

1-1 By: Zaffirini S.B. No. 1637
1-2 (In the Senate - Filed March 6, 2019; March 14, 2019, read
1-3 first time and referred to Committee on Criminal Justice;
1-4 May 6, 2019, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 7, Nays 0; May 6, 2019,
1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	Whitmire	X		
1-10	Huffman	X		
1-11	Buckingham	X		
1-12	Flores	X		
1-13	Hughes	X		
1-14	Miles	X		
1-15	Perry	X		

1-16 COMMITTEE SUBSTITUTE FOR S.B. No. 1637 By: Whitmire

1-17 A BILL TO BE ENTITLED
1-18 AN ACT

1-19 relating to the administrative, civil, and criminal consequences,
1-20 including fines, fees, and costs, imposed on persons arrested for,
1-21 charged with, or convicted of certain criminal offenses.

1-22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-23 SECTION 1. Chapter 1, Code of Criminal Procedure, is
1-24 amended by adding Article 1.053 to read as follows:

1-25 Art. 1.053. PRESENT ABILITY TO PAY. Except as otherwise
1-26 specifically provided, in determining a defendant's ability to pay
1-27 for any purpose, the court shall consider only the defendant's
1-28 present ability to pay.

1-29 SECTION 2. Article 43.015, Code of Criminal Procedure, is
1-30 amended by adding Subdivision (3) to read as follows:

1-31 (3) "Cost" includes any fee imposed on a defendant by
1-32 the court at the time a judgment is entered.

1-33 SECTION 3. Chapter 43, Code of Criminal Procedure, is
1-34 amended by adding Article 43.035 to read as follows:

1-35 Art. 43.035. RECONSIDERATION OF FINE OR COSTS. (a) If a
1-36 defendant notifies the court that the defendant has difficulty
1-37 paying the fine and costs in compliance with the judgment, the court
1-38 shall hold a hearing to determine whether that portion of the
1-39 judgment imposes an undue hardship on the defendant.

1-40 (b) For purposes of Subsection (a), a defendant may notify
1-41 the court by:

1-42 (1) voluntarily appearing and informing the court or
1-43 the clerk of the court in the manner established by the court for
1-44 that purpose;

1-45 (2) filing a motion with the court;

1-46 (3) mailing a letter to the court; or

1-47 (4) any other method established by the court for that
1-48 purpose.

1-49 (c) If the court determines at the hearing under Subsection
1-50 (a) that the portion of the judgment regarding the fine and costs
1-51 imposes an undue hardship on the defendant, the court shall
1-52 consider whether the fine and costs should be satisfied through one
1-53 or more methods listed under Article 42.15(a-1).

1-54 (d) The court may decline to hold a hearing under Subsection
1-55 (a) if the court:

1-56 (1) previously held a hearing under that subsection
1-57 with respect to the case and is able to determine without holding a
1-58 hearing that the portion of the judgment regarding the fine and
1-59 costs does not impose an undue hardship on the defendant; or

1-60 (2) is able to determine without holding a hearing

2-1 that:
 2-2 (A) the applicable portion of the judgment
 2-3 imposes an undue hardship on the defendant; and
 2-4 (B) the fine and costs should be satisfied
 2-5 through one or more methods listed under Article 42.15(a-1).
 2-6 (e) The court retains jurisdiction for the purpose of making
 2-7 a determination under this article.
 2-8 SECTION 4. The heading to Article 43.05, Code of Criminal
 2-9 Procedure, is amended to read as follows:
 2-10 Art. 43.05. ISSUANCE AND RECALL OF CAPIAS PRO FINE [~~SHALL~~
 2-11 ~~RECITE~~].
 2-12 SECTION 5. Article 43.05(a-1), Code of Criminal Procedure,
 2-13 as added by Chapter 1127 (S.B. 1913), Acts of the 85th Legislature,
 2-14 Regular Session, 2017, is amended to read as follows:
 2-15 (a-1) A court may not issue a capias pro fine for the
 2-16 defendant's failure to satisfy the judgment according to its terms
 2-17 unless the court holds a hearing to determine whether the judgment
 2-18 imposes an undue hardship on the defendant [~~on the defendant's~~
 2-19 ~~ability to satisfy the judgment~~] and the defendant fails to:
 2-20 (1) [~~the defendant fails to~~] appear at the hearing; or
 2-21 (2) comply with an order issued under Subsection (a-3)
 2-22 as a result of the hearing [~~based on evidence presented at the~~
 2-23 ~~hearing, the court determines that the capias pro fine should be~~
 2-24 ~~issued~~].
 2-25 SECTION 6. Article 43.05, Code of Criminal Procedure, is
 2-26 amended by amending Subsection (a-2) and adding Subsections (a-3)
 2-27 and (a-4) to read as follows:
 2-28 (a-2) If the court determines at the hearing under
 2-29 Subsection (a-1) that the judgment imposes an undue hardship on the
 2-30 defendant, the court shall determine whether the fine and costs
 2-31 should be satisfied through one or more methods listed under
 2-32 Article 42.15(a-1). The court retains jurisdiction for the purpose
 2-33 of making a determination under this subsection.
 2-34 (a-3) If the court determines at the hearing under
 2-35 Subsection (a-1) that the judgment does not impose an undue
 2-36 hardship on the defendant, the court shall order the defendant to
 2-37 comply with the judgment not later than the 30th day after the date
 2-38 the determination is made.
 2-39 (a-4) The court shall recall a capias pro fine if, before
 2-40 the capias pro fine is executed, the defendant:
 2-41 (1) provides notice to the court under Article 43.035
 2-42 and a hearing is set under that article; or
 2-43 (2) [~~the defendant~~] voluntarily appears and makes a
 2-44 good faith effort to resolve the capias pro fine [~~amount owed, and~~
 2-45 [~~(2) the amount owed is resolved in any manner~~
 2-46 ~~authorized by this code~~].
 2-47 SECTION 7. Article 43.09(f), Code of Criminal Procedure, is
 2-48 amended to read as follows:
 2-49 (f) A court may require a defendant who is unable to pay a
 2-50 fine or costs to discharge all or part of the fine or costs by
 2-51 performing community service. The court may allow a defendant to
 2-52 perform the required community service in the county in which the
 2-53 defendant resides.
 2-54 SECTION 8. Article 43.091, Code of Criminal Procedure, is
 2-55 amended to read as follows:
 2-56 Art. 43.091. WAIVER OF PAYMENT OF FINES AND COSTS FOR
 2-57 CERTAIN DEFENDANTS AND FOR CHILDREN. (a) A court may waive
 2-58 payment of all or part of a fine [~~or costs~~] imposed on a defendant if
 2-59 the court determines that:
 2-60 (1) the defendant is indigent or does not have
 2-61 sufficient resources or income to pay all or part of the fine [~~or~~
 2-62 ~~costs~~] or was, at the time the offense was committed, a child as
 2-63 defined by Article 45.058(h); and
 2-64 (2) each alternative method of discharging the fine
 2-65 [~~or cost~~] under Article 43.09 or 42.15 would impose an undue
 2-66 hardship on the defendant.
 2-67 (b) A determination of undue hardship made under Subsection
 2-68 (a)(2) is in the court's discretion. In making that determination,
 2-69 the court may consider, as applicable, the defendant's:

- 3-1 (1) significant physical or mental impairment or
- 3-2 disability;
- 3-3 (2) pregnancy and childbirth;
- 3-4 (3) substantial family commitments or
- 3-5 responsibilities, including child or dependent care;
- 3-6 (4) work responsibilities and hours;
- 3-7 (5) transportation limitations;
- 3-8 (6) homelessness or housing insecurity; and
- 3-9 (7) any other factor the court determines relevant.

3-10 (c) A court may waive payment of all or part of the costs

3-11 imposed on a defendant if the court determines that the defendant:

3-12 (1) is indigent or does not have sufficient resources

3-13 or income to pay all or part of the costs; or

3-14 (2) was, at the time the offense was committed, a child

3-15 as defined by Article 45.058(h).

3-16 (d) This subsection applies only to a defendant placed on

3-17 community supervision, including deferred adjudication community

3-18 supervision, whose fine or costs are wholly or partly waived under

3-19 this article. At any time during the defendant's period of

3-20 community supervision, the court, on the court's own motion or by

3-21 motion of the attorney representing the state, may reconsider the

3-22 waiver of the fine or costs. After providing written notice to the

3-23 defendant and an opportunity for the defendant to present

3-24 information relevant to the defendant's ability to pay, the court

3-25 may order the defendant to pay all or part of the waived amount of

3-26 the fine or costs only if the court determines that the defendant

3-27 has sufficient resources or income to pay that amount.

3-28 SECTION 9. Subchapter A, Chapter 45, Code of Criminal

3-29 Procedure, is amended by adding Article 45.004 to read as follows:

3-30 Art. 45.004. GENERAL DEFINITION. In this chapter, "cost"

3-31 includes any fee imposed on a defendant by the justice or judge at

3-32 the time a judgment is entered.

3-33 SECTION 10. Subchapter B, Chapter 45, Code of Criminal

3-34 Procedure, is amended by adding Articles 45.0201 and 45.0445 to

3-35 read as follows:

3-36 Art. 45.0201. APPEARANCE BY TELEPHONE OR VIDEOCONFERENCE.

3-37 If the justice or judge determines that requiring a defendant to

3-38 appear before the justice or judge in person for a hearing under

3-39 Article 45.0445 or 45.045 would impose an undue hardship on the

3-40 defendant, the justice or judge may allow the defendant to appear by

3-41 telephone or videoconference.

3-42 Art. 45.0445. RECONSIDERATION OF FINE OR COSTS. (a) If

3-43 the defendant notifies the justice or judge that the defendant has

3-44 difficulty paying the fine and costs in compliance with the

3-45 judgment, the justice or judge shall hold a hearing to determine

3-46 whether the judgment imposes an undue hardship on the defendant.

3-47 (b) For purposes of Subsection (a), a defendant may notify

3-48 the justice or judge by:

3-49 (1) voluntarily appearing and informing the justice or

3-50 judge or the clerk of the court in the manner established by the

3-51 justice or judge for that purpose;

3-52 (2) filing a motion with the justice or judge;

3-53 (3) mailing a letter to the justice or judge; or

3-54 (4) any other method established by the justice or

3-55 judge for that purpose.

3-56 (c) If the justice or judge determines at the hearing under

3-57 Subsection (a) that the judgment imposes an undue hardship on the

3-58 defendant, the justice or judge shall consider whether to allow the

3-59 defendant to satisfy the fine and costs through one or more methods

3-60 listed under Article 45.041(a-1).

3-61 (d) The justice or judge may decline to hold a hearing under

3-62 Subsection (a) if the justice or judge:

3-63 (1) previously held a hearing under that subsection

3-64 with respect to the case and is able to determine without holding a

3-65 hearing that the judgment does not impose an undue hardship on the

3-66 defendant; or

3-67 (2) is able to determine without holding a hearing

3-68 that:

3-69 (A) the judgment imposes an undue hardship on the

4-1 defendant; and

4-2 (B) the fine and costs should be satisfied
4-3 through one or more methods listed under Article 45.041(a-1).

4-4 (e) The justice or judge retains jurisdiction for the
4-5 purpose of making a determination under this article.

4-6 SECTION 11. Article 45.045(a-2), Code of Criminal
4-7 Procedure, as added by Chapter 1127 (S.B. 1913), Acts of the 85th
4-8 Legislature, Regular Session, 2017, is amended to read as follows:

4-9 (a-2) The court may not issue a *capias pro fine* for the
4-10 defendant's failure to satisfy the judgment according to its terms
4-11 unless the court holds a hearing to determine whether the judgment
4-12 imposes an undue hardship on the defendant ~~[on the defendant's~~
4-13 ~~ability to satisfy the judgment]~~ and the defendant fails to:

4-14 (1) ~~[the defendant fails to]~~ appear at the hearing; or

4-15 (2) comply with an order issued under Subsection (a-4)
4-16 as a result of the hearing ~~[based on evidence presented at the~~
4-17 ~~hearing, the court determines that the *capias pro fine* should be~~
4-18 ~~issued].~~

4-19 SECTION 12. Article 45.045, Code of Criminal Procedure, is
4-20 amended by amending Subsection (a-3) and adding Subsections (a-4)
4-21 and (a-5) to read as follows:

4-22 (a-3) If the justice or judge determines at the hearing
4-23 under Subsection (a-2) that the judgment imposes an undue hardship
4-24 on the defendant, the justice or judge shall determine whether the
4-25 fine and costs should be satisfied through one or more methods
4-26 listed under Article 45.041(a-1). The justice or judge retains
4-27 jurisdiction for the purpose of making a determination under this
4-28 subsection.

4-29 (a-4) If the justice or judge determines at the hearing
4-30 under Subsection (a-2) that the judgment does not impose an undue
4-31 hardship on the defendant, the justice or judge shall order the
4-32 defendant to comply with the judgment not later than the 30th day
4-33 after the date the determination is made.

4-34 (a-5) The court shall recall a *capias pro fine* if, before
4-35 the *capias pro fine* is executed, the defendant:

4-36 (1) provides notice to the justice or judge under
4-37 Article 45.0445 and a hearing is set under that article; or

4-38 (2) ~~[the defendant] voluntarily appears and makes a~~
4-39 ~~good faith effort to resolve the *capias pro fine* [amount owed, and~~
4-40 ~~[(2) the amount owed is resolved in any manner~~
4-41 ~~authorized by this chapter].~~

4-42 SECTION 13. Article 45.049, Code of Criminal Procedure, is
4-43 amended by adding Subsection (a-1) to read as follows:

4-44 (a-1) A justice or judge may allow a defendant to perform in
4-45 the county in which the defendant resides any community service
4-46 required under this article.

4-47 SECTION 14. Article 45.0491, Code of Criminal Procedure, is
4-48 amended to read as follows:

4-49 Art. 45.0491. WAIVER OF PAYMENT OF FINES AND COSTS FOR
4-50 CERTAIN DEFENDANTS AND FOR CHILDREN. (a) A municipal court,
4-51 regardless of whether the court is a court of record, or a justice
4-52 court may waive payment of all or part of a fine ~~[or costs]~~ imposed
4-53 on a defendant if the court determines that:

4-54 (1) the defendant is indigent or does not have
4-55 sufficient resources or income to pay all or part of the fine ~~[or~~
4-56 ~~costs]~~ or was, at the time the offense was committed, a child as
4-57 defined by Article 45.058(h); and

4-58 (2) ~~discharging the fine [or costs] under Article~~
4-59 45.049 or as otherwise authorized by this chapter would impose an
4-60 undue hardship on the defendant.

4-61 (b) A defendant is presumed to be indigent or to not have
4-62 sufficient resources or income to pay all or part of the fine or
4-63 costs for purposes of Subsection (a) or (d) if the defendant:

4-64 (1) is in the conservatorship of the Department of
4-65 Family and Protective Services, or was in the conservatorship of
4-66 that department at the time of the offense; or

4-67 (2) is designated as a homeless child or youth or an
4-68 unaccompanied youth, as those terms are defined by 42 U.S.C.
4-69 Section 11434a, or was so designated at the time of the offense.

5-1 (c) A determination of undue hardship made under Subsection
 5-2 (a)(2) is in the court's discretion. In making that determination,
 5-3 the court may consider, as applicable, the defendant's:
 5-4 (1) significant physical or mental impairment or
 5-5 disability;
 5-6 (2) pregnancy and childbirth;
 5-7 (3) substantial family commitments or
 5-8 responsibilities, including child or dependent care;
 5-9 (4) work responsibilities and hours;
 5-10 (5) transportation limitations;
 5-11 (6) homelessness or housing insecurity; and
 5-12 (7) any other factors the court determines relevant.

5-13 (d) A municipal court, regardless of whether the court is a
 5-14 court of record, or a justice court may waive payment of all or part
 5-15 of the costs imposed on a defendant if the court determines that the
 5-16 defendant:

5-17 (1) is indigent or does not have sufficient resources
 5-18 or income to pay all or part of the costs; or

5-19 (2) was, at the time the offense was committed, a child
 5-20 as defined by Article 45.058(h).

5-21 SECTION 15. Article 45.051(a-1), Code of Criminal
 5-22 Procedure, as amended by Chapters 227 (H.B. 350) and 777 (H.B.
 5-23 1964), Acts of the 82nd Legislature, Regular Session, 2011, is
 5-24 reenacted and amended to read as follows:

5-25 (a-1) Notwithstanding any other provision of law, as an
 5-26 alternative to requiring a defendant charged with one or more
 5-27 offenses to make payment of all court costs as required by
 5-28 Subsection (a), the judge may:

5-29 (1) allow the defendant to enter into an agreement for
 5-30 payment of those costs in installments during the defendant's
 5-31 period of probation;

5-32 (2) require an eligible defendant to discharge all or
 5-33 part of those costs by performing community service or attending a
 5-34 tutoring program under Article 45.049 or 45.0492; ~~or~~

5-35 (3) waive all or part of the court costs under Article
 5-36 45.0491(d); or

5-37 (4) take any combination of actions authorized by
 5-38 Subdivision (1), ~~or~~ (2), or (3).

5-39 SECTION 16. Section 702.003, Transportation Code, is
 5-40 amended by adding Subsections (b-1), (g), and (h) and amending
 5-41 Subsections (c) and (e-1) to read as follows:

5-42 (b-1) Information that is provided to make a determination
 5-43 under Subsection (a) and that concerns an outstanding warrant from
 5-44 the municipality for failure to pay a fine expires on the second
 5-45 anniversary of the date the information was provided and may not be
 5-46 used to refuse registration after that date. Once information
 5-47 about an outstanding warrant for failure to pay a fine is provided
 5-48 under Subsection (b), subsequent information about other warrants
 5-49 for failure to pay a fine that are issued before the second
 5-50 anniversary of the date the initial information was provided may
 5-51 not be used, either before or after the second anniversary of that
 5-52 date, to refuse registration under this section unless the motor
 5-53 vehicle is no longer subject to refusal of registration because of
 5-54 notice received under Subsection (c).

5-55 (c) A municipality that has a contract under Subsection (b)
 5-56 shall notify the county assessor-collector or the department
 5-57 regarding a person for whom the county assessor-collector or the
 5-58 department has refused to register a motor vehicle on:

5-59 (1) entry of a judgment against the person and the
 5-60 person's payment to the court or other means of discharge,
 5-61 including a waiver, of the fine for the violation and of all court
 5-62 costs;

5-63 (2) perfection of an appeal of the case for which the
 5-64 arrest warrant was issued; or

5-65 (3) dismissal of the charge for which the arrest
 5-66 warrant was issued.

5-67 (e-1) Except as otherwise provided by this section, a [A]
 5-68 municipality that has a contract under Subsection (b) may impose an
 5-69 additional \$20 fee to a person who has an outstanding warrant from

6-1 the municipality for failure to appear or failure to pay a fine on a
6-2 complaint that involves the violation of a traffic law. The
6-3 additional fee may be used only to reimburse the department or the
6-4 county assessor-collector for its expenses for providing services
6-5 under the contract, or another county department for expenses
6-6 related to services under the contract.

6-7 (g) A municipal court judge or justice of the peace who has
6-8 jurisdiction over the underlying offense may waive an additional
6-9 fee imposed under Subsection (e-1) if the judge or justice makes a
6-10 finding that the defendant is economically unable to pay the fee or
6-11 that good cause exists for the waiver.

6-12 (h) If a municipality is notified that the court having
6-13 jurisdiction over the underlying offense has waived the fine that
6-14 is the subject of the warrant due to the defendant's indigency, the
6-15 municipality may not impose an additional fee on the defendant
6-16 under Subsection (e-1).

6-17 SECTION 17. The following provisions of the Code of
6-18 Criminal Procedure are repealed:

6-19 (1) Article 42.15(a-1), as added by Chapter 977 (H.B.
6-20 351), Acts of the 85th Legislature, Regular Session, 2017;

6-21 (2) Article 43.05(a-1), as added by Chapter 977 (H.B.
6-22 351), Acts of the 85th Legislature, Regular Session, 2017;

6-23 (3) Article 45.041(a-1), as added by Chapter 977 (H.B.
6-24 351), Acts of the 85th Legislature, Regular Session, 2017; and

6-25 (4) Article 45.045(a-2), as added by Chapter 977 (H.B.
6-26 351), Acts of the 85th Legislature, Regular Session, 2017.

6-27 SECTION 18. Notwithstanding Section 32, Chapter 977 (H.B.
6-28 351), and Section 28, Chapter 1127 (S.B. 1913), Acts of the 85th
6-29 Legislature, Regular Session, 2017, Section 706.006,
6-30 Transportation Code, as amended by those Acts, applies to any fee
6-31 assessed on or after the effective date of this Act, regardless of
6-32 whether the offense, complaint, citation, or other violation giving
6-33 rise to the fee occurred before, on, or after the effective date of
6-34 this Act.

6-35 SECTION 19. Articles 1.053 and 45.0201, Code of Criminal
6-36 Procedure, as added by this Act, apply to a proceeding that
6-37 commences before, on, or after the effective date of this Act.

6-38 SECTION 20. Articles 43.035 and 45.0445, Code of Criminal
6-39 Procedure, as added by this Act, apply to a notification received by
6-40 a court on or after the effective date of this Act, regardless of
6-41 whether the judgment of conviction was entered before, on, or after
6-42 the effective date of this Act.

6-43 SECTION 21. The changes in law made by this Act to Articles
6-44 43.09, 43.091, 45.049, 45.0491, and 45.051, Code of Criminal
6-45 Procedure, apply to a sentencing proceeding that commences before,
6-46 on, or after the effective date of this Act.

6-47 SECTION 22. The change in law made by this Act to Articles
6-48 43.05 and 45.045, Code of Criminal Procedure, applies only to a
6-49 capias pro fine issued on or after the effective date of this Act. A
6-50 capias pro fine issued before the effective date of this Act is
6-51 governed by the law in effect on the date the capias pro fine was
6-52 issued, and the former law is continued in effect for that purpose.

6-53 SECTION 23. The changes in law made by this Act to Section
6-54 702.003, Transportation Code, apply only to an offense committed on
6-55 or after the effective date of this Act. An offense committed
6-56 before the effective date of this Act is governed by the law in
6-57 effect on the date the offense was committed, and the former law is
6-58 continued in effect for that purpose. For purposes of this section,
6-59 an offense was committed before the effective date of this Act if
6-60 any element of the offense occurred before that date.

6-61 SECTION 24. This Act takes effect September 1, 2019.

6-62 * * * * *