilities and hours;
- 2           (5) transportation limitations;
- 3           (6) homelessness or housing insecurity; and
- 4           (7) any other factor the court determines relevant.

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

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

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

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

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

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

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

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

26           SECTION 10. Chapter 45, Code of Criminal Procedure, is  
27 amended by adding Article 45.0445 to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

6        (a-2) The court may not issue a capias pro fine for the  
7 defendant's failure to satisfy the judgment according to its terms  
8 unless the court holds a hearing to determine whether the defendant  
9 is able to comply with the judgment without an undue hardship [~~on~~  
10 ~~the defendant's ability to satisfy the judgment]~~ and the defendant  
11 fails to:

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

13            (2) comply with an order under Subsection (a-5) [~~based~~  
14 ~~on evidence presented at the hearing, the court determines that the~~  
15 ~~capias pro fine should be issued)].~~

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

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

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

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

27        (a-4) If the justice or judge determines at the hearing

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

7 (a-5) If the justice or judge determines at the hearing  
8 under Subsection (a-2) that the judgment does not impose an undue  
9 hardship on the defendant, the justice or judge shall order the  
10 defendant to comply with the judgment not later than the 30th day  
11 after the date the determination is made.

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

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

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

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

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

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

4 (b) A defendant is presumed to be indigent or to not have  
5 sufficient resources or income to pay all or part of the fine and  
6 costs if the defendant:

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

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

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

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

18 (2) pregnancy and childbirth;

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

21 (4) work responsibilities and hours;

22 (5) transportation limitations;

23 (6) homelessness or housing insecurity; and

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

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

1 defendant:

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

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

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

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

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

12  
13 SECTION 15. Article 45.051(a-1), Code of Criminal  
14 Procedure, as amended by Chapters 227 (H.B. 350) and 777 (H.B.  
15 1964), Acts of the 82nd Legislature, Regular Session, 2011, is  
16 reenacted and amended to read as follows:

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

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

24 (2) require an eligible defendant to discharge all or  
25 part of those costs by performing community service or attending a  
26 tutoring program under Article 45.049 or 45.0492; [~~or~~]

27 (3) waive all or part of the court costs under Article

1 45.0491(d); or

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

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

7 (b-1) Information that is provided to make a determination  
8 under Subsection (a) and that concerns an outstanding warrant from  
9 the municipality for failure to pay a fine expires on the second  
10 anniversary of the date the information was provided and may not be  
11 used to refuse registration after that date. Once information  
12 about an outstanding warrant for failure to pay a fine is provided  
13 under Subsection (b), subsequent information about other warrants  
14 for failure to pay a fine that are issued before the second  
15 anniversary of the date the initial information was provided may  
16 not be used, either before or after the second anniversary of that  
17 date, to refuse registration under this section unless the motor  
18 vehicle is no longer subject to refusal of registration because of  
19 notice received under Subsection (c).

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

24 (1) entry of a judgment against the person and the  
25 person's payment to the court or other means of discharge,  
26 including a waiver, of the fine for the violation and of all court  
27 costs;

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

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

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

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

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

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

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

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

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

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

7           SECTION 18. Notwithstanding Section 32, Chapter 977 (H.B.  
8 351), and Section 28, Chapter 1127 (S.B. 1913), Acts of the 85th  
9 Legislature, Regular Session, 2017, Section 706.006,  
10 Transportation Code, as amended by those Acts, applies to any fee  
11 assessed on or after the effective date of this Act, regardless of  
12 whether the offense, complaint, citation, or other violation giving  
13 rise to the fee occurred before, on, or after the effective date of  
14 this Act.

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

18           SECTION 20. The changes in law made by this Act to Article  
19 15.17, Code of Criminal Procedure, and Section 702.003,  
20 Transportation Code, apply only to an offense committed on or after  
21 the effective date of this Act. An offense committed before the  
22 effective date of this Act is governed by the law in effect on the  
23 date the offense was committed, and the former law is continued in  
24 effect for that purpose. For purposes of this section, an offense  
25 was committed before the effective date of this Act if any element  
26 of the offense occurred before that date.

27           SECTION 21. Articles 43.035 and 45.0445, Code of Criminal

1 Procedure, as added by this Act, apply to a notification received by  
2 a court on or after the effective date of this Act, regardless of  
3 whether the judgment of conviction was entered before, on, or after  
4 the effective date of this Act.

5 SECTION 22. The changes in law made by this Act to Articles  
6 43.09, 43.091, 45.049, 45.0491, and 45.051, Code of Criminal  
7 Procedure, apply to a sentencing proceeding that commences before,  
8 on, or after the effective date of this Act.

9 SECTION 23. The change in law made by this Act to Articles  
10 43.05 and 45.045, Code of Criminal Procedure, applies only to a  
11 capias pro fine issued on or after the effective date of this Act. A  
12 capias pro fine issued before the effective date of this Act is  
13 governed by the law in effect on the date the capias pro fine was  
14 issued, and the former law is continued in effect for that purpose.

15 SECTION 24. The change in law made by this Act to Article  
16 45.014, Code of Criminal Procedure, applies to a voluntary court  
17 appearance that occurs on or after the effective date of this Act.

18 SECTION 25. This Act takes effect September 1, 2019.