

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION**

**May 22, 2009**

**TO:** Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

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

**IN RE: HB2139** by McClendon (Relating to the establishment, operation, and funding of victim-offender mediation programs. ), **Committee Report 2nd House, Substituted**

**Estimated Two-year Net Impact to General Revenue Related Funds** for HB2139, Committee Report 2nd House, Substituted: an impact of \$0 through the biennium ending August 31, 2011.

**General Revenue-Related Funds, Five-Year Impact:**

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2010	\$0
2011	\$0
2012	\$0
2013	\$0
2014	\$0

**All Funds, Five-Year Impact:**

Fiscal Year	Probable Revenue Gain/ (Loss) from <i>General Revenue fund-GR Account, Pretrial Victim- Offender Mediation Program</i>	Probable Savings/(Cost) from <i>General Revenue fund-GR Account, Pretrial Victim- Offender Mediation Program</i>	Probable Savings/(Cost) from <i>Local Units of Government</i>
2010	\$189,000	(\$189,000)	\$162,000
2011	\$455,000	(\$455,000)	\$388,000
2012	\$455,000	(\$455,000)	\$388,000
2013	\$455,000	(\$455,000)	\$388,000
2014	\$455,000	(\$455,000)	\$388,000

**Fiscal Analysis**

The bill would add Subchapter A-1 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). 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 and community supervision and corrections departments.

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 county or municipality that establishes a program would be required to notify the Office

of the Attorney General when the program is implemented and would be authorized to apply for funds for the program in accordance with other provisions in the bill.

A pretrial victim-offender mediation program established under the added subchapter may collect from the defendant a reasonable program fee not to exceed \$500 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. If the county or municipality operates a pretrial victim offender mediation program, that entity would be authorized to retain 40 percent of the funds collected to be used exclusively for the maintenance of the pretrial victim-offender mediation program operated within the county or municipality. If a county or municipality complies with certain requirements, the county or municipality may retain as a collection fee 10 percent of an amount equal to the difference between the amount of funds collected and any amount to which the county or municipality would otherwise be entitled. The comptroller would be required to deposit the funds received from the county or municipality 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 A-1, Chapter 56, CCP. The legislature would be required to appropriate money from the account solely to the OAG for distribution to pretrial victim-offender mediation programs that apply for the money. Funds collected would be subject to audit by the comptroller.

Subchapter B, Chapter 102, and Subchapter B, Chapter 103 of the Government Code would be amended to add language to conform to provisions of Subchapter A-1, CCP.

The bill would amend Family Code, Title 3 to require the Juvenile Probation Commission (JPC) to establish a juvenile victim-offender mediation pilot program in the Bexar County Juvenile Probation Department. This section of the bill would only be required if JPC receives federal supplemental appropriations under the American Recovery and Reinvestment Act of 2009 or similar federal legislation. JPC would require the department to develop resources and programming consistent with best practices, and to identify outcome measures that may be used to measure the programs' effectiveness. The department would be required to report to JPC by December 1, 2010 on the effectiveness of the program, including recommendations regarding expansion of the program. 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 September 1, 2009 unless it receives the votes necessary for immediate enactment.

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. 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 Attorney General, 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 used historical data from the *Annual Statistical Report for the Texas Judiciary* (for multiple years), adjusted for growth, indigence, implementation, and retention by local governments to estimate the fiscal impact from the new \$15 court cost. 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.

It is unknown what amount the legislature might appropriate from the revenue deposited to the Pretrial Victim-Offender Mediation Program account to be distributed to the local programs. Neither is it known how many programs would be established, nor how much money may be requested from the local governments to help fund the local programs. However, for the purpose of this analysis, it is assumed that an amount equal to revenue gained would be appropriated and expended.

### **Local Government Impact**

The table above reflects estimated revenue gain to local governments in the aggregate related to collecting the \$15 court cost if each eligible local entity were to establish a pretrial victim-offender mediation program. Impact would vary by county or municipality depending on the number of cases for which the \$15 fee would be imposed and whether the local government establishes a pretrial victim-offender mediation program, which would then entitle the entity to retain 40 percent of the fee and a collection fee, as opposed to retaining only a collection fee.

It is assumed that a county or municipality would establish a pretrial victim-offender mediation program only if, notwithstanding the \$500 program fee that could be charged to a defendant, the county or municipality has a sufficient budget and would collect sufficient applicable court fees to absorb the associated costs.

The bill would require the Juvenile Probation Commission to establish and implement a juvenile victim-offender mediation pilot program in Bexar County. The bill would require the Bexar County Juvenile Probation Department to establish a resource network comprised of certain local officials defined by the bill, develop the program with the Commission's best practices, identify outcome measures on the effectiveness of the program, and submit a report to the Commission. There would be no costs incurred by Bexar County related to the implementation of the pilot program.

### **Source Agencies:**

**LBB Staff:** JOB, ESi, GG, AI, TP