

SUBJECT: Redistributing part of consolidated court cost for indigent defense services

COMMITTEE: Judiciary & Civil Jurisprudence — favorable, without amendment

VOTE: 7 ayes — Smithee, Farrar, Gutierrez, Murr, Neave, Rinaldi, Schofield

0 nays

2 absent — Hernandez, Laubenberg

SENATE VOTE: On final passage, April 27 — 31-0

WITNESSES: *On companion bill, HB 3789:*

For — Jim Allison, County Judges and Commissioners Association of Texas; William Cox, El Paso County Public Defender's Office; Richard Evans, Texas Indigent Defense Commission, Bandera County; Robert Johnston, Anderson County; Vincent Perez, El Paso County; (*Registered, but did not testify:* Jennifer Allmon, The Texas Catholic Conference of Bishops; Mary Kate Bevel, Texas Criminal Justice Coalition; John Dahill, Texas Conference of Urban Counties; Joseph Green, Travis County Commissioners Court; Jose Landeros, El Paso County; Mark Mendez, Tarrant County; Mary Mergler, Texas Appleseed; Alexandra Peek, Austin Justice Coalition; Charles Reed, Dallas County Commissioners Court; Melissa Shannon, Bexar County Commissioners Court; Dee Simpson, Texas Rio Grande Legal Aid; Paul Sugg, Texas Association of Counties)

Against — None

On — Jim Bethke, Texas Indigent Defense Commission

BACKGROUND: Local Government Code, sec. 133.102 requires those convicted of criminal offenses to pay a court cost, in addition to all other costs, based on the type of crime. The costs are:

- \$133 on conviction of a felony;
- \$83 on conviction of a class A or class B misdemeanor; and

- \$40 on conviction of a non-jailable misdemeanor offense, including a criminal violation of a city ordinance, other than convictions relating to a pedestrian or parking a motor vehicle.

The costs are remitted to the comptroller. Sec. 133.102(e) requires the comptroller to allocate court costs to 14 accounts and funds in varying percentages. These include an allocation of 0.0088 percent for the general revenue dedicated abused children's counseling account no. 5011 and an allocation of 9.8218 percent for the general revenue dedicated comprehensive rehabilitation account no. 107. The general revenue dedicated fair defense account no. 5073 receives an allocation of 8.0143 percent. The fair defense account is used to fund operations of the Texas Indigent Defense Commission and the Office of Capital and Forensic Writs and for grants to counties for indigent defense services.

DIGEST: SB 2053 would eliminate the allocation of the court costs collected upon criminal convictions that currently goes to the abused children's counseling fund and the comprehensive rehabilitation fund. References to these accounts would be removed from Local Government Code, sec. 133.102.

The bill would increase the amount of court costs going to the fair defense fund by the amounts that would have previously gone to the abused children's counseling fund and the comprehensive rehabilitation fund. This reallocation would increase the amount going to the fair defense account from 8.0143 percent of court costs to 17.8448 percent.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2017.

SUPPORTERS SAY: SB 2053 would respond to a 2017 court decision holding part of the collection and allocation of the consolidated court costs unconstitutional by redirecting those funds to a constitutional purpose that is in serious need of additional funding — the state's indigent defense system.

In March 2017, the Texas Court of Criminal Appeals ruled that the collection and allocation of part of the consolidated court costs for the abused children's counseling fund and the comprehensive rehabilitation account does not meet the requirement that costs be expended for legitimate criminal justice purposes. The abused children's counseling fund was abolished by the Legislature in 1997, and revenue directed to the fund has been deposited in the general revenue fund with no requirement that it be used for criminal justice purposes. The uses of the comprehensive rehabilitation account do not relate to the criminal justice system, the court said, so allocations to the fund also do not meet requirements for the spending of the courts costs. The court said that if the Legislature redirected the funds to a legitimate criminal justice purpose, the existing court fee could continue to be collected.

SB 2053 would use the court ruling as an opportunity to reallocate portions of the court costs to the Texas Indigent Defense Commission, which would distribute the grants to counties to help carry out the Fair Defense Act. The act requires counties to meet certain standards and follow guidelines in appointing attorneys for criminal defendants who cannot afford to hire their own. Costs statewide for this constitutionally required duty grew from \$91 million in 2001 to \$248 million in 2016. Counties continue to shoulder the vast majority of this increase by paying about 88 percent of the costs with the state picking up about 12 percent.

Texas should prioritize the use of the available consolidated court costs for indigent defense. Counties deserve more help funding this duty, which they pay for through their strained local property tax systems. About half the U.S. states fully fund indigent defense services, and increased funding in Texas could help avoid the types of lawsuits recently brought in several states over inadequate indigent defense systems. A lawsuit in Texas and inadequate state support could risk the state's system being declared unconstitutional.

According to the fiscal note, SB 2053 would result in an increase of about \$15 million per year to help pay for indigent defense costs. It would restore cuts of \$5.3 million made in both the House and Senate versions of

the fiscal 2018-19 budget and would provide additional support to counties to fund this important constitutional requirement.

OPPONENTS
SAY:

Instead of the approach proposed in SB 2053, the Legislature may want to consider the allocation of the consolidated court cost fees in the context of the state's general criminal justice and budget needs.

NOTES:

According to the Legislative Budget Board's fiscal note, the bill would result in an annual decrease of \$14,000 to general revenue, representing funds from the abolished abused children's counseling fund that no longer would be deposited to general revenue. The fiscal note also estimates a gain for the fair defense account of \$15.8 million in fiscal 2018 and a gain of \$15.4 million annually after that. The comprehensive rehabilitation account would lose roughly the same amount during the same period.

The companion bill, HB 3739 by Murr, was reported favorably from the House Judiciary and Civil Jurisprudence Committee on April 18.