

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

April 18, 2011

TO: Honorable Pete Gallego, Chair, House Committee on Criminal Jurisprudence

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

IN RE: HB2065 by Allen (Relating to the establishment, operation, and funding of victim-offender mediation programs.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for HB2065, As Introduced: a negative impact of (\$1,051,418) through the biennium ending August 31, 2013.

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
2012	(\$525,709)
2013	(\$525,709)
2014	\$0
2015	\$0
2016	\$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>General Revenue Fund 1</i>
2012	\$182,000	(\$182,000)	(\$525,709)
2013	\$453,000	(\$453,000)	(\$525,709)
2014	\$453,000	(\$453,000)	\$0
2015	\$452,000	(\$452,000)	\$0
2016	\$452,000	(\$452,000)	\$0

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 by a local entity that establishes a program 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 (OAG) 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 of the 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 programs established under Subchapter A-1, Chapter 56 of the Code of Criminal Procedure. 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 in Chapter 102 and Chapter 103 of the Government Code would be amended to add language to conform to provisions of Subchapter A-1, Code of Criminal Procedure.

The bill would add Chapter 62 to Title 3, Family Code to require the Juvenile Probation Commission (JPC) to establish a Juvenile Victim-Offender Mediation pilot program in two counties that meet certain eligibility requirements. JPC would require an eligible juvenile probation department to develop resources and programming consistent with best practices, and to identify outcome measures that may be used to measure the programs' effectiveness. Each department would be required to report to JPC by December 1, 2012 on the effectiveness of the program, including recommendations regarding continuation and expansion of the program. This chapter expires September 2, 2013.

The bill would take effect immediately if it receives a vote of two-thirds of all members elected to each house. If the bill does not receive the votes required to pass, the bill would take effect September 1, 2011.

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 within 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.

Methodology

The Comptroller of Public Accounts used historical data from the Annual Statistical Report for the Texas Judiciary (for multiple years), adjusted for growth, indigency, 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. The Office of Court Administration (OCA) also reported that in fiscal year (FY) 2010 for Title 7 property offenses, there were 44,515 convictions in the district courts and 54,927 convictions in the county courts.

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.

The State Auditor's Office reported there would be costs for an audit of the programs during FY 2012 and 2013, but the amounts are not anticipated to be significant and could be absorbed within existing resources.

The bill specifies that the Juvenile Probation Commission must provide sufficient funds to eligible counties to establish a victim-offender mediation pilot program if funds are appropriated for the purposes of Chapter 61, Title 3, Family Code. Bexar and Travis counties would qualify for the pilot program under the eligibility requirements of the bill. Bexar County reported that it would need to hire a project coordinator, a mediation manager, a mediation coordinator and an office assistant to fulfill the specifications of the program. The counties would also need to expend funds for interpreter service and printing and publication.

The salaries of the four local employees identified by Bexar County as necessary for the establishment and operations of the program total \$255,167 per fiscal year. In addition, Bexar County reported that it would need approximately \$7,688 per fiscal year for translation services and printing and publication costs. This analysis assumes that the same costs would apply to the program in Travis County, for a total of \$262,855 per year per county.

The Comptroller of Public Accounts reported there would be no administrative or technology costs to implement the provisions of the bill.

The Office of the Attorney General indicated that there would be additional administrative costs associated with implementation of the Pretrial Victim-Offender Mediation Program, primarily related to assistance with design and oversight of those programs. However, this analysis assumes that any additional costs associated with implementation of the legislation could be absorbed within existing resources.

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 government established a Pretrial Victim-Offender Mediation Program. The fiscal 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 established a Pretrial Victim-Offender Mediation Program.

It is assumed that a county or a 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.

According to the Office of Court Administration (OCA), assuming a 100 percent collection rate, a county or a municipality that operates a program would keep \$6.90 of each \$15 court cost while the remaining \$8.10 of the \$15 court cost would be remitted to the state $[(.40 \times \$15) + (.10 \times \$9)] = \$6 + \$0.90 = \$6.90$. Thus, 46 percent of the court cost would be retained locally. A county or a municipality that does not establish a program would retain 10 percent of the \$15 court cost if they timely remit the balance of the court cost to the Comptroller. The \$15 court cost would be assessed in all counties and municipalities regardless of whether the county or municipality establishes a program which would amount to \$1.50 for each \$15 fee.

OCA also reported that in fiscal year (FY) 2010, there were approximately 44,515 Title 7 property offense convictions in the State's district courts and 54,927 in the county-level courts for a total of 99,442 convictions. There were also a significant number of Title 7 convictions in the justice and municipal courts, but OCA does not have any estimate of the number of cases. Using only convictions

in the district and county-level courts, the new \$15 court cost would result in an estimated \$596,652 in annual revenue [$99,442 \times \$15 \times 0.40$ estimated collection rate = \$596,652]. Assuming all counties and municipalities establish a program, 46 percent of that total (\$274,460) would be retained by the counties and municipalities while about \$322,192 would go to the state to be directed back to the counties and municipalities for use in pretrial victim-offender mediation programs.

The bill would require the Juvenile Probation Commission to establish and implement a Juvenile Victim-Offender Mediation pilot program in a county with a population of more than one million in which more than 75 percent of the population resides in a single municipality. There would be no costs incurred by a local juvenile probation department related to the implementation of the pilot program.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 302 Office of the Attorney General, 304 Comptroller of Public Accounts, 308 State Auditor's Office, 665 Juvenile Probation Commission, 696 Department of Criminal Justice

LBB Staff: JOB, ESi, SD, TP, MWU, TB, JM, AI, JJO