

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

March 26, 2007

TO: Honorable Aaron Pena, Chair, House Committee on Criminal Jurisprudence

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB2437 by Escobar (Relating to the establishment, operation, and funding of pretrial victim-offender mediation programs.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for HB2437, As Introduced: a positive impact of \$540,000 through the biennium ending August 31, 2009.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2008	\$162,000
2009	\$378,000
2010	\$368,000
2011	\$358,000
2012	\$349,000

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue Gain/(Loss) from <i>GENERAL REVENUE FUND - GR</i> <i>Account, Pretrial Victim-Offender</i> <i>Mediation Program</i> 1	Probable Revenue Gain/(Loss) from <i>Local Governments</i>
2008	\$162,000	\$162,000
2009	\$378,000	\$378,000
2010	\$368,000	\$368,000
2011	\$358,000	\$358,000
2012	\$349,000	\$349,000

Fiscal Analysis

The bill would add Subchapter C to Chapter 56 of the Code of Criminal Procedure (CCP) to authorize a county or a municipality to establish a pretrial victim-offender mediation program for cases involving a first-time offender arrested and charged under Title 7 of the Penal Code (Offenses Against Property). A county with a population of more than 100,000 would be required to establish a pretrial victim-offender mediation program. Operational procedures that must be followed are provided in the bill, including requirements of the attorney representing the state and staff and other resources of pretrial services departments, community supervision and corrections departments, juvenile probation departments, and juvenile boards.

Provisions of the bill would require the court to dismiss the indictment or information charging the defendant with the commission of the crime if the defendant successfully completes the mediation agreement and either pays all court costs or enters a payment plan approved by the court or the attorney representing the state. If charges are dismissed and the defendant commits no other offense, other than a misdemeanor traffic offense punishable by a fine only, then on the first anniversary of the date the defendant successfully completed the mediation program, on a motion of the defendant, the court would be required to enter an order of nondisclosure.

The lieutenant governor and the speaker of the house of representatives would be authorized to assign oversight duties of the programs to appropriate legislative committees. A legislative committee or the governor would be authorized to request that the state auditor perform a management, operations, or financial or accounting audit of a pretrial victim-offender mediation program established under the subchapter.

A pretrial victim-offender mediation program established under the added subchapter may collect from the defendant a reasonable program fee not to exceed \$750 and an alcohol or controlled substance testing, counseling, and treatment fee in an amount necessary to cover the costs. Fees must be based on the defendant's ability to pay and be used only for purposes specific to the program.

The bill would amend Subchapter A of Chapter 102, Code of Criminal Procedure, to require in addition to other costs on conviction imposed by the chapter, a \$15 court cost on conviction of a felony or misdemeanor under Title 7, Penal Code. The county or municipality in which the funds are deposited may retain 40 percent of the funds collected to be used exclusively for the development and maintenance of pretrial victim-offender mediation programs operated within the county or municipality, and may retain an additional 10 percent for keeping records of the funds collected and submitting to the comptroller before the last day of the first month following each calendar quarter 50 percent of the funds collected under the article during the preceding quarter. Otherwise, 60 percent would be required to be submitted to the comptroller. The comptroller would be required to deposit the funds to the credit of the pretrial victim-offender mediation program account in the general revenue fund to help fund pretrial victim-offender mediation programs established under Subchapter C, Chapter 56, CCP. The legislature would be required to appropriate money from the account solely to the criminal justice division of the governor's office for distribution to applicable programs that apply for the money. Funds collected would be subject to audit by the comptroller.

Those counties that would be required to establish a victim-offender mediation program under Subchapter C, Chapter 56, CCP, would be required to do so by not later than the later of March 1, 2008 or the first anniversary of the initial date on which the federal census indicates that the county's population exceeds 100,000. As of the 2000 U.S. census, there are 34 counties that would be required to establish a program by March 1, 2008.

Changes in the law would apply only to an offense committed on or after the effective date of the bill. The bill would take effect immediately if it were to received the required two-thirds vote in each house; otherwise, it would take effect September 1, 2007.

The proposed legislation would do one or more of the following: create or recreate a dedicated account in the General Revenue Fund, create or recreate a special or trust fund either with or outside of the Treasury, or create a dedicated revenue source. Legislative policy, implemented as Government Code 403.094, consolidated special funds (except those affected by constitutional, federal, or other restrictions) into the General Revenue Fund as of August 31, 1993 and eliminated all applicable statutory revenue dedications as of August 31, 1995. Each subsequent Legislature has reviewed bills that affect funds consolidation. The fund, account, or revenue dedication included in this bill would be subject to funds consolidation review by the current Legislature.

It is anticipated that administrative costs resulting from requirements placed on the Comptroller of Public Accounts, Office of the Governor, and Office of the State Auditor could be absorbed using existing resources. All other fiscal impact is reflected in the tables above.

Methodology

The Comptroller of Public Accounts based fiscal impact data on historical data from the *Annual Statistical Report for the Texas Judiciary*, multiple years, adjusted for growth, indigency, implementation, and retention by local governments. The court costs for criminal cases were multiplied by the total number of convictions, reduced to reflect historical non-collection rates, and adjusted for an implementation lag. Estimates were based on felony and some misdemeanor convictions for which data were available. In general, misdemeanor property offense data were not sufficiently detailed to be included in the analysis.

Local Government Impact

The table above reflects estimated revenue gain to local governments in the aggregate. Impact would vary by county or municipality in which a pretrial victim-offender program is established, depending on number of cases eligible for the program, number of persons who agree to participate in the program, revenue collection rates, and associated costs of the program.

The City of Houston estimates costs for new staff and one-time capital outlay related to establishing and operating the program would be \$55,000 in fiscal year 2008; in fiscal year 2009, other program related costs added to staff salaries run total \$53,250, and increase \$1,000 per year thereafter. The city assumes, based on general collection rates, revenue gains from fees would be approximately \$39,750 per year. The City of Carrollton estimates start-up costs of \$49,000 in fiscal year 2008, followed by costs of \$48,300 in fiscal year 2009, then increasing between \$1,500 and \$1,700 each year thereafter, but did not estimate revenue gains from fees. The City of Abilene estimated moderate costs (\$83,000 in fiscal year 2008, and \$66,150 up to \$76,576 the following four years), and did not estimate revenue gains.

Five of the counties that would be required to implement provisions of the bill provided fiscal estimates:

Harris County (2000 census population of 3.4 million) estimates start-up costs of \$1.7 million, with approximately similar costs thereafter, and assumes a revenue gain of \$600,000 per year. Estimates were based on the assumption that between 3,000 and 4,000 offenders would participate in the program each year and that the caseload would require 23 caseworkers, 4 supervisors, and 3 clerks.

Bexar County (2000 census population of almost 1.4 million) estimates the program would cost nearly \$600,000 annually, and that fees of only \$247,500 could be collected to offset those costs. Estimates were based on convictions of 825 defendants for first-time misdemeanor or felony charges. The county reported that if all 825 defendants were diverted from the Bexar County Adult Detention Center, the county would experience an indirect savings of \$3.2 million.

Fort Bend County (2000 census population of 354,452) estimates start-up costs of \$1.4 million in fiscal year 2008 for staff salaries and benefits, capital outlay, contracts with Dispute Resolutions, and contracts for controlled substance testing, counseling, or treatment. Other than the initial capital outlay costs of \$3,576, costs are estimated to remain in the \$1.4 million range over the subsequent four fiscal years. The county anticipates revenue gains of nearly \$1.2 million annually.

Montgomery County (2000 census population of 293,768) estimates first-year costs of \$562,203, dropping to costs of \$502,403 in the subsequent four fiscal years. No estimate of revenue gain was provided.

Jefferson County (2000 census population of 252,051) estimates first-year costs of the program to be \$262,500 and \$255,000 thereafter. No estimates of revenue gain were provided.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 301 Office of the Governor, 304 Comptroller of Public Accounts, 308 State Auditor's Office, 696 Department of Criminal Justice

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