

**SUBJECT:** Failing to appear, withdrawing requests in municipal, justice jury trials

**COMMITTEE:** County Affairs — committee substitute recommended

**VOTE:** 8 ayes — R. Lewis, Gutierrez, Chisum, Hamric, Kamel, G. Lewis, Munoz, Wohlgemuth

0 nays

1 absent — Longoria

**WITNESSES:** For — Sandy Prindle, Justice of the Peace and Constables Association of Texas

Against — None

**BACKGROUND:** Justice of the peace courts have original jurisdiction in misdemeanor criminal cases with punishments by fine only, exclusive jurisdiction in civil cases where the amount in controversy is \$200 or less and concurrent jurisdiction with both the county and district courts when the amount is at least \$200 but less than \$5,000. Municipal courts have concurrent jurisdiction with justice of the peace courts in misdemeanor cases of violations of state laws within city limits (predominantly traffic offenses) when punishment is limited to fines only, of \$500 or less.

**DIGEST:** CSHB 1760 would authorize justice and municipal courts to order persons who demand a jury trial and then fail to appear for the trial to pay the costs of impaneling the jury. The court could waive the fee for good cause and could enforce an order through contempt of court.

Defendants in justice courts who request a jury trial and then withdraw the request within 24 hours of the trial would be required to pay a \$3 jury fee if they are convicted or if final disposition is deferred.

CSHB 1760 would repeal a requirement that defendants convicted in a trial in a county court or a county court at law pay a trial fee of \$10.

SUPPORTERS  
SAY:

CSHB 1760 would discourage defendants in justice and municipal courts from failing to appear for jury trials they have demanded and from withdrawing requests for jury trials at the last minute. These practices result in courts having to pay persons who are summoned but do not serve on a jury and in jurors being unduly inconvenienced. This bill would not affect persons who act in good faith and do not abuse the court system.

Defendants in justice and municipal courts sometimes demand a jury trial and then fail to appear for the trial. For example, in eviction cases defendants sometimes demand a jury trial to give them time to find another place to live. When the trial date comes, the court will impanel a jury but the defendant often fails to appear in court. The court must pay each juror, usually 12 are called, a minimum of \$6 per day. CSHB 1760 would allow the court to charge these defendants for impaneling a jury. This is a reasonable charge considering the time, cost and work involved for the court. In civil cases like evictions, when the defendant just wants more time and eventually moves from the residence, remedies such as default hearing and losing the case do not deter abuses of the system. In criminal cases such as traffic offenses current remedies of arrest warrants and bond revocation often could be inappropriate. CSHB 1760 is designed to discourage these abuses in the first place.

CSHB 1760 would give courts flexibility to consider defendants' individual circumstances and to waive the jury costs for good cause.

Defendants often withdraw requests for jury trials just a few hours before the trial and after the court has called in jurors. For instance, defendants in traffic cases often demand a jury trial and then agree to a plea bargain just before a trial begins. CSHB 1760 would require these defendants who are convicted or whose case is deferred to pay the same small jury fee, \$3, charged to defendants who are convicted by a jury.

The charges allowed by CSHB 1760 are minimal and would not limit the right or ability of all citizens to demand a jury trial but would deter these irresponsible practices and would supplement county budgets. Taxpayers currently pay the majority of the costs of litigation; the fees proposed in this bill would shift the costs onto those who actually use the courts.

CSHB 1760 would repeal requirements that defendants convicted in trials in county courts or county courts at law pay a trial fee because questions have been raised about the constitutionality of this fee and many courts are not collecting it.

OPPONENTS  
SAY:

Current remedies are adequate to discourage persons from failing to appear for jury trials. In criminal cases an arrest warrant can be issued or a bond can be revoked, and in civil cases persons can be subject to a default hearing, lose the case and be penalized.

While the individual fees proposed in HB 1760 alone are not so high, cumulatively such fees and other court costs could increase the proportion of defendants who are unable to pay and could discourage less affluent defendants from demanding jury trials, a constitutional right in criminal cases. It is only proper that taxpayers absorb a large part of court costs, since justice is a public good that benefits all members of a community.

NOTES:

The committee substitute added the provisions concerning failure to appear to the Civil Practice and Remedies Code and made changes applying the \$3 fee to offenses committed on or after the bill's effective date and applying the failure to appear provisions to proceedings commenced on or after the bill's effective date.

The companion bill, SB 1060 by Wentworth, was approved by the Senate on April 25 and has been referred to the House County Affairs Committee.