

## **BILL ANALYSIS**

Senate Research Center  
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C.S.S.B. 1373  
By: Zaffirini  
Criminal Justice  
4/21/2021  
Committee Report (Substituted)

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

In 2019, the legislature passed H.B. 435 by Representative Shaheen, which allows judges to declare court costs and fees uncollectible if the defendant is dead or serving life, or the fee remains unpaid after 15 years. This change helped reduce the administrative burden for court and county staff. The plain text of the statute, however, applies only to court costs and fees, not to fines. Judges also should declare fines uncollectible if the defendant satisfies the above criteria. S.B. 1373 would clarify that fines, not just court costs and fees, also are uncollectible if the defendant is dead or serving life, or the fine remains unpaid after 15 years.

Also in 2019, S.B. 346 by Senator Zaffirini redefined some court costs as reimbursement fees to ensure they remained constitutional. A drafting error, however, implies that these court costs and fees are assessed only at the time of judgment. Court costs and fees may be modified or assessed post-conviction, however. Accordingly, S.B. 1373 would clarify that court costs include any fee modified or imposed after judgment.

Relatedly, the legislature passed S.B. 1913 (2017) by Senator Zaffirini, requiring courts to inquire about defendants' ability to pay fines in Class C misdemeanor cases. Although court orders have boilerplate language stating that they conducted such an inquiry, some courts are not asking defendants about their inability to pay despite the law's requirements. When some public defenders have appealed the issue, courts of appeal have ruled that due to the boilerplate language, they will assume the inquiry happened, even when the inquiry is not in the record. Under this framework, unless the record proves that the inability to pay inquiry did not occur or an objection or statement that the inquiry has not been made, courts of appeal would assume the inquiry did occur. This interpretation of the law threatens to create a loophole defeating the legislative intent of S.B. 1913. To correct this issue, S.B. 1373 would require judges to inquire on the record about the defendant's ability to pay in Class C misdemeanor cases.

(Original Author's/Sponsor's Statement of Intent)

C.S.S.B. 1373 amends current law relating to the imposition and collection of fines, fees, and court costs in criminal cases.

### **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 42.15(a-1), Code of Criminal Procedure, to require the court to inquire on the record, rather than to inquire, whether the defendant has sufficient resources or income to immediately pay all or part of the fine and costs, during or immediately after imposing a sentence in a case in which the defendant entered a plea in open court as provided by certain articles and notwithstanding any other provision of this article.

SECTION 2. Amends Article 43.015(3), Code of Criminal Procedure, to redefine "cost" in Chapter 43 (Execution of Judgment) to include a reimbursement a fee.

SECTION 3. Amends Article 45.004, Code of Criminal Procedure, to redefine "cost" in Chapter 45 (Justice and Municipal Courts) to include a reimbursement fee, unless the context clearly indicates otherwise.

SECTION 4. Amends Article 103.0081, Code of Criminal Procedure, as follows:

Art. 103.0081. New heading: UNCOLLECTIBLE FINES AND FEES. (a) Authorizes any officer authorized by Chapter 103 (Payment, Collection, and Recordkeeping) to collect a fine, reimbursement or other fee, or item of cost, rather than to collect a fee or item of cost, to request the trial court in which a criminal action or proceeding was held to make a finding that a fine, reimbursement or other fee, or item of cost imposed in the action or proceeding is uncollectible if the officer believes the fine, reimbursement or other fee, or item of cost has been unpaid for at least 15 years. Makes conforming changes.

(b) Makes conforming changes to this subsection.

SECTION 5. Provides that the changes in law made by this Act apply to a fine, fee, or cost imposed before, on, or after the effective date of this Act.

SECTION 6. Effective date: September 1, 2021.