

## **BILL ANALYSIS**

Senate Research Center  
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C.S.S.B. 1637  
By: Zaffirini  
Criminal Justice  
5/3/2019  
Committee Report (Substituted)

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

Low-income persons become trapped in a cycle of debt when they cannot afford to pay traffic tickets and other low-level, fine-only citations. When they cannot pay their tickets, they lose their driver's licenses and cannot renew their vehicle registrations, making it illegal to drive to work. When they do drive, they receive more tickets for driving without a license and registration, accumulating more fines, court costs, and fees. What's more, when they do not pay fines or court costs, warrants are issued for their arrest, and they may be jailed for days, weeks, or even months. While in jail, they lose their jobs and housing and are driven deeper into poverty.

Last session, the legislature made great strides in addressing this issue by passing S.B. 1913 (2017), by Senator Zaffirini. As a result, Office of Court Administration data indicate that the alternatives established by the bill are decreasing the number of arrest warrants issued for unpaid Class C citations and that fewer persons are spending time in jail to satisfy their fines, though none should. In 2016 only approximately 57,000 persons satisfied their fines through community service, compared to more than 75,000 in 2018. Judges also are more frequently waiving fines due to indigency—almost 50,000 times in 2018, compared to fewer than 34,000 in 2016. What's more, local revenue actually has increased as more persons enter payment plans with which they can comply.

Stakeholders, however, have reported some issues with S.B. 1913's implementation that S.B. 1637 would address. Generally, S.B. 1637 would require courts to lift a *capias pro fine* (warrant for failure to pay a fine) if the defendant voluntarily appears in court and makes a good faith effort to satisfy the citation; clarify that defendants may perform community service in the defendant's county of residence; provide guidance for courts to help them determine whether someone can perform community service without undue hardship; clarify that, when determining if a defendant is able to pay fines and costs, judges should only consider present ability to pay, not ability to pay at the time of the offense; add a statutory provision for sentencing reconsideration hearings if a defendant indicates that he or she is unable to comply with a sentence; and allow courts to hold hearings by phone or video conference. These changes would increase access to justice for low-income Texans who are trying to comply with the law by, for instance, entering a payment plan or performing community service. (Original Author's/Sponsor's Statement of Intent)

C.S.S.B. 1637 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 Chapter 1, Code of Criminal Procedure, by adding Article 1.053, as follows:

Art. 1.053. PRESENT ABILITY TO PAY. Requires the court, except as otherwise specifically provided, in determining a defendant's ability to pay for any purpose, to consider only the defendant's present ability to pay.

SECTION 2. Amends Article 43.015, Code of Criminal Procedure, by adding Subdivision (3) to define "cost."

SECTION 3. Amends Chapter 43, Code of Criminal Procedure, by adding Article 43.035, as follows:

Art. 43.035. RECONSIDERATION OF FINE OR COSTS. (a) Requires the court, if a defendant notifies the court that the defendant has difficulty paying the fine and costs in compliance with the judgment, to hold a hearing to determine whether that portion of the judgment imposes an undue hardship on the defendant.

(b) Authorizes a defendant, for purposes of Subsection (a), to notify the court by taking one of certain enumerated actions.

(c) Requires the court, if the court determines at the hearing under Subsection (a) that the portion of the judgment regarding the fine and costs imposes an undue hardship on the defendant, to consider whether the fine and costs should be satisfied through one or more methods listed under Article 42.15(a-1) (relating to requiring the court, after imposing a certain sentence, to inquire whether the defendant can pay all or part of the fine or costs and, if the defendant does not have sufficient funds to pay, to determine an alternate method for satisfaction of the fine or costs).

(d) Authorizes the court to decline to hold a hearing under Subsection (a) if the court:

(1) previously held a hearing under that subsection with respect to the case and is able to determine without holding a hearing that the portion of the judgment regarding the fine and costs does not impose an undue hardship on the defendant; or

(2) is able to determine without holding a hearing that:

(A) the applicable portion of the judgment imposes an undue hardship on the defendant; and

(B) that the fines and costs should be satisfied through one or more methods listed under Article 42.15(a-1).

(e) Provides that the court retains jurisdiction for the purpose of making a determination under this article.

SECTION 4. Amends the heading to Article 43.05, Code of Criminal Procedure, to read as follows:

Art. 43.05. ISSUANCE AND RECALL OF CAPIAS PRO FINE.

SECTION 5. Amends Article 43.05(a-1), Code of Criminal Procedure, as added by Chapter 1127 (S.B. 1913), Acts of the 85th Legislature, Regular Session, 2017, as follows:

(a-1) Prohibits a court from issuing a capias pro fine for the defendant's failure to satisfy the judgment according to its term unless the court holds a hearing to determine whether the judgment imposes an undue hardship on the defendant and the defendant fails to appear at the hearing or comply with an order under Subsection (a-3) as a result of the hearing, rather than unless the court holds a hearing on the defendant's ability to satisfy

the judgment and 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.

SECTION 6. Amends Article 43.05, Code of Criminal Procedure, by amending Subsection (a-2) and adding Subsections (a-3) and (a-4), as follows:

(a-2) Requires the court, if the court determines at the hearing under Subsection (a-1) that the judgment imposes an undue hardship on the defendant, to determine whether the fine and costs should be satisfied through one or more methods listed under Article 42.15(a-1). Provides that the court retains jurisdiction for the purpose of making a determination under this subsection. Creates Subsection (a-4) from existing text of this subsection.

(a-3) Requires the court, if the court determines at the hearing under Subsection (a-1) that the judgment does not impose an undue hardship on the defendant, to order the defendant to comply with the judgment not later than the 30th day after the date the determination is made.

(a-4) Requires the court to recall a *capias pro fine* if, before the *capias pro fine* is executed, the defendant provides notice to the court under Article 43.035 and a hearing set under that article or voluntarily appears and makes a good faith effort to resolve the *capias pro fine*, rather than 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. Makes nonsubstantive changes.

SECTION 7. Amends Article 43.09(f), Code of Criminal Procedure, to authorize a court to allow a defendant to perform the required community service in the county in which the defendant resides.

SECTION 8. Amends Article 43.091, Code of Criminal Procedure, as follows:

Art. 43.091. WAIVER OF PAYMENT OF FINES AND COSTS FOR CERTAIN DEFENDANTS AND FOR CHILDREN. (a) Creates this subsection from existing text and authorizes a court to waive payment of all or part of a fine imposed on a defendant, rather than of all or part of a fine or costs imposed on a defendant, if the court determines that:

(1)–(2) makes conforming changes to these subdivisions.

(b) Provides that a determination of undue hardship made under Subsection (a)(2) is in the court's discretion. Authorizes the court, in making that determination, to consider, as applicable, certain enumerated criteria regarding the defendant.

(c) Authorizes the court to waive payment of all or part of the costs imposed on a defendant if the court determines that the defendant is indigent or does not have sufficient resources or income to pay all or part of the costs or was, at the time the offense was committed, a child as defined by Article 45.058(h) (relating to the definition of "child").

(d) Provides that this subsection applies only to a defendant placed on community supervision, including deferred adjudication community supervision, whose fine or costs are wholly or partly waived under this article. Authorizes the court, at any time during the defendant's period of community supervision, on the court's own motion or by motion of the attorney representing the state, to reconsider the waiver of the fine or costs. Authorizes the court, after providing written notice to the defendant and an opportunity for the defendant to present information relevant to the defendant's ability to pay, to order the defendant to pay all or part of the waived amount of the fine or costs only if the court determines that the defendant has sufficient resources or income to pay that amount.

SECTION 9. Amends Subchapter A, Chapter 45, Code of Criminal Procedure, by adding Article 45.004, as follows:

Art. 45.004. GENERAL DEFINITION. Defines "cost" for purposes of this chapter (Justice and Municipal Courts).

SECTION 10. Amends Subchapter B, Chapter 45, Code of Criminal Procedure, by adding Articles 45.0201 and 45.0445, as follows:

Art. 45.0201. APPEARANCE BY TELEPHONE OR VIDEOCONFERENCE. Authorizes the justice or judge, if the justice or judge determines that requiring a defendant to appear before the justice or judge in person for a hearing under Article 45.0445 or 45.045 (Capias Pro Fine) would impose an undue hardship on the defendant, to allow the defendant to appear by telephone or videoconference.

Art. 45.0445. RECONSIDERATION OF FINE OR COSTS. (a) Requires the justice or judge, if the defendant notifies the justice or judge that the defendant has difficulty paying the fine and costs in compliance with the judgment, to hold a hearing to determine whether the judgment imposes an undue hardship on the defendant.

(b) Authorizes a defendant, for purposes of Subsection (a), to notify the justice or judge by certain enumerated methods.

(c) Requires the justice or judge, if the justice or judge determines at the hearing under Subsection (a) that the judgment imposes an undue hardship on the defendant, to consider whether to allow the defendant to satisfy the fine and costs through one or more methods listed under Article 45.041(a-1) (relating to requiring the justice or judge, after imposing a certain sentence, to inquire whether the defendant can pay all or part of the fine or costs and, if the defendant does not have sufficient funds to pay, to determine whether the fine and costs should have certain enumerated actions taken).

(d) Authorizes the justice or judge to decline to hold a hearing under Subsection (a) if the justice or judge:

(1) previously held a hearing under that subsection with respect to the case and is able to determine without holding a hearing that the judgment does not impose an undue hardship on the defendant; or

(2) is able to determine without holding a hearing that:

(A) the judgment imposes an undue hardship on the defendant; and

(B) the fine and costs should be satisfied through one or more methods listed under Article 45.041(a-1).

(e) Provides that the justice or judge retains jurisdiction for the purpose of making a determination under this article.

SECTION 11. Amends Article 45.045(a-2), Code of Criminal Procedure, as added by Chapter 1127 (S.B. 1913), Acts of the 85th Legislature, Regular Session, 2017, as follows:

(a-2) Prohibits a court from issuing a capias pro fine for the defendant's failure to satisfy the judgment according to its terms unless the court holds a hearing to determine whether the judgment imposes an undue hardship on the defendant, rather than unless the court holds a hearing on the defendant's ability to satisfy the judgment, and the defendant fails to:

(1) appear at the hearing; or

(2) comply with an order issued under Subsection (a-4) as a result of the hearing.

Deletes existing text prohibiting a court from issuing a capias pro fine for the defendant's failure to satisfy the judgment according to its terms unless the court holds a hearing on the defendant's ability to satisfy the judgment and the defendant fails to appear at the hearing or, based on the evidence presented at the hearing, the court determines that the capias pro fine should be issued.

SECTION 12. Amends Article 45.045, Code of Criminal Procedure, by amending Subsection (a-3) and adding Subsections (a-4) and (a-5), as follows:

(a-3) Requires the justice or judge, if the justice or judge determines at the hearing under Subsection (a-2) that the judgment imposes an undue hardship on the defendant, to determine whether the fine and costs should be satisfied through one or more methods listed under Article 45.041(a-1). Provides that the justice or judge retains jurisdiction for the purpose of making a determination under this subsection. Creates Subsection (a-5) from existing text of this subsection.

(a-4) Requires the justice or judge, if the justice or judge determines at the hearing under Subsection (a-2) that the judgment does not impose an undue hardship on the defendant, to order the defendant to comply with the judgment not later than the 30th day after the date the determination is made.

(a-5) Requires the court to recall a capias pro fine if, before the capias pro fine is executed, the defendant provides notice to the justice or judge under Article 45.0445 and a hearing is set under that article or the defendant voluntarily appears and makes a good faith effort to resolve the capias pro fine, rather than 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.

SECTION 13. Amends Article 45.049, Code of Criminal Procedure, by adding Subsection (a-1) to authorize a judge or justice to allow a defendant to perform in the county in which the defendant resides any community service required under this article (Community Service in Satisfaction of Fine or Costs).

SECTION 14. Amends Article 45.0491, Code of Criminal Procedure, as follows:

Art. 45.0491. WAIVER OF PAYMENT OF FINES AND COSTS FOR CERTAIN DEFENDANTS AND FOR CHILDREN. (a) Makes conforming changes throughout this subsection.

(b) Provides that a defendant is presumed to be indigent or to not have sufficient resources or income to pay all or part of the fine or costs for purposes of Subsection (a) or (d), rather than all of part of the fine or costs, if the defendant:

(1)–(2) makes no changes to these subdivisions.

(c) Provides that a determination of undue hardship made under Subsection (a)(2) (relating to authorizing a court to waive payment of all or part of a fine if the fine would cause undue hardship to the defendant) is in the court's discretion. Authorizes the court, in making that determination, to consider, as applicable, certain enumerated criteria.

(d) 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 costs imposed on a defendant if the court determines that the defendant:

(1) is indigent or does not have sufficient resources or income to pay all or part of the costs; or

(2) was, at the time the offense was committed, a child as defined by Article 45.058(h).

SECTION 15. Reenacts Article 45.051(a-1), Code of Criminal Procedure, as amended by Chapters 227 (H.B. 350) and 777 (H.B. 1964), Acts of the 82nd Legislature, Regular Session, 2011, and amends it as follows:

(a-1) Authorizes a judge, notwithstanding any other provision of law, as an alternative to requiring a defendant charged with one or more offenses to make payment of all court costs as required by Subsection (a) (relating to authorizing the judge to order deferral of certain sentences and costs relating to such deferral), to:

- (1) makes no changes to this subdivision;
- (2) makes a nonsubstantive change to this subdivision;
- (3) waive all or part of the court costs under Article 45.0491(d); or
- (4) creates this subdivision from existing text and makes a conforming change.

SECTION 16. Amends Section 702.003, Transportation Code, by adding Subsections (b-1), (g), and (h) and amending Subsections (c) and (e-1), as follows:

(b-1) Provides that information that is provided to make a determination under Subsection (a) (relating to authorizing certain entities to refuse to register a vehicle under certain conditions) and that concerns an outstanding warrant from the municipality for failure to pay a fine 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 warrants for failure to pay a fine that are issued before the second anniversary of the date the initial information was provided, once information about an outstanding warrant for failure to pay a fine is provided under Subsection (b) (relating to authorizing certain entities to contract to provide information), from being used, either before or after the second anniversary of that date, to refuse registration under this section (Refusal to Register Vehicle) unless the motor vehicle is no longer subject to refusal of registration because of notice received under Subsection (c).

(c) Requires a municipality that has a contract under Subsection (b) to notify the county assessor-collector or the Texas Department of Motor Vehicles (TxDMV) regarding a person for whom the county assessor-collector or TxDMV has refused to register a motor vehicle on:

- (1) entry of a judgment against the person and the person's payment to the court or other means of discharge, including a waiver, of the fine for the violation and of all court costs, rather than entry of a judgment against the person and the person's payment to the court of the fine for the violation and of all court costs; or
- (2)–(3) makes no changes to these subdivisions.

(e-1) Authorizes a municipality that has a contract under Subsection (b), except as otherwise provided by this section, rather than authorizing a municipality that has a contract under Subsection (b), to impose an additional \$20 fee to a person who has an outstanding warrant from the municipality for failure to appear or failure to pay a fine on a complaint that involves the violation of a traffic law.

(g) 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 (e-1) 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.

(h) Prohibits a municipality, if the municipality is notified that the court having jurisdiction over the underlying offense has waived the fine that is the subject of the warrant due to the defendant's indigency, from imposing an additional fee on the defendant under Subsection (e-1).

SECTION 17. Repealer: Article 42.15(a-1) (relating to requiring the court, after imposing a certain sentence, to inquire whether the defendant can pay all or part of the fine or costs and, if the defendant does not have sufficient funds to pay, to determine an alternate method for satisfaction of the fine or costs), Code of Criminal Procedure, as added by Chapter 977 (H.B. 351), Acts of the 85th Legislature, Regular Session, 2017.

Repealer: Article 43.05(a-1) (relating to prohibiting a court from issuing a capias pro fine for the defendant's failure to satisfy the judgment according to its terms unless the court holds a hearing on the defendant's ability to satisfy the judgment and the defendant meets certain enumerated criteria), Code of Criminal Procedure, as added by Chapter 977 (H.B. 351), Acts of the 85th Legislature, Regular Session, 2017.

Repealer: Article 45.041(a-1) (relating to requiring the justice or judge, after imposing a certain sentence, to inquire whether the defendant can pay all or part of the fine or costs and, if the defendant does not have sufficient funds to pay, to determine an alternate method for satisfaction of the fine or costs), Code of Criminal Procedure, as added by Chapter 977 (H.B. 351), Acts of the 85th Legislature, Regular Session, 2017.

Repealer: Article 45.045(a-2) (relating to prohibiting a court from issuing a capias pro fine for the defendant's failure to satisfy the judgment according to its terms unless the court holds a hearing on the defendant's ability to satisfy the judgment and the defendant meets certain enumerated criteria), Code of Criminal Procedure, as added by Chapter 977 (H.B. 351), Acts of the 85th Legislature, Regular Session, 2017.

SECTION 18. Provides that Section 706.006, Transportation Code, as amended by Section 32, Chapter 977 (H.B. 351), and Section 28, Chapter 1127 (S.B. 1913), Acts of the 85th Legislature, Regular Session, 2017, notwithstanding those Acts, applies to any fee assessed on or after the effective date of this Act, regardless of whether the offense, complaint, citation, or other violation giving rise to the fee occurred before, on, or after the effective date of this Act.

SECTION 19. Provides that Articles 1.053 and 45.0201, Code of Criminal Procedure, as added by this Act, apply to a proceeding that commences before, on, or after the effective date of this Act.

SECTION 20. Makes application of Articles 43.035 and 45.0445, Code of Criminal Procedure, as added by this Act, prospective.

SECTION 21. Provides that the changes in law made by this Act to Articles 43.09, 43.091, 45.049, 45.0491, and 45.051, Code of Criminal Procedure, apply to a sentencing proceeding that commences before, on, or after the effective date of this Act.

SECTION 22. Makes application of Articles 43.05 and 45.045, Code of Criminal Procedure, as amended by this Act, prospective in regards to a capias pro fine.

SECTION 23. Makes application of Section 702.003, Transportation Code, as amended by this Act, prospective. Provides that, for purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 24. Effective date: September 1, 2019.