

SUBJECT: Court order to certain defendant to pay costs of court-appointed counsel

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 5 ayes — Herrero, Moody, Leach, Shaheen, Simpson

0 nays

2 absent — Canales, Hunter

WITNESSES: For — David Holmes, Hill County, Texas; (*Registered, but did not testify*: Donald Lee, Texas Conference of Urban Counties)

Against — Rebecca Bernhardt, Texas Fair Defense Project; (*Registered, but did not testify*: Victor Cornell, American Civil Liberties Union of Texas; Patricia Cummings, Texas Criminal Defense Lawyers Association; Elizabeth Henneke, Texas Criminal Justice Coalition; Amanda Marzullo, Texas Defender Service; Jennifer Erschabek, Texas Inmate Families Association; Yannis Banks, Texas NAACP; and five individuals)

BACKGROUND: Code of Criminal Procedure, art. 26.05 governs the compensation provided to attorneys appointed to defend indigent criminal defendants. Code of Criminal Procedure, art. 26.04(m) outlines what courts can consider when determining if the defendant is indigent.

Under art. 26.05(g), courts can order defendants to offset the costs of legal services while charges are pending or as part of court costs assessed if a defendant was convicted. This order can occur if the court determines that a defendant has the resources to pay the costs.

DIGEST: CSHB 1663 would allow courts to order certain defendants who had been sentenced to a period of confinement or probation to pay the unpaid portion of legal services provided to them. Courts could make such orders at any time during a sentence of confinement or probation term if the court determined that the defendant had the financial resources to pay the costs.

The bill would apply only to defendants who at the time they were sentenced to confinement or probation did not have the financial resources to pay their entire cost of their legal services.

The bill would take effect September 1, 2015.

**SUPPORTERS  
SAY:**

CSHB 1663 could help counties recover some of the large sums they expend to provide indigent defendants with attorneys. When courts determine if criminal defendants will be provided an attorney because of indigency, they focus on defendants' financial situation at that time. In some cases, however, defendants' financial circumstances change after they are incarcerated or put on probation. In these cases, defendants should be held accountable and required to repay the costs of legal services provided to them.

CSHB 1663 would give courts the necessary authority to determine if a defendant's financial situation had changed after an initial determination and, if so, to order defendants to pay the legal costs of county-provided legal services. Counties have numerous demands, and county taxpayers should not shoulder indigent defense costs for those with the resources to pay them. Counties could use funds recovered under the bill for other indigent defense costs.

The bill would be a logical extension of current law allowing courts to order defendants to offset the cost of legal serves while charges are pending or of court costs after a conviction. Courts are familiar with making such determinations and could make them according to current guidelines. The bill would not require courts to order defendants to pay the costs but would leave it to the courts' discretion. This would allow courts the flexibility to make appropriate decisions concerning ordering payments.

**OPPONENTS  
SAY:**

It is unclear what standard courts would use to determine whether defendants had the financial resources to pay their legal costs and how defendants would respond to information about their financial status. These standards would be important to ensure a fair process when

deciding if defendants would be ordered to pay the costs of their legal services.

OTHER  
OPPONENTS  
SAY:

It is unclear if courts would have the authority over defendants who were confined to implement CSHB 1663. In general, courts have this authority only in limited situations.