

By: Whitmire

S.B. No. 2186

A BILL TO BE ENTITLED

1 AN ACT
2 relating to pretrial diversion programs funded by the community
3 justice assistance division of the Texas Department of Criminal
4 Justice and the provision of training and technical assistance
5 provided by the division.

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

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

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

- 21 (A) a restitution center;
- 22 (B) a court residential treatment facility;
- 23 (C) a substance abuse treatment facility;
- 24 (D) a custody facility or boot camp;

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

4 (F) an intermediate sanction facility.

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

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

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

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

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

17 (4) a format for strategic plans; ~~and~~

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

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

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

24 Sec. 509.0045. PRETRIAL DIVERSION INFORMATION MANAGEMENT
25 SYSTEM; REPORTING OF INFORMATION. (a) The division shall
26 establish and operate an information management system to be used
27 by departments, municipalities, and counties that receive funds

1 under this chapter for pretrial diversion programs.

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

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

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

8 (3) selecting appropriate release conditions for the
9 defendants;

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

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

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

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

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

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

26 (f) A department or regional partnership of departments may
27 use funds received under Subsection (e) to provide any program or

1 service that a department is authorized to provide under other law,
2 including implementing, administering, and supporting
3 evidence-based community supervision strategies, electronic
4 monitoring, substance abuse and mental health counseling and
5 treatment, specialized community supervision caseloads,
6 intermediate sanctions, victims' services, restitution collection,
7 short-term incarceration in county jails, specialized courts,
8 pretrial services, pretrial diversion [~~and intervention~~] programs,
9 and work release and day reporting centers.

10 SECTION 5. Section 509.009, Government Code, is amended to
11 read as follows:

12 Sec. 509.009. TRAINING. The division shall [~~may~~] provide
13 pre-service, in-service, and educational training and technical
14 assistance to departments to promote compliance with the standards
15 under this chapter and to assist departments in improving the
16 operation of department services.

17 SECTION 6. Sections 509.011(a), (b), (e), and (f),
18 Government Code, are amended to read as follows:

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

26 (1) for per capita funding, a per diem amount for each
27 felony defendant on community supervision who is directly

1 supervised by the department pursuant to lawful authority;

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

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

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

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

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

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

27 (2) development and operation of pretrial diversion

1 programs that meet the standards adopted under Section
2 509.003(a)(6);

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

5 (4) [~~(3)~~] research projects to evaluate the
6 effectiveness of community corrections programs, if the research is
7 conducted in cooperation with the Criminal Justice Policy Council;

8 (5) [~~(4)~~] contract services for felony defendants;

9 (6) [~~(5)~~] residential services for misdemeanor
10 defendants who exhibit levels of risk or needs indicating a need for
11 confinement and treatment, as described by Section 509.005(b);

12 (7) [~~(6)~~] establishment or operation of county
13 correctional centers under Subchapter H, Chapter 351, Local
14 Government Code, or community corrections facilities for which the
15 division has established standards under Section 509.006;

16 (8) [~~(7)~~] development and operation of treatment
17 alternative to incarceration programs under Section 76.017; and

18 (9) [~~(8)~~] other purposes determined appropriate by
19 the division and approved by the board.

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

25 (f) The division annually shall compute for each department
26 for community corrections program formula funding a percentage
27 determined by assigning equal weights to the percentage of the

1 state's population residing in the counties served by the
2 department and the department's percentage of all felony defendants
3 in the state under direct community supervision or pretrial
4 diversion supervision. The division shall use the most recent
5 information available in making computations under this
6 subsection. The board by rule may adopt a policy limiting for all
7 departments the percentage of benefit or loss that may be realized
8 as a result of the operation of the formula.

9 SECTION 7. Section 509.013, Government Code, is amended by
10 adding Subsection (c) to read as follows:

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

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

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

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

21 SECTION 8. Article 42A.602(a), Code of Criminal Procedure,
22 is amended to read as follows:

23 (a) If a judge requires as a condition of community
24 supervision or participation in a pretrial diversion
25 [~~intervention~~] program operated under Section 76.011, Government
26 Code, or a drug court program established under Chapter 123,
27 Government Code, or former law that the defendant serve a term of

1 confinement in a community corrections facility, the term may not
2 exceed 24 months.

3 SECTION 9. Article 42A.604(a), Code of Criminal Procedure,
4 is amended to read as follows:

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

24 SECTION 10. Article 55.01(a), Code of Criminal Procedure,
25 is amended to read as follows:

26 (a) A person who has been placed under a custodial or
27 noncustodial arrest for commission of either a felony or

1 misdemeanor is entitled to have all records and files relating to
2 the arrest expunged if:

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

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

7 (B) convicted and subsequently:

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

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

15 (2) the person has been released and the charge, if
16 any, has not resulted in a final conviction and is no longer pending
17 and there was no court-ordered community supervision under Chapter
18 [42A](#) for the offense, unless the offense is a Class C misdemeanor,
19 provided that:

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

27 (i) has not been presented against the

1 person at any time following the arrest, and:

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

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

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

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

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

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

27 (b) the person completed a pretrial

1 diversion [~~intervention~~] program authorized under Section 76.011,
2 Government Code, other than a veterans treatment court program
3 created under Chapter 124, Government Code, or former law;

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

8 (d) the indictment or information was
9 void; or

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

13 SECTION 11. Article 102.012, Code of Criminal Procedure, is
14 amended to read as follows:

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

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

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

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

3 SECTION 12. Article [102.0121](#), Code of Criminal Procedure,
4 is amended to read as follows:

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

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

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

22 SECTION 13. Sections [76.011](#)(a) and (c), Government Code,
23 are amended to read as follows:

24 (a) The department may operate programs for:

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

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

- 1 (A) Chapter 11, Code of Criminal Procedure;
- 2 (B) Chapter 17, Code of Criminal Procedure;
- 3 (C) Article 44.04, Code of Criminal Procedure; or
- 4 (D) any other law;

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

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

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

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

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

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

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

24 SECTION 14. Section 103.021, Government Code, is amended to
25 read as follows:

26 Sec. 103.021. ADDITIONAL FEES AND COSTS IN CRIMINAL OR
27 CIVIL CASES: CODE OF CRIMINAL PROCEDURE. An accused or defendant,

1 or a party to a civil suit, as applicable, shall pay the following
2 fees and costs under the Code of Criminal Procedure if ordered by
3 the court or otherwise required:

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

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

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

13 (3-a) costs associated with operating a global
14 positioning monitoring system as a condition of release on bond
15 (Art. 17.49(b)(2), Code of Criminal Procedure) . . . actual costs,
16 subject to a determination of indigency;

17 (3-b) costs associated with providing a defendant's
18 victim with an electronic receptor device as a condition of the
19 defendant's release on bond (Art. 17.49(b)(3), Code of Criminal
20 Procedure) . . . actual costs, subject to a determination of
21 indigency;

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

25 (5) reimbursement to general revenue fund for payments
26 made to victim of an offense as condition of community supervision
27 (Art. 42A.301(b)(17) [~~42A.301(17)~~], Code of Criminal Procedure)

1 . . . not to exceed \$50 for a misdemeanor offense or \$100 for a
2 felony offense;

3 (6) payment to a crime stoppers organization as
4 condition of community supervision (Art. [42A.301\(b\)\(20\)](#)
5 [~~42A.301(20)~~], Code of Criminal Procedure) . . . not to exceed \$50;

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

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

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

13 (10) additional community supervision fee for certain
14 offenses (Art. [42A.653\(a\)](#), Code of Criminal Procedure) . . . \$5 per
15 month;

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

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

26 (13) costs of certain testing, assessments, or
27 programs during a deferral period (Art. [45.051](#), Code of Criminal

1 Procedure) . . . amount ordered;

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

5 (15) an additional fee:

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

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

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

21 (16) a request fee for teen court program (Art.
22 45.052, Code of Criminal Procedure) . . . \$20, if the court
23 ordering the fee is located in the Texas-Louisiana border region,
24 but otherwise not to exceed \$10;

25 (17) a fee to cover costs of required duties of teen
26 court (Art. 45.052, Code of Criminal Procedure) . . . \$20, if the
27 court ordering the fee is located in the Texas-Louisiana border

1 region, but otherwise \$10;

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

5 (19) certified mailing of notice of hearing date (Art.
6 102.006, Code of Criminal Procedure) . . . \$1, plus postage;

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

10 (20-a) a fee to defray the cost of notifying state
11 agencies of orders of expungement (Art. 45.0216, Code of Criminal
12 Procedure) . . . \$30 per application;

13 (21) sight orders:

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

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

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

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

26 (E) if the face amount of the check or sight order
27 is greater than \$500 (Art. 102.007, Code of Criminal Procedure)

1 . . . not to exceed \$75;

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

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

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

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

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

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

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

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

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

27 SECTION 15. Section 351.184(a), Local Government Code, is

1 amended to read as follows:

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

8 SECTION 16. As soon as practicable after the effective date
9 of this Act, the Texas Board of Criminal Justice shall adopt rules
10 establishing minimum standards for the operation of a pretrial
11 diversion program funded by the community justice assistance
12 division of the Texas Department of Criminal Justice, as required
13 by Section 509.003(a), Government Code, as amended by this Act.

14 SECTION 17. Section 509.011(a), Government Code, as amended
15 by this Act, applies only to a payment to a community supervision
16 and corrections department based on a voucher submitted to the
17 comptroller on or after the effective date of this Act.

18 SECTION 18. This Act takes effect September 1, 2019.