

## **BILL ANALYSIS**

Senate Research Center  
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C.S.H.B. 351  
By: Canales et al. (Hinojosa)  
Criminal Justice  
5/19/2017  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Interested parties contend that too many people are sent to jail because they cannot afford to pay fines or court costs, and the parties assert that judges need more flexibility to waive fines and costs and order community service.

Currently judges must fine people, wait for them to default, issue a warrant, wait for them to be picked up or come in voluntarily on the warrant, and then they can determine indigence and offer community service. Many judges rarely use this option even after a person has been returned to court.

H.B. 351 provides judges with new tools and procedures to hold low-income Texans accountable without jail time when they cannot pay their fines and court costs in criminal cases, so that we can reduce the number of persons trapped in the current system's cycle of debt, license suspensions, arrest warrants, and jail time when they cannot pay. The bill requires a judge to inquire about the defendant's ability to pay immediately after the imposition of a sentence and authorizes judge to use existing tools to deal with defendants who have an ability to pay.

H.B. 351 prohibits a justice or judge from issuing an arrest warrant for a defendant's failure to appear unless the court provides notice by telephone or regular mail regarding rescheduling the hearing, potential alternatives to satisfy the fine/costs, and consequences of failure to appear. The bill requires recall of warrant if defendant voluntarily appears to resolve and does resolve the warrant in a manner consistent with the law. It also requires personal bond on fine-only offenses unless a judge fines the defendant has the ability to pay bond or defendant fails to appear. A judge must re-evaluate requiring monetary bond if the defendant remains in jail for 48 hours.

C.S.H.B. 351 amends current law relating to the administrative, civil, and criminal consequences, including fines, fees, and costs, imposed on persons arrested for, charged with, or convicted of certain criminal offenses.

### **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 14.06(b), Code of Criminal Procedure, to authorize a peace officer who is charging a person, including a child, with committing an offense that is a Class C misdemeanor, other than an offense under Section 49.02 (Public Intoxication), Penal Code, to, instead of taking the person before a magistrate, issue a citation to the person that contains certain information.

SECTION 2. Amends Section 4(a), Article 17.42, Code of Criminal Procedure, as follows:

- (a) Requires the court, except as otherwise provided by this subsection, if a court releases an accused on personal bond on the recommendation of a personal bond office, to assess a personal bond fee of \$20 or three percent of the amount of the bail fixed for the accused, whichever is greater. Prohibits a court that requires a defendant to give a

personal bond under Article 45.016 (Bail) from assessing a personal bond fee under this subsection.

SECTION 3. Amends Article 27.14(b), Code of Criminal Procedure, as follows:

(a) Requires the court to notify the defendant either in person or by regular mail, rather than certified mail, return receipt requested, of the amount of any fine or costs assessed in the case, information regarding the alternatives to the full payment of any fine or costs assessed against the defendant, if the defendant is unable to pay that amount, and, if requested by the defendant, the amount of an appeal bond that the court will approve. Requires the defendant, except as otherwise provided by this code, to pay any fine or costs assessed or give an appeal bond in the amount stated in the notice before the 31st day after receiving the notice. Makes nonsubstantive changes.

SECTION 4. Amends Article 42.15, Code of Criminal Procedure, by adding Subsection (a-1) and amending Subsection (b), as follows:

(a-1) Requires a court, notwithstanding any other provision of this article, immediately after imposing a sentence in a case in which the defendant entered a plea in open court as provided by Article 27.13 (Plea of Guilty or Nolo Contendere in Felony), 27.14(a) (relating to authorizing a plea of "guilty" or a plea of "nolo contendere" in a misdemeanor case to be made either by the defendant or his counsel in open court), or 27.16(a) (relating to authorizing the plea of not guilty to be made orally by the defendant or by his counsel in open court), to inquire whether the defendant has sufficient resources or income to immediately pay all or part of the fine and costs. Requires the court, if the court determines that the defendant does not have sufficient resources or income to immediately pay all or part of the fine and costs, to determine whether the fine and costs should meet certain criteria.

(b) Includes a reference to Article 43.091 in the list of section applying to fines and costs.

SECTION 5. Amends Article 43.05, Code of Criminal Procedure, by adding Subsections (a-1) and (a-2), as follows:

(a-1) Provides that before a court is authorized to issue a capias pro fine for the defendant's failure to satisfy the judgment according to its terms the court is required to provide by regular mail to the defendant a certain notice and either the defendant fails to appear at the hearing or, based on evidence presented at the hearing, the court determines that the capias pro fine should be issued.

(a-2) Requires the court to recall a capias pro fine if, before the capias pro fine is executed, the defendant voluntarily appears to resolve the amount owed and the amount owed is resolved in any manner authorized by this code.

SECTION 6. Amends Article 43.09, Code of Criminal Procedure, by amending Subsections (a), (g), (h), (j), and (l) and adding Subsection (h-1), as follows:

(a) Provides that when a defendant is convicted of a misdemeanor and the defendant's punishment is assessed at a pecuniary fine or is confined in a jail after conviction of a felony for which a fine is imposed, if the defendant is unable to pay the fine and costs adjudged against the defendant, the defendant, is authorized to for such time as will satisfy the judgment be put to certain work, as provided in Article 43.10, rather than the succeeding article; or if there is no such county jail industries program, workhouse, farm, or improvements and maintenance projects, the defendant is required to be confined in jail for a sufficient length of time to discharge the full amount of fine and costs adjudged against the defendant; rating such confinement at \$100, rather than \$50, for each day and rating such labor at \$100, rather than \$50, for each day; provided, however, that the defendant may pay the pecuniary fine assessed against the defendant at any time while the defendant is serving at work in the county jail industries program, in the workhouse, or on the county farm, or on the public improvements and maintenance projects of the

county or a political subdivision located in whole or in part in the county, or while the defendant is serving the defendant's jail sentence, and in such instances the defendant is, rather than is required to be, entitled to the credit earned under this subsection during the time that the defendant has served and requires the defendant to only be required to pay the balance of the pecuniary fine assessed against the defendant. Makes nonsubstantive changes.

(g) Requires the court, in the court's order requiring a defendant to perform, community service under Subsection (f), rather than to participate in community service work under Subsection (f) of this article, to specify the number of hours of community service the defendant is required to perform, whether the community supervision and corrections department or a court-related services office will perform the administrative duties required by the placement of the defendant in the community service program, and the date by which the defendant is required to submit to the court documentation verifying the defendant's completion of the community service. Makes nonsubstantive changes.

(h) Authorizes the court to order the defendant to perform community service, rather than work, under Subsection (f):

(1) by attending certain programs or activities; or

(2) for certain entities.

(h-1) Requires an entity, rather than a governmental entity or nonprofit organization, that accepts a defendant under Subsection (f), rather than Subsection (f) of this article, to perform community service to agree to supervise, either on-site or remotely, the defendant in the performance of the defendant's community service, and report on the defendant's community service to the district probation department or court-related services office. Creates this subsection from existing text. Makes conforming changes.

(j) Prohibits a court from ordering a defendant to perform more than 16 hours per week of community service under Subsection (f) unless the court determine that requiring the defendant to perform, rather than work, additional hours does not impose an undue, rather than work a, hardship on the defendant or the defendant's dependents. Makes a nonsubstantive change.

(l) Provides that a sheriff, employee of a sheriff's department, county commissioner, county employee, county judge, an employee of a community corrections and supervision department, restitution center, or officer or employee of a political subdivision other than a county or an entity that accept a defendant under this article to perform community service is not liable for damages arising from an act or failure to act in connection with manual labor performed by an inmate or community service performed by a defendant under, rather than pursuant to, this article if the act or failure to act meets certain criteria.

SECTION 7. Amends Article 43.091, Code of Criminal Procedure, as follows:

Art. 43.091. New heading: WAIVER OF PAYMENT OF FINES AND COSTS FOR CERTAIN DEFENDANTS AND FOR CHILDREN. Authorizes a court to waive payments of all or part of a fine or costs imposed on a defendant, rather than defendant who defaults in payment, if the court determines that the defendant meets certain criteria. Makes a nonsubstantive change.

SECTION 8. Amends Article 45.014, Code of Criminal Procedure, by adding Subsections (e), (f), and (g), as follows:

(e) Prohibits a justice or judge from issuing an arrest warrant for the defendant's failure to appear, including failure to appear as required by a citation issued under Article 14.06(b), unless certain criteria are met.

(f) Authorizes a defendant who receives notice under Subsection (e) to request an alternative date or time to appear before the justice or judge if the defendant is unable to appear on the date and time included in the notice.

(g) Requires a justice or judge to recall an arrest warrant for the defendant's failure to appear if, before the arrest warrant is executed, the defendant voluntarily appears to resolve the arrest warrant and the arrest warrant is resolved in any manner authorized by this code.

SECTION 9. Amends Article 45.016, Code of Criminal Procedure, as follows:

Art. 45.016. New heading: PERSONAL BOND; BAIL BOND. (a) Creates this subsection from existing text. Authorizes the justice or judge to require the defendant to give a personal bond, rather than bail, to secure the defendant's appearance in accordance with this code.

(b) Prohibits the justice or judge from, either instead of or in addition to the personal bond, requiring a defendant to give a bail bond unless the defendant fails to appear in accordance with this code with respect to the applicable offense and the justice or judge makes a certain determination.

(c) Requires the justice or judge, if a defendant required to give a bail bond under Subsection (b) remains in custody, without giving the bond, for more than 48 hours after the issuance of the applicable order, to reconsider the requirement for the defendant to give the bond.

(d) Authorizes the defendant, if the defendant refuses to give a personal bond or, except as provided by Subsection (c), refuses or otherwise fails to give a bail bond, to be held in custody. Creates this subsection from existing text.

SECTION 10. Amends Article 45.041, Code of Criminal Procedure, by adding Subsection (a-1) and amending Subsection (b), as follows:

(a-1) Requires the justice or judge, notwithstanding any other provision of this article, immediately after imposing a sentence in a case in which the defendant entered a plea in open court as provided by Article 27.14(a) or 27.16(a), to inquire whether the defendant has sufficient resources or income to immediately pay all or part of the fine and costs. Requires the justice or judge, if the justice or judge determines that the defendant does not have sufficient resources or income to immediately pay all or part of the fine and costs, to make a certain determination.

(b) Includes reference to Article 45.0491.

SECTION 11. Amends Article 45.0425(a), Code of Criminal Procedure, to change a reference to a bail bond to an appeal bond, and prohibits the appeal bond from in any case being for an amount, rather than a sum, less than \$50.

SECTION 12. Amends Article 45.045, Code of Criminal Procedure, by adding Subsections (a-2) and (a-3), as follows:

(a-2) Provides that before a court is authorized to issue a *capias pro fine* for the defendant's failure to satisfy the judgment according to its terms:

(1) the court is required to provide by regular mail to the defendant a certain notice; and

(2) either the defendant fails to appear at the hearing or, based on evidence presented at the hearing, the court determines that the *capias pro fine* should be issued.

(a-3) Requires the court to recall a capias pro fine if, before the capias pro fine is executed, the defendant voluntarily appears to resolve the amount owed and the amount owed is resolved in any manner authorized by this chapter (Justice and Municipal Courts).

SECTION 13. Amends Article 45.046(a), Code of Criminal Procedure, to make nonsubstantive changes.

SECTION 14. Amends Article 45.048, Code of Criminal Procedure, as follows:

Art. 45.048. DISCHARGED FROM JAIL. (a) Changes references to \$50 and each period of time served to \$100 and each period served, respectively.

(b) Makes conforming and nonsubstantive changes.

SECTION 15. Amends Article 45.049, Code of Criminal Procedure, by amending Subsections (b), (c), (d), (e), (f), and (g) and adding Subsection (c-1), as follows:

(b) Requires the justice or judge, in the justice's or judge's order requiring a defendant to perform, rather than participate in, community service under this article, to specify certain information.

(c) Authorizes the justice or judge to order the defendant to perform community service, rather than community service work, under this article:

(1) by attending certain programs or activities; or

(2) for certain entities.

(c-1) Requires an entity, rather than a governmental entity or nonprofit organization, that accepts a defendant under this article, to perform community service to agree to supervise, either on-site or remotely, the defendant in the performance of the defendant's community service, and report on the defendant's community service to the justice or judge who ordered the service, rather than community service. Creates this subsection from existing text. Makes conforming changes.

(d) Prohibits a justice or judge from ordering a defendant to perform more than 16 hours per week of community service under this article, unless the court determine that requiring the defendant to perform, rather than work, additional hours does not impose an undue, rather than work a, hardship on the defendant or the defendant's dependents.

(e) Changes a reference to \$50 to \$100.

(f) Provides that a sheriff, employee of a sheriff's department, county commissioner, county employee, county judge, an employee of a community corrections an supervision department, restitution center, justice of the peace, municipal court judge, or officer or employee of a political subdivision other than a county or an entity that accept a defendant under this article to perform community service is not liable for damages arising from an act or failure to act in connection with community service, rather than manual labor, performed by a defendant under this article if the act or failure to act meets certain criteria.

(g) Provides that if under Article 45.051(b)(10), Code of Criminal Procedure, the judge requires the defendant to perform community service as a condition of the deferral, the defendant is entitled to elect whether to perform the required service, rather than to perform the required governmental entity or nonprofit organization community service, in a certain county.

SECTION 16. Amends Article 45.0491, Code of Criminal Procedure, as follows:

Art. 45.0491. New heading: WAIVER OF PAYMENT OF FINES AND COSTS FOR CERTAIN DEFENDANTS AND FOR CHILDREN. Authorizes a municipal court, regardless of whether the court is a court of record, or a justice court to waive payment of all or part of a fine or costs imposed on a defendant, rather than a defendant who defaults in payment, if the court makes a certain determination.

SECTION 17. Amends the heading to Article 45.0492, Code of Criminal Procedure, as added by Chapter 227 (H.B. 350), Acts of the 82nd Legislature, Regular Session, 2011, to read as follows:

Art. 45.0492. COMMUNITY SERVICE IN SATISFACTION OF FINE OR COSTS FOR CERTAIN JUVENILE DEFENDANTS.

SECTION 18. Amends Article 45.0492, Code of Criminal Procedure, as added by Chapter 227 (H.B. 350), Acts of the 82nd Legislature, Regular Session, 2011, by amending Subsections (b), (c), (d), (f), (g), and (h) and adding Subsection (d-1), as follows:

(b) Deletes references to attending a tutoring program.

(c) Requires the justice or judge, in the justice's or judge's order requiring a defendant to perform, rather than participate in, community service, rather than work or a tutoring program, under this article, to specify the number of hours of community service the defendant is required to perform and the date by which the defendant is required to submit to the court documentation verifying the defendant's completion of the community service, rather than the number of hours the defendant is required to work or attend tutoring.

(d) Authorizes the justice or judge to order the defendant to perform community service, rather than community service work, under this article:

(1) by attending certain programs or activities; or

(2) for certain entities, rather than only for certain entities.

(d-1) Requires an entity, rather than a governmental entity or nonprofit organization, that accepts a defendant under this article to perform community service to agree to supervise, either on-site or remotely, the defendant in the performance of the defendant's community service and report on the defendant's community service to the justice or judge who ordered the service, rather than community service. Creates this subsection from existing text. Makes conforming changes.

(f) Prohibits a justice or judge from ordering a defendant to perform more than 16 hours per week of community service under this article, unless the justice or judge determines that requiring the defendant to perform additional hours does not impose an undue hardship on the defendant or the defendant's family, rather than perform more than 16 hours of community service per week or attend more than 16 hours of tutoring per week under this article unless the justice or judge determines that requiring additional hours of work or tutoring does not cause a hardship on the defendant or the defendant's family.

(g) Provides that a defendant is considered to have discharged not less than \$100, rather than \$50, of fines or costs for each eight hours of community service performed, rather than community service performed or tutoring program attended, under this article.

(h) Provides that certain persons including an entity that accepts a defendant under this article to perform community service is not liable for damages arising from an act or failure to act in connection with community services, rather than an activity, performed by a defendant under this article if the act or failure to act meet certain criteria. Deletes existing text including a nonprofit organization or tutoring program in the list of the persons to which this subsection applies.

SECTION 19. Amends Article 45.0492, Code of Criminal Procedure, as added by Chapter 777 (H.B. 1964), Acts of the 82nd Legislature, Regular Session, 2011, by amending Subsections (c), (d), (e), and (f) and adding Subsections (d-1) and (h), as follows:

(c) Requires the justice or judge, in the justice's or judge's order requiring a defendant to perform community service under this article, to specify certain information.

(d) Authorizes the justice or judge to order the defendant to perform community service, rather than community service work, under this article:

(1) by attending certain programs or activities; or

(2) for certain entities, rather than only for certain entities.

(d-1) Requires an entity, rather than a governmental entity or nonprofit organization, that accepts a defendant under this article to perform community service to agree to supervise, either on-site or remotely, the defendant in the performance of the defendant's community service, and report on the defendant's community service to the justice or judge who ordered the service. Makes conforming changes.

(e) Prohibits a justice or judge from ordering a defendant to perform more than 16 hours of community service per week under this article unless the justice or judge determine that requiring the defendant to perform additional hours, rather than additional hours of work, does not impose an undue, rather than cause a, hardship on the defendant or the defendant's family.

(f) Provides that certain persons, including an entity that accept a defendant under this article to perform community service is not liable for damages arising from an act or failure to act in connection with community service performed by a defendant under this article if the act or failure to act meets certain criteria.

(h) Provides that a defendant is considered to have discharged no less than \$100 of fines or costs for each eight hours of community service performed under this article.

SECTION 20. Amends Article 45.051(a), Code of Criminal Procedure, to delete a reference to bail bond or an appearance bond.

SECTION 21. Amends Article 45.0511(t), Code of Criminal Procedure, to make a conforming change.

SECTION 22. Amends Article 103.0031(j), Code of Criminal Procedure, as follows:

(j) Requires a communication to the accused person regarding the amount of payment that is acceptable to the court under the court's standard policy for the resolution of a case to include:

(1) makes a nonsubstantive change; and

(2) a statement that, if the person is unable to pay the full amount of payment that is acceptable to the court, the person should contact the court regarding the alternatives to full payment that are available to resolve the case.

SECTION 23. Amends Section 502.010, Transportation Code, by amending Subsections (a) and (c) and adding Subsections (b-1), (i), and (j), as follows:

(a) Creates an exception under this section.

(b-1) Provides that information that is provided to make a determination under Subsection (a)(1) (relating to the owner of a vehicle owing the county money for a fine, fee, or tax that is past due) and that concerns the past due status of a fine or fee imposed

for a criminal offense and owed to the county expires on the second anniversary of the date the information was provided and is prohibited from being used to refuse registration after that date. Prohibits subsequent information about other fines or fees that are imposed for a criminal offense and that become past due before the second anniversary of the date the initial information was provided, once information about a past due fine or fee is provided under Subsection (b), from being used, either before or after the second anniversary of that date, to refuse registration under this section unless the motor vehicle is no longer subject to refusal of registration because of notice received under Subsection (c).

(c) Includes reference to a waiver.

(i) Authorizes a municipal court judge or justice of the peace who has jurisdiction over the underlying offense to waive an additional fee imposed under Subsection (f) if the judge or justice makes a finding that the defendant is economically unable to pay the fee or that good cause exists for the waiver.

(j) Prohibits the court, if a county assessor-collector is notified that the court having jurisdiction over the underlying offense has waived the past due fine or fee due to the defendant's indigency, from imposing an additional fee on the defendant under Subsection (f).

SECTION 24. Reenacts Section 502.010(f), Transportation Code, as amended by Chapters 1094 (S.B. 1386) and 1296 (H.B. 2357), Acts of the 82nd Legislature, Regular Session, 2011, and amends it, as follows:

(f) Authorizes a county that has a contract under Subsection (b), except as otherwise provided by this section, to impose an additional fee of \$20 to:

(1) makes no change to this subdivision; or

(2) deletes existing text authorizing the additional fee to be used only to reimburse the Texas Department of Motor Vehicles (TxDMV) or the county for its expenses for providing services under the contract.

SECTION 25. Amends Section 706.005, Transportation Code, as follows:

Sec. 706.005. CLEARANCE NOTICE TO DEPARTMENT. (a) Includes the dismissal of the charge for which the warrant of arrest was issued or judgment arose, other than a dismissal with prejudice by motion of the appropriate prosecuting attorney for lack of evidence in the information necessary to give the Texas Department of Public Safety (DPS) under certain circumstances.

(b) Prohibits DPS from continuing to deny the renewal of the person's driver's license under this chapter (Denial or Renewal of License for Failure to Appear) after DPS receives notice:

(1) and (2) makes no changes to these subdivisions;

(3) that the charge on which the person failed to appear was dismissed with prejudice by motion of the appropriate prosecuting attorney for lack of evidence; or

(4) redesignates existing Subdivision (3) as Subdivision (4) and makes no further changes.

SECTION 26. Amends Section 706.006, Transportation Code, by amending Subsections (a) and (b) and adding Subsections (a-1) and (d), as follows:

(a) Requires a person who fails to appear for a complaint or citation for a certain offense, except as provided by Subsection (d), to be required to pay an administrative fee of \$30 for each complaint or citation reported to DPS under this chapter, unless:

(1) makes no change to this subdivision;

(2) the charges on which the person failed to appear were dismissed with prejudice by motion of the appropriate prosecuting attorney for lack of evidence;

(3) the failure to appear report was sent to DPS in error; or

(4) the case regarding the complaint or citation is closed and the failure to appear report has been destroyed in accordance with the applicable political subdivision's records retention policy.

(a-1) Requires a person who is required to pay a fee under Subsection (a) to pay the fee when:

(1) makes no change to this subdivision;

(2) the underlying offense is dismissed, other than a dismissal described by Subsection (a)(2); or

(3) makes no change to this subdivision.

(b) Creates an exception under Subsection (d).

(d) Prohibits the person, if the court having jurisdiction over the underlying offense makes a finding that the person is indigent, from being required to pay an administrative fee under this section. Provides that for purposes of this subsection, a person is presumed indigent if the person meets certain criteria.

SECTION 27. Repealer: Article 45.0492(e) (relating to requiring a tutoring program that accepts a certain defendant to agree to supervise the defendant), Code of Criminal Procedure, as added by Chapter 227 (H.B. 350), Acts of the 82nd Legislature, Regular Session, 2011.

SECTION 28. Makes application of Articles 14.06 and 27.14, Code of Criminal Procedure, and Section 502.010 and Chapter 706, Transportation Code, as amended by this Act, prospective.

SECTION 29. Provides that the changes in law made by this Act to Articles 42.15, 43.09, 43.091, 45.014, 45.041, 45.046, 45.049, and 45.0491, Code of Criminal Procedure, and Articles 45.0492, Code of Criminal Procedure, as added by Chapter 227 (H.B. 350), Acts of the 82nd Legislature, Regular Session, 2011, and 45.0492, Code of Criminal Procedure, as added by Chapter 777 (H.B. 1964), Acts of the 82nd Legislature, Regular Session, 2011, apply to a sentencing proceeding that commences before, on, or after the effective date of this Act.

SECTION 30. Makes application of Articles 43.05 and 45.045, Code of Criminal Procedure, as amended by this Act, prospective.

SECTION 31. Makes application of Articles 45.016, 45.051, and 45.0511, Code of Criminal Procedure, as amended by this Act, prospective.

SECTION 32. Provides that the change in law made by this Act to Article 45.048, Code of Criminal Procedure, applies to a defendant who is placed in jail on or after the effective date of this Act for failure to pay the fine and costs imposed on conviction of an offense, regardless of whether the offense for which the defendant was convicted was committed before, on, or after the effective date of this Act.

SECTION 33. Effective date: September 1, 2017.