SUBJECT: Deferral of court costs in certain misdemeanor cases

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 6 ayes — Peña, Vaught, Escobar, Moreno, Pierson, Talton

                0 nays

                3 absent — Riddle, Hodge, Mallory Caraway

WITNESSES: For — Brian Holman, Texas Municipal Courts Association; C. Victor
                Lander, Municipal Judges Section, State Bar of Texas & Texas Municipal
                Courts Association; Dennis McKnight, Bexar County Sheriff's Office;
                John Vasquez, Texas Municipal Courts Association; (*Registered, but did
                not testify:* Will Harrell, ACLU, NAACP, LULAC)

                Against — None

BACKGROUND: Code of Criminal Procedure, art. 45.051, provides that on a plea of guilty
                or no contest or on a finding of guilt in a misdemeanor case punishable by
                fine only and payment of all court costs, the judge may defer the
                proceedings without entering an adjudication of guilt and place the
                defendant on probation for a period not to exceed 180 days. The judge
                may require certain conditions of the defendant, such as payment of a
                bond, payment of restitution, counseling, treatment, or driving safety
                courses.

                On determination that the defendant has complied with the requirements
                imposed, the judge must dismiss the complaint, and it must be clearly
                noted in the docket that the complaint is dismissed and that there is not a
                final conviction.

                If the defendant fails to comply with the conditions, the judge may impose
                the fine assessed or impose a lesser fine. In most cases, the imposition of
                the fine or lesser fine constitutes a final conviction of the defendant.

DIGEST: CSHB 2267 would amend Code of Criminal Procedure, art. 45.051, to
                allow a judge to give a defendant alternatives to the full payment of all
                court costs. Under CSHB 2267 a defendant could enter into an agreement
                to pay off the court costs through an installment plan or to discharge all or

part of the court costs by performing community service under Code of Criminal Procedure, art. 45.049. A judge also could impose any combination of the two.

If the defendant failed to comply with the imposed requirements, the court would notify the defendant in writing of the failure and require the defendant to appear and show cause why the order of deferral should not be revoked. On the defendant's showing of good cause for failure to comply, the court could allow more time for the defendant to comply.

The bill would take effect September 1, 2007, and would apply only to an offense committed on or after that date.

SUPPORTERS
SAY:

CSHB 2267 would assure equal protection under the law for defendants of all income levels while helping to address overcrowding in jails. Current law discriminates against indigent defendants by requiring them to accept a conviction in order to qualify for community service or a payment plan. Those with disposable income can pay off their court costs and qualify for deferred disposition and a cleared record.

CSHB 2267 would address this problem by allowing minors and the indigent to take advantage of deferred disposition. Under current law, a defendant must pay all applicable court costs before becoming eligible for deferred disposition. Sometimes these costs are larger than the fine itself. Allowing payment plans and community service as an option for all defendants would be equitable and just.

The bill is needed because many judges currently do not allow payment plans or community service in lieu of initial full payment of court costs. This is usually because judges either do not know about them or are afraid to implement them because of a lack of statutory authority. Making these changes to the statutory scheme of deferred disposition would educate judges and encourage them to implement the changes.

CSHB 2267 would not require that payment alternatives be limited to the indigent. The bill is designed to allow judges maximum discretion to tailor solutions that fit both the crime and the circumstances of the defendant. Many judges have been implementing these alternatives for years, and CSHB 2267 is designed to give them statutory authority to do so.

CSHB 2267 also would help to address jail overcrowding. Urban counties are facing a jail capacity crisis, and their courts would take advantage of community service or payment plans as alternatives to jailing individuals for noncompliance with the probation plans under Code of Criminal Procedure, art. 45.051. Noncompliance itself can stem from failure to pay court costs. Additionally, by expressly authorizing payment alternatives, defendants who were not able to pay their court costs would be more likely to avoid imprisonment for non-payment, which was deemed unconstitutional by the U.S. Supreme Court in *Tate v. Short*, 401 U.S. 395 (1971).

CSHB 2267 would not result in a loss of local and state revenues because those who would take advantage of it likely would not be able to pay court costs under current law. Under this bill, they could set up a payment plan, which would help to increase collections. According the Legislative Budget Board, CSHB 2267 would have no fiscal implication to the state or local governments.

OPPONENTS SAY:

CSHB 2267 is unnecessary. Judges already have wide powers to pursue the interests of equitable justice. Many municipal judges already award community service and establish payment plans for court costs. In addition, many judges already hold hearings where a defendant has an opportunity to show good cause as to why probation should not be revoked. Incorporating these practices into statute would risk limiting the powers of judges. If there are judges who do not yet know about these practices, then judicial education, not statutory change, would be the best way to spread these practices.

NOTES:

As introduced, HB 2267 would have only allowed payment plans and community service as alternatives to full initial payment of court costs in traffic cases. The committee substitute would apply to all misdemeanor offenses punishable by fine only.