

- SUBJECT:** Amending conditions for payment of legal costs by indigent defendants
- COMMITTEE:** Criminal Jurisprudence — favorable, without amendment
- VOTE:** 6 ayes — Herrero, Moody, Canales, Hunter, Shaheen, Simpson  
0 nays  
1 absent — Leach
- WITNESSES:** For — Rebecca Bernhardt, Texas Fair Defense Project; (*Registered, but did not testify*: Sarah Pahl, Texas Criminal Justice Coalition)  
Against — None  
On — Wesley Shackelford, Texas Indigent Defense Commission; (*Registered, but did not testify*: Mark Walters)
- BACKGROUND:** Code of Criminal Procedure, art. 42.12, sec. 11(a) allows a judge to impose upon a defendant certain conditions of community supervision (probation) that may include reimbursing a county for the costs of appointed legal counsel. Under sec. 11(b), a judge is required to consider the defendant’s ability to pay in ordering the defendant to make such payments.  
  
Under Code of Criminal Procedure, sec. 26.05(g), which governs the compensation of court-appointed attorneys, a judge must make a determination that the defendant is able to pay any costs of legal services before ordering a defendant to pay such costs.
- DIGEST:** HB 3633 would limit the amount a defendant would be required to reimburse a county for the costs of appointed legal counsel. It also would require a judge, in setting conditions for probation, to determine a defendant’s financial resources in deciding the extent to which a defendant should reimburse a county for the costs of appointed legal counsel.

**Repayment cap.** The bill would prohibit a judge from ordering a defendant to pay any amount that exceeded the actual costs, including expenses and costs, paid by the county in attorney's fees for an appointed attorney. If the defendant was represented by a public defender's office, the judge could not order an amount that exceeded the actual amount, including expenses and costs, that the county otherwise would have paid to an appointed attorney had the county not had a public defender's office. This also would apply to reimbursement of attorney's costs as part of a condition of probation under Code of Criminal Procedure, art. 42.12.

**Indigency determination.** Under the bill, before a judge could impose a condition of probation requiring a defendant to reimburse the county for the cost of legal representation, the judge would have to make a determination that a defendant had adequate financial resources to offset these costs in part or in whole. The judge would set any reimbursement in an amount the defendant was deemed able to pay, as long as the amount did not exceed actual costs as previously prohibited.

**Previous reimbursement.** HB 3633 also would prohibit a judge from imposing a condition of community supervision requiring the defendant to reimburse a county for costs of legal services if the defendant has already paid the obligation during the pendency of the charges or as conviction costs. The court would be required to consider the ability of the defendant to make payments before ordering the defendant to make payments.

**Effective date.** This bill would take effect September 1, 2015, and would only apply to criminal hearings or proceedings that begin on or after the effective date of this act, regardless of when the underlying offense was committed.

SUPPORTERS  
SAY:

HB 3633 would ensure that defendants were not required by the county to pay for legal services in an amount greater than the actual costs for those services. By creating a repayment cap, this bill would eliminate the possibility of a defendant making continuous payments toward an order to pay legal services during pendency of the charges that exceeded actual

costs of the services by the end of the case.

If a case goes on for a long time while a defendant is making open-ended monthly payments, there is a possibility for those payments to exceed the costs that counties actually incurred paying appointed legal counsel. Several attorneys have reported incidents under current law in which their defendant clients were overcharged for these legal services.

HB 3633 would protect indigent defendants by requiring a judge to first determine, rather than merely consider, whether the defendant had the financial resources to pay for legal services before imposing an order upon the defendant for payment. Strengthening this requirement in the code would clarify that a judge cannot unreasonably impose a condition upon an indigent defendant to pay a county for legal services. The bill would uphold constitutional protections afforded to indigent defendants, who have the right to legal representation despite lacking the means to pay.

This bill would make requirements clearer in two competing statutes, which currently impose different requirements on defendants in similar situations. Art. 26.05(g) requires a judge to first make a determination on a defendant's ability to pay before imposing an order for payment of costs, while art. 42.12, sec. 11 allows the judge to order payment without first determining the defendant's ability to pay. This bill would clarify language and mirror the statutes to reduce confusion in the code.

**OPPONENTS  
SAY:**

HB 3633 would not address any real issue because there have not been confirmed cases of actual overcharging of legal services to defendants. It would act only to make it explicit that counties cannot overcharge, when it has not been proven that counties are in fact overcharging defendants for the costs of legal services.

**NOTES:**

The Senate companion bill, SB 544 by West, was referred to the Senate Criminal Justice Committee on February 18.