

SUBJECT: Discharging children's fines and court costs through alternative methods

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 7 ayes — Herrero, Carter, Burnam, Canales, Leach, Moody, Toth

1 nay — Schaefer

1 absent — Hughes

SENATE VOTE: On final passage, March 27 — 30-0, on Local and Uncontested Calendar

WITNESSES: (*On House companion bill, HB 3059:*)

For — (*Registered, but did not testify:* Yannis Banks, Texas NAACP; Kay Forth, American Civil Liberties Union of Texas; Andrea Marsh, Texas Fair Defense Project; Lauren Rose, Texans Care For Children; Michael Vitris, Texas Appleseed)

Against — None

BACKGROUND: Code of Criminal Procedure, art. 45.0492, applies to a defendant younger than age 17 who is assessed a fine or court costs for a class C misdemeanor (maximum fine of \$500) that occurred on the grounds of a primary or secondary school at which the defendant was enrolled at the time of the offense. A judge may require such a defendant to discharge these fines or costs by performing community service or attending a tutoring program.

Art. 45.049 authorizes a judge to require a defendant who fails to pay previously assessed fines or costs, or who is determined by the court to have insufficient resources to pay the fine or costs, to discharge all or part of the fine or costs by performing community service.

Articles 45.0491 and 43.091 allow a court to waive payment of a fine or cost for an indigent defendant who defaults in payment and for whom alternative methods of discharging the fine or cost would impose an undue hardship.

DIGEST:

SB 395 would allow a judge to permit a child defendant, at least 10 years old and younger than age 17, to discharge fines and court costs associated with a class C misdemeanor conviction by electing to perform community service or receive tutoring. The child's decision would have to be made in writing and signed by his or her parent, guardian, or managing conservator.

The bill also would permit a court to waive a child defendant's class C misdemeanor fines or court costs if the child defaulted on the payment and discharging the costs through community service or tutoring would impose an undue hardship on the defendant.

The provision in current law requiring that the offense have occurred on the grounds of the defendant's school would not apply to the performance of community service, receipt of tutoring, or discharge of fines or costs under SB 395.

The bill would take effect September 1, 2013, and would apply only to a sentencing proceeding that began on or after that date.

SUPPORTERS
SAY:

SB 395 would promote youth accountability by giving judges the discretion to allow juveniles to choose a more productive sentence that involved helping the community rather than paying a fine. Currently, a child tried in juvenile court is not required to pay fines, regardless of the severity of the offense. However, a child tried for a class C misdemeanor in a criminal court can be assessed a fine of \$500 plus court costs, expenses that could weigh heavily on students and their families.

If a child fails to appear in court or if the child's parents cannot afford the fine, a *capias pro fine* can be issued for them when they turn 17 years old. Having this unpaid fine could hurt a child's ability to attend college, secure loans, or gain employment. On the other hand, if the child's family had the means to pay the fine, the young defendant could avoid the crime's consequences, along with a potentially valuable lesson.

This bill would formalize the process that gives judges the ability to allow a child defendant and his or her parents to elect whether to pay the fine, perform community service, or receive tutoring, which would promote more positive outcomes for at-risk youth.

OPPONENTS
SAY:

SB 395 would allow a young defendant to avoid the actual consequences of his or her crime. Requiring a juvenile to find employment in order to pay the fine could be a more productive consequence than receiving tutoring, performing community service, or simply having the fine waived.

NOTES:

The companion bill, HB 3059 by Herrero, was left pending in the House Criminal Jurisprudence Committee on April 23.