86R20299 JRR-D

By:  White, et al. H.B. No. 1653

Substitute the following for H.B. No. 1653:

By:  Sherman, Sr. C.S.H.B. No. 1653

A BILL TO BE ENTITLED

AN ACT

relating to pretrial diversion programs funded by the community justice assistance division of the Texas Department of Criminal Justice.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1.  Section 509.001(1), Government Code, is amended to read as follows:

(1)  "Community corrections facility" means a physical structure, established by the judges described by Section 76.002 after authorization of the establishment of the structure has been included in a department's strategic plan, that is operated by the department or operated for the department by an entity under contract with the department, for the purpose of treating persons who have been placed on community supervision or who are participating in a pretrial diversion [~~intervention~~] program operated under Section 76.011 or a drug court program established under Chapter 123 or former law and providing services and programs to modify criminal behavior, deter criminal activity, protect the public, and restore victims of crime. The term includes:

(A)  a restitution center;

(B)  a court residential treatment facility;

(C)  a substance abuse treatment facility;

(D)  a custody facility or boot camp;

(E)  a facility for an offender with a mental impairment, as defined by Section 614.001, Health and Safety Code; and

(F)  an intermediate sanction facility.

SECTION 2.  Section 509.003(a), Government Code, is amended to read as follows:

(a)  The division shall propose and the board shall adopt reasonable rules establishing:

(1)  minimum standards for programs, community corrections facilities and other facilities, equipment, and other aspects of the operation of departments;

(2)  a list and description of core services that should be provided by each department;

(3)  methods for measuring the success of community supervision and corrections programs, including methods for measuring rates of diversion, program completion, and recidivism;

(4)  a format for strategic plans; [~~and~~]

(5)  minimum standards for the operation of substance abuse facilities and programs funded through the division; and

(6)  minimum standards for the operation of pretrial diversion programs funded through the division.

SECTION 3.  Chapter 509, Government Code, is amended by adding Section 509.0045 to read as follows:

Sec. 509.0045.  PRETRIAL DIVERSION INFORMATION MANAGEMENT SYSTEM; REPORTING OF INFORMATION. (a) The division shall establish and operate an information management system to be used by departments, municipalities, and counties that receive funds under this chapter for pretrial diversion programs.

(b)  The system established under Subsection (a) must assist departments, municipalities, and counties in:

(1)  identifying defendants who are eligible for pretrial diversion programs;

(2)  collecting and accessing information relating to the defendants;

(3)  selecting appropriate release conditions for the defendants;

(4)  monitoring the defendants' compliance with release conditions; and

(5)  performing other functions related to defendants participating in pretrial diversion programs.

(c)  The division shall require each department, municipality, and county that receives funds under this chapter for a pretrial diversion program to report, in the manner prescribed by the division, information requested by the division that relates to:

(1)  the development or operation of the pretrial diversion program for which the recipient receives funds under this chapter; or

(2)  a defendant participating in a pretrial diversion program described by Subdivision (1).

SECTION 4.  Section 509.0071(f), Government Code, is amended to read as follows:

(f)  A department or regional partnership of departments may use funds received under Subsection (e) to provide any program or service that a department is authorized to provide under other law, including implementing, administering, and supporting evidence-based community supervision strategies, electronic monitoring, substance abuse and mental health counseling and treatment, specialized community supervision caseloads, intermediate sanctions, victims' services, restitution collection, short-term incarceration in county jails, specialized courts, pretrial services, pretrial diversion [~~and intervention~~] programs, and work release and day reporting centers.

SECTION 5.  Sections 509.011(a), (b), (e), and (f), Government Code, are amended to read as follows:

(a)  If the division determines that a department complies with division standards and if the department has submitted a strategic plan under Section 509.007 and the supporting information required by the division and the division determines the plan and supporting information are acceptable, the division shall prepare and submit to the comptroller vouchers for payment to the department as follows:

(1)  for per capita funding, a per diem amount for each felony defendant on community supervision who is directly supervised by the department pursuant to lawful authority;

(2)  for per capita funding, a per diem amount for a period not to exceed 182 days for each defendant on community supervision who is supervised by the department pursuant to lawful authority, other than a [~~felony~~] defendant described by Subdivision (1); [~~and~~]

(3)  for per capita funding, a per diem amount for each felony defendant participating in a pretrial diversion program who is directly supervised by the department pursuant to lawful authority;

(4)  for per capita funding, a per diem amount for a period not to exceed 182 days for each defendant participating in a pretrial diversion program who is supervised by the department pursuant to lawful authority, other than a defendant described by Subdivision (3); and

(5)  for formula funding, an annual amount as computed by multiplying a percentage determined by the allocation formula established under Subsection (f) times the total amount provided in the General Appropriations Act for payments under this subdivision.

(b)  The division may use discretionary grant funds to further the purposes of this chapter by contracting for services with state agencies or nonprofit organizations. The division may also make discretionary grants to departments, municipalities, or counties for the following purposes:

(1)  development and operation of pretrial and presentencing services;

(2)  development and operation of pretrial diversion programs that meet the standards adopted under Section 509.003(a)(6);

(3)  electronic monitoring services, surveillance supervision programs, and controlled substances testing services;

(4) [~~(3)~~]  research projects to evaluate the effectiveness of community corrections programs, if the research is conducted in cooperation with the Criminal Justice Policy Council;

(5) [~~(4)~~]  contract services for felony defendants;

(6) [~~(5)~~]  residential services for misdemeanor defendants who exhibit levels of risk or needs indicating a need for confinement and treatment[~~, as described by Section 509.005(b)~~];

(7) [~~(6)~~]  establishment or operation of county correctional centers under Subchapter H, Chapter 351, Local Government Code, or community corrections facilities for which the division has established standards under Section 509.006;

(8) [~~(7)~~]  development and operation of treatment alternative to incarceration programs under Section 76.017; and

(9) [~~(8)~~]  other purposes determined appropriate by the division and approved by the board.

(e)  In establishing per diem payments authorized by Subsections (a)(1), [~~and~~] (a)(2), (a)(3), and (a)(4), the division shall consider the amounts appropriated in the General Appropriations Act for basic supervision as sufficient to provide basic supervision in each year of the fiscal biennium.

(f)  The division annually shall compute for each department for community corrections program formula funding a percentage determined by assigning equal weights to the percentage of the state's population residing in the counties served by the department and the department's percentage of all felony defendants in the state under direct community supervision or pretrial diversion supervision. The division shall use the most recent information available in making computations under this subsection. The board by rule may adopt a policy limiting for all departments the percentage of benefit or loss that may be realized as a result of the operation of the formula.

SECTION 6.  Section 509.013, Government Code, is amended by adding Subsection (c) to read as follows:

(c)  In awarding a grant for the development or operation of a pretrial diversion program, the division shall give priority to programs that:

(1)  establish pretrial diversion programs for state jail felony defendants;

(2)  place eligible defendants into pretrial diversion programs as soon as practicable after each defendant's arrest; or

(3)  seek to ensure that defendants successfully satisfy the requirements of the program in a timely and efficient manner.

SECTION 7.  Article 42A.602(a), Code of Criminal Procedure, is amended to read as follows:

(a)  If a judge requires as a condition of community supervision or participation in a pretrial diversion [~~intervention~~] program operated under Section 76.011, Government Code, or a drug court program established under Chapter 123, Government Code, or former law that the defendant serve a term of confinement in a community corrections facility, the term may not exceed 24 months.

SECTION 8.  Article 42A.604(a), Code of Criminal Procedure, is amended to read as follows:

(a)  As directed by the judge, the community corrections facility director shall file with the community supervision and corrections department director or administrator of a drug court program, as applicable, a copy of an evaluation made by the facility director of the defendant's behavior and attitude at the facility. The community supervision and corrections department director or program administrator shall examine the evaluation, make written comments on the evaluation that the director or administrator considers relevant, and file the evaluation and comments with the judge who granted community supervision to the defendant or placed the defendant in a pretrial diversion [~~intervention~~] program or drug court program. If the evaluation indicates that the defendant has made significant progress toward compliance with court-ordered conditions of community supervision or objectives of placement in the program, as applicable, the judge may release the defendant from the community corrections facility. A defendant who served a term in the facility as a condition of community supervision shall serve the remainder of the defendant's community supervision under any terms and conditions the court imposes under this chapter.

SECTION 9.  Article 55.01(a), Code of Criminal Procedure, is amended to read as follows:

(a)  A person who has been placed under a custodial or noncustodial arrest for commission of either a felony or misdemeanor is entitled to have all records and files relating to the arrest expunged if:

(1)  the person is tried for the offense for which the person was arrested and is:

(A)  acquitted by the trial court, except as provided by Subsection (c); or

(B)  convicted and subsequently:

(i)  pardoned for a reason other than that described by Subparagraph (ii); or

(ii)  pardoned or otherwise granted relief on the basis of actual innocence with respect to that offense, if the applicable pardon or court order clearly indicates on its face that the pardon or order was granted or rendered on the basis of the person's actual innocence; or

(2)  the person has been released and the charge, if any, has not resulted in a final conviction and is no longer pending and there was no court-ordered community supervision under Chapter 42A for the offense, unless the offense is a Class C misdemeanor, provided that:

(A)  regardless of whether any statute of limitations exists for the offense and whether any limitations period for the offense has expired, an indictment or information charging the person with the commission of a misdemeanor offense based on the person's arrest or charging the person with the commission of any felony offense arising out of the same transaction for which the person was arrested:

(i)  has not been presented against the person at any time following the arrest, and:

(a)  at least 180 days have elapsed from the date of arrest if the arrest for which the expunction was sought was for an offense punishable as a Class C misdemeanor and if there was no felony charge arising out of the same transaction for which the person was arrested;

(b)  at least one year has elapsed from the date of arrest if the arrest for which the expunction was sought was for an offense punishable as a Class B or A misdemeanor and if there was no felony charge arising out of the same transaction for which the person was arrested;

(c)  at least three years have elapsed from the date of arrest if the arrest for which the expunction was sought was for an offense punishable as a felony or if there was a felony charge arising out of the same transaction for which the person was arrested; or

(d)  the attorney representing the state certifies that the applicable arrest records and files are not needed for use in any criminal investigation or prosecution, including an investigation or prosecution of another person; or

(ii)  if presented at any time following the arrest, was dismissed or quashed, and the court finds that the indictment or information was dismissed or quashed because:

(a)  the person completed a veterans treatment court program created under Chapter 124, Government Code, or former law, subject to Subsection (a-3);

(b)  the person completed a pretrial diversion [~~intervention~~] program authorized under Section 76.011, Government Code, other than a veterans treatment court program created under Chapter 124, Government Code, or former law;

(c)  the presentment had been made because of mistake, false information, or other similar reason indicating absence of probable cause at the time of the dismissal to believe the person committed the offense; or

(d)  the indictment or information was void; or

(B)  prosecution of the person for the offense for which the person was arrested is no longer possible because the limitations period has expired.

SECTION 10.  Article 102.012, Code of Criminal Procedure, is amended to read as follows:

Art. 102.012.  FEES FOR PRETRIAL DIVERSION [~~INTERVENTION~~] PROGRAMS. (a) A court that authorizes a defendant to participate in a pretrial diversion [~~intervention~~] program established under Section 76.011, Government Code, may order the defendant to pay to the court a supervision fee in an amount not more than $60 per month as a condition of participating in the program.

(b)  In addition to or in lieu of the supervision fee authorized by Subsection (a), the court may order the defendant to pay or reimburse a community supervision and corrections department for any other expense that is:

(1)  incurred as a result of the defendant's participation in the pretrial diversion [~~intervention~~] program, other than an expense described by Article 102.0121; or

(2)  necessary to the defendant's successful completion of the program.

SECTION 11.  Article 102.0121, Code of Criminal Procedure, is amended to read as follows:

Art. 102.0121.  FEES FOR CERTAIN EXPENSES RELATED TO PRETRIAL DIVERSION [~~INTERVENTION~~] PROGRAMS. (a) A district attorney, criminal district attorney, or county attorney may collect a fee in an amount not to exceed $500 to be used to reimburse a county for expenses, including expenses of the district attorney's, criminal district attorney's, or county attorney's office, related to a defendant's participation in a pretrial diversion [~~intervention~~] program offered in that county.

(b)  The district attorney, criminal district attorney, or county attorney may collect the fee from any defendant who participates in a pretrial diversion [~~intervention~~] program administered in any part by the attorney's office.

(c)  Fees collected under this article shall be deposited in the county treasury in a special fund to be used solely to administer the pretrial diversion [~~intervention~~] program. An expenditure from the fund may be made only in accordance with a budget approved by the commissioners court.

SECTION 12.  Sections 76.011(a) and (c), Government Code, are amended to read as follows:

(a)  The department may operate programs for:

(1)  the supervision and rehabilitation of persons in pretrial diversion [~~intervention~~] programs;

(2)  the supervision of persons released on bail under:

(A)  Chapter 11, Code of Criminal Procedure;

(B)  Chapter 17, Code of Criminal Procedure;

(C)  Article 44.04, Code of Criminal Procedure; or

(D)  any other law;

(3)  the supervision of a person subject to, or the verification of compliance with, a court order issued under:

(A)  Article 17.441, Code of Criminal Procedure, requiring a person to install a deep-lung breath analysis mechanism on each vehicle owned or operated by the person;

(B)  Chapter 123 of this code or former law, issuing an occupational driver's license;

(C)  Section 49.09(h), Penal Code, requiring a person to install a deep-lung breath analysis mechanism on each vehicle owned or operated by the person; or

(D)  Subchapter L, Chapter 521, Transportation Code, granting a person an occupational driver's license; and

(4)  the supervision of a person not otherwise described by Subdivision (1), (2), or (3), if a court orders the person to submit to the supervision of, or to receive services from, the department.

(c)  A person in a pretrial diversion [~~intervention~~] program operated by the department under Subsection (a) may be supervised for a period not to exceed two years.

SECTION 13.  Section 103.021, Government Code, is amended to read as follows:

Sec. 103.021.  ADDITIONAL FEES AND COSTS IN CRIMINAL OR CIVIL CASES: CODE OF CRIMINAL PROCEDURE. An accused or defendant, or a party to a civil suit, as applicable, shall pay the following fees and costs under the Code of Criminal Procedure if ordered by the court or otherwise required:

(1)  a personal bond fee (Art. 17.42, Code of Criminal Procedure) . . . the greater of $20 or three percent of the amount of the bail fixed for the accused;

(2)  cost of electronic monitoring as a condition of release on personal bond (Art. 17.43, Code of Criminal Procedure) . . . actual cost;

(3)  a fee for verification of and monitoring of motor vehicle ignition interlock (Art. 17.441, Code of Criminal Procedure) . . . not to exceed $10;

(3-a)  costs associated with operating a global positioning monitoring system as a condition of release on bond (Art. 17.49(b)(2), Code of Criminal Procedure) . . . actual costs, subject to a determination of indigency;

(3-b)  costs associated with providing a defendant's victim with an electronic receptor device as a condition of the defendant's release on bond (Art. 17.49(b)(3), Code of Criminal Procedure) . . . actual costs, subject to a determination of indigency;

(4)  repayment of reward paid by a crime stoppers organization on conviction of a felony (Art. 37.073, Code of Criminal Procedure) . . . amount ordered;

(5)  reimbursement to general revenue fund for payments made to victim of an offense as condition of community supervision (Art. 42A.301(b)(17) [~~42A.301(17)~~], Code of Criminal Procedure) . . . not to exceed $50 for a misdemeanor offense or $100 for a felony offense;

(6)  payment to a crime stoppers organization as condition of community supervision (Art. 42A.301(b)(20) [~~42A.301(20)~~], Code of Criminal Procedure) . . . not to exceed $50;

(7)  children's advocacy center fee (Art. 42A.455, Code of Criminal Procedure) . . . not to exceed $50;

(8)  family violence center fee (Art. 42A.504(b), Code of Criminal Procedure) . . . $100;

(9)  community supervision fee (Art. 42A.652(a), Code of Criminal Procedure) . . . not less than $25 or more than $60 per month;

(10)  additional community supervision fee for certain offenses (Art. 42A.653(a), Code of Criminal Procedure) . . . $5 per month;

(11)  for certain financially able sex offenders as a condition of community supervision, the costs of treatment, specialized supervision, or rehabilitation (Art. 42A.452, Code of Criminal Procedure) . . . all or part of the reasonable and necessary costs of the treatment, supervision, or rehabilitation as determined by the judge;

(12)  fee for failure to appear for trial in a justice or municipal court if a jury trial is not waived (Art. 45.026, Code of Criminal Procedure) . . . costs incurred for impaneling the jury;

(13)  costs of certain testing, assessments, or programs during a deferral period (Art. 45.051, Code of Criminal Procedure) . . . amount ordered;

(14)  special expense on dismissal of certain misdemeanor complaints (Art. 45.051, Code of Criminal Procedure) . . . not to exceed amount of fine assessed;

(15)  an additional fee:

(A)  for a copy of the defendant's driving record to be requested from the Department of Public Safety by the judge (Art. 45.0511(c-1), Code of Criminal Procedure) . . . amount equal to the sum of the fee established by Section 521.048, Transportation Code, and the state electronic Internet portal fee;

(B)  as an administrative fee for requesting a driving safety course or a course under the motorcycle operator training and safety program for certain traffic offenses to cover the cost of administering the article (Art. 45.0511(f)(1), Code of Criminal Procedure) . . . not to exceed $10; or

(C)  for requesting a driving safety course or a course under the motorcycle operator training and safety program before the final disposition of the case (Art. 45.0511(f)(2), Code of Criminal Procedure) . . . not to exceed the maximum amount of the fine for the offense committed by the defendant;

(16)  a request fee for teen court program (Art. 45.052, Code of Criminal Procedure) . . . $20, if the court ordering the fee is located in the Texas-Louisiana border region, but otherwise not to exceed $10;

(17)  a fee to cover costs of required duties of teen court (Art. 45.052, Code of Criminal Procedure) . . . $20, if the court ordering the fee is located in the Texas-Louisiana border region, but otherwise $10;

(18)  a mileage fee for officer performing certain services (Art. 102.001, Code of Criminal Procedure) . . . $0.15 per mile;

(19)  certified mailing of notice of hearing date (Art. 102.006, Code of Criminal Procedure) . . . $1, plus postage;

(20)  certified mailing of certified copies of an order of expunction (Art. 102.006, Code of Criminal Procedure) . . . $2, plus postage;

(20-a)  a fee to defray the cost of notifying state agencies of orders of expungement (Art. 45.0216, Code of Criminal Procedure) . . . $30 per application;

(21)  sight orders:

(A)  if the face amount of the check or sight order does not exceed $10 (Art. 102.007, Code of Criminal Procedure) . . . not to exceed $10;

(B)  if the face amount of the check or sight order is greater than $10 but does not exceed $100 (Art. 102.007, Code of Criminal Procedure) . . . not to exceed $15;

(C)  if the face amount of the check or sight order is greater than $100 but does not exceed $300 (Art. 102.007, Code of Criminal Procedure) . . . not to exceed $30;

(D)  if the face amount of the check or sight order is greater than $300 but does not exceed $500 (Art. 102.007, Code of Criminal Procedure) . . . not to exceed $50; and

(E)  if the face amount of the check or sight order is greater than $500 (Art. 102.007, Code of Criminal Procedure) . . . not to exceed $75;

(22)  fees for a pretrial diversion [~~intervention~~] program:

(A)  a supervision fee (Art. 102.012(a), Code of Criminal Procedure) . . . $60 a month plus expenses; and

(B)  a district attorney, criminal district attorney, or county attorney administrative fee (Art. 102.0121, Code of Criminal Procedure) . . . not to exceed $500;

(23)  parking fee violations for child safety fund in municipalities with populations:

(A)  greater than 850,000 (Art. 102.014, Code of Criminal Procedure) . . . not less than $2 and not to exceed $5; and

(B)  less than 850,000 (Art. 102.014, Code of Criminal Procedure) . . . not to exceed $5;

(24)  an administrative fee for collection of fines, fees, restitution, or other costs (Art. 102.072, Code of Criminal Procedure) . . . not to exceed $2 for each transaction;

(25)  a collection fee, if authorized by the commissioners court of a county or the governing body of a municipality, for certain debts and accounts receivable, including unpaid fines, fees, court costs, forfeited bonds, and restitution ordered paid (Art. 103.0031, Code of Criminal Procedure) . . . 30 percent of an amount more than 60 days past due; and

(26)  a cost on conviction for the truancy prevention and diversion fund (Art. 102.015, Code of Criminal Procedure) . . . $2.

SECTION 14.  Section 351.184(a), Local Government Code, is amended to read as follows:

(a)  To certify county correctional centers as eligible for state funding under Section 509.011(b)(7) [~~509.011(b)(6)~~], Government Code, the community justice assistance division of the Texas Department of Criminal Justice, with the assistance of the Commission on Jail Standards, shall develop standards for the physical plant and operations of county correctional centers.

SECTION 15.  As soon as practicable after the effective date of this Act, the Texas Board of Criminal Justice shall adopt rules establishing minimum standards for the operation of a pretrial diversion program funded by the community justice assistance division of the Texas Department of Criminal Justice, as required by Section 509.003(a), Government Code, as amended by this Act.

SECTION 16.  Section 509.011(a), Government Code, as amended by this Act, applies only to a payment to a community supervision and corrections department based on a voucher submitted to the comptroller on or after the effective date of this Act.

SECTION 17.  This Act takes effect September 1, 2019.