

BILL ANALYSIS

Senate Research Center
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H.B. 3633
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Criminal Justice
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

H.B. 3633 amends state law that addresses the repayment of court costs for appointed counsel in criminal cases. Article 42.12, Code of Criminal Procedure, contains provisions that outline the terms and instructions for a defendant who has been ordered by the courts to complete a period of community supervision. Article 26.05(g), Code of Criminal Procedure, contains provisions regarding the payment for legal representation performed by appointed counsel.

Under existing Texas law, a judge may order a defendant who was represented by appointed counsel to pay in full, or in part, the cost of legal representation if the court can establish that the defendant has the ability to pay. This can be ordered before a case goes to trial or at the time of conviction under Article 26.05(g), Code of Criminal Procedure. Article 42.12(b) of that code also contains provisions regarding the terms of community supervision, including the payment of fines and court costs owed by a defendant.

However, these chapters do not establish the defendant's ability to comply with certain payments required by the courts as part of the term of community supervision prior to ordering those conditions to be met. Neither does current statute limit the amount to be paid by a defendant to the actual costs incurred by a jurisdiction to obtain legal representation for a defendant that is provided by appointed counsel.

H.B. 3633 brings consistency to state statutes that address the repayment of attorney fees by a defendant for appointed counsel in a criminal case. The bill also requires a judge to establish that a defendant is able to pay before ordering repayment to a jurisdiction for the costs of appointed counsel.

H.B. 3633 also:

- Provides that a defendant will not be required to repay an amount that exceeds the actual cost of legal services provided by appointed counsel.
- Provides that the defendant is not ordered to pay twice for the costs of legal services at the time of sentencing if the defendant has already paid those costs prior to the start of court proceedings.
- Provides that a defendant's probation cannot be revoked if the only violation of the terms of supervision is that the defendant failed to repay the cost of legal representation provided by appointed counsel.

H.B. 3633 amends current law relating to reimbursement for the costs of legal services provided to an indigent defendant in a criminal case.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Article 26.05(g), Code of Criminal Procedure, as follows:

(g) Requires the judge, rather than the court, if the judge, rather than the court, determines that a defendant has financial resources that enable the defendant to offset in part or in whole the costs of the legal services provided to the defendant in accordance with Article 1.051(c) (relating to the appointing of an attorney for an indigent defendant) or (d) (relating to appellate and postconviction habeas corpus matters for which an indigent defendant is entitled to representation by an attorney), including any expenses or costs, to order the defendant to pay during the pendency of the charges or, if convicted, as court costs the amount that the judge finds the defendant is able to pay. Prohibits the defendant from being ordered to pay an amount that exceeds:

(1) the actual costs, including any expenses and costs, paid by the county for the legal services provided by an appointed attorney; or

(2) if the defendant was represented by a public defender's office, the actual amount, including any expenses and costs, that would have otherwise been paid to an appointed attorney had the county not had a public defender's office.

SECTION 2. Amends Sections 11(a) and (b), Article 42.12, Code of Criminal Procedure, as follows:

(a) Authorizes the conditions of community supervision to include, but not be limited to, the conditions that the defendant is required to:

(1)-(10) Makes no change to these subdivisions;

(11) reimburse the county in which the prosecution was instituted for the costs of the legal services in an amount that the judge finds the defendant is able to pay if the judge determines that the defendant has financial resources that enable the defendant to offset in part or in whole the costs of the legal services provided to the defendant in accordance with Article 1.051(c) or (d), including any expenses and costs, except that the defendant is prohibited from being ordered to pay an amount that exceeds:

(A) the actual costs, including any expenses and costs, paid by the county for the legal services provided by an appointed attorney;

(B) if the defendant was represented by a public defender's office, the actual amount, including any expenses and costs, that would have otherwise been paid to an appointed attorney had the county not had a public defender's office;

(12)-(24) Makes no change to these subdivisions.

Deletes existing text authorizing the conditions of community supervision to include, but not be limited to, the conditions that the defendant is required to reimburse the county in which the prosecution was instituted for compensation paid to appointed counsel for defending the defendant in the case, if counsel was appointed, or if the defendant was represented by a public defender's office, in an amount that would have been paid to appointed attorney had the county not had a public defender's office.

(b)(1) Prohibits a judge from ordering a defendant to make any payments as a term or condition of community supervision, except for fines, court costs, and restitution to the victim, reimbursement of a county as described by Subsection (a)(11), and other conditions related personally to the rehabilitation of the defendant or otherwise expressly authorized by law.

(2) Prohibits a judge from imposing a condition of community supervision requiring a defendant to reimburse a county for the costs of legal services as

described by Subsection (a)(11) if the defendant has already satisfied that obligation under Article 26.05(g).

(3) Requires the court to consider the ability of the defendant to make payments before ordering, rather than in ordering, the defendant to make payments under this article.

Makes nonsubstantive changes.

SECTION 3. Amends Section 21(c), Article 42.12, Code of Criminal Procedure, as follows:

(c) Requires that the state prove by a preponderance of the evidence that the defendant was able to pay and did not pay as ordered by the judge in a community supervision revocation hearing at which it is alleged only that the defendant violated the conditions of community supervision by failing to pay community supervision fees or court costs or by failing to pay the costs of legal services as described by Section 11(a)(11).

Deletes existing text requiring that the state prove by a preponderance of the evidence that the defendant was able to pay and did not pay as ordered by the judge in a community supervision revocation hearing at which it is alleged only that the defendant violated the conditions of community supervision by failing to pay compensation paid to appointed counsel. Makes a nonsubstantive change.

SECTION 4. Provides that the change in law made by this Act applies only to a criminal hearing or proceeding that commences on or after the effective date of this Act, regardless of when the defendant committed the underlying offense for which the defendant became subject to the hearing or proceeding. Makes application of this Act prospective.

SECTION 5. Effective date: September 1, 2015.