

SUBJECT: Raising the maximum monthly community supervision fee

COMMITTEE: Corrections — committee substitute recommended

VOTE: 7 ayes — Haggerty, Allen, Ellis, Gray, Hopson, Isett, Ritter

1 nay — Farrar

1 present not voting — Hodge

WITNESSES: For — Jim Allison, County Judges and Commissioners Association of Texas; Jamie Cummings, Tarrant County Criminal Court #5, Tarrant County Judges, Tarrant County Community Supervision Department; George Gallagher, 396th District Court, Tarrant County Criminal Judges, Tarrant County Community Supervision Department; Donald Lee, Texas Conference of Urban Counties; Bill Lewis, Mothers Against Drunk Driving; *Registered but did not testify:* Mark Mendez, Tarrant County Commissioners Court

Against — Linda Reeves, Inmate Families Organization, Inc.

On — Pablo Martinez, Criminal Justice Policy Council; Bonita White, Texas Department of Criminal Justice – Community Justice Assistance Division

BACKGROUND: Code of Criminal Procedure, art. 42.12, sec. 19(a) requires a judge granting community supervision to fix a fee of not less than \$25 and not more than \$40 per month for a defendant to pay the court during the community supervision period. A judge may decide to waive, reduce, or suspend the monthly fee if its payment would cause the defendant significant financial hardship.

Government Code, sec. 509.011(a) allows the Community Justice Assistance Division of the Texas Department of Criminal Justice to submit to the comptroller payment vouchers to qualifying local community supervision and corrections departments (CSCDs) for the following:

- ! a per diem amount for each felony defendant the department directly supervises;

- ! a per diem amount for a period not to exceed 182 days for each defendant, other than a felony defendant, under department supervision; and
- ! an annual amount as computed by an allocation formula.

DIGEST: CSHB 598 would amend Code of Criminal Procedure, art. 42.12, sec.19(a) to increase the maximum monthly fee for community supervision to \$60.

The bill would take effect on September 1, 2001.

SUPPORTERS SAY: CSHB 598 would help ease local probation department budgetary problems. For example, the Tarrant County CSCD anticipates a \$2.4 million shortfall for its 2001-02 budget. The probation fee has not increased since 1986, despite an increase in salaries for district judges and attorneys and an annual inflation rate of two to four percent. Departments are losing good probation officers because they cannot pay them enough. Some cannot afford to offer counseling to misdemeanor defendants, who then go on to commit felonies, costing the state courts and prisons even more money.

CSHB 598 would enable judges to charge wealthier probationers higher monthly fees to offset the lower fees charged poorer defendants. The current maximum fee is unrealistically low for many probationers. In addition, it is only fair that defendants cover at least some of the cost of their supervision and the operation of the probation department. The state funds two-thirds of the cost of supervision, and the probationer pays the rest.

CSHB 598 would not create a new burden for defendants. Judges would not be required to assess the new maximum fee of \$60 per month, and they still would be able to waive or reduce the fee if it would cause a defendant significant financial hardship. In addition, judges often implement payment plans when a probationer falls behind in paying fees. The LBB estimates that, on average, defendants under supervision currently pay only \$26.43 per month in supervision fees.

CSHB 598 would not lead to more technical revocations for probationers who were unable to pay their fees. Due process limitations exist to keep judges from revoking probationers purely for inability to pay. It is unconstitutional to imprison someone solely for an inability to pay a debt.

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- OPPONENTS SAY:** CSHB 598 would create a financial hardship for defendants. Probationers already pay up to 30 separate fees. A \$20 monthly increase in fees could make the difference in whether a probationer could feed his family. If probationers failed to pay their increased fees, their probation could be revoked, leaving their families in an even worse situation. Currently, no cap on total probation fees exists. Some probationers pay in excess of \$400 per month. In addition to the community supervision fee, there are court costs, counseling fees, fines, and other fees.
- CSHB 598 could lead to increased technical revocations for probationers. Defendants who could not afford to make their monthly payments might be afraid to show up for their monthly meetings with probation officers. Failure to appear and falling behind in paying fees could result in more revocations of probation. This would require the state to incur the costs of imprisonment and possibly supporting families these probationers would leave behind.
- NOTES:** HB 598 as filed also would have amended Government Code, sec. 509.011(a) to extend the time period for which local community supervision and corrections departments could get per diem state funding for non-felony offenders under supervision to two years.
- The bill's fiscal note shows no significant fiscal implication to the state. The LBB estimates that local CSCDs could see an average revenue increase of \$53,278 per month, per department, or \$6.5 million total per month statewide.