88R20401 SHH-D

By:  Morales Shaw, et al. H.B. No. 1977

Substitute the following for H.B. No. 1977:

By:  Thompson of Harris C.S.H.B. No. 1977

A BILL TO BE ENTITLED

AN ACT

relating to the creation of a pretrial intervention program for certain youth offenders; authorizing a fee.

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

ARTICLE 1. PRETRIAL INTERVENTION PROGRAM

SECTION 1.01.  Subtitle K, Title 2, Government Code, is amended by adding Chapter 127 to read as follows:

CHAPTER 127. PRETRIAL INTERVENTION PROGRAM FOR CERTAIN YOUTH OFFENDERS

Sec. 127.001.  YOUTH PRETRIAL INTERVENTION PROGRAM DEFINED; PROCEDURES FOR CERTAIN DEFENDANTS. (a) In this chapter, "youth pretrial intervention program" means a program that has the following essential characteristics:

(1)  the integration of services in the processing of cases in the judicial system;

(2)  the use of a nonadversarial approach involving prosecutors and defense attorneys to promote public safety and to protect the due process rights of program participants;

(3)  early identification and prompt placement of eligible participants in the program;

(4)  access to a continuum of alcohol, controlled substance, mental health, and other related treatment and rehabilitative services;

(5)  careful monitoring of treatment and services provided to program participants;

(6)  a coordinated strategy to govern program responses to participants' compliance;

(7)  ongoing judicial interaction with program participants;

(8)  monitoring and evaluation of program goals and effectiveness;

(9)  continuing interdisciplinary education to promote effective program planning, implementation, and operations;

(10)  development of partnerships with public agencies and community organizations; and

(11)  inclusion of a participant's family members who agree to be involved in the treatment and services provided to the participant under the program.

(b)  If a defendant successfully completes a youth pretrial intervention program, after notice to the attorney representing the state and a hearing in the youth pretrial intervention court at which that court determines that a dismissal is in the best interest of justice, the youth pretrial intervention court shall provide to the court in which the criminal case is pending information about the dismissal and shall include all of the information required about the defendant for a petition for expunction under Section 2(b), Article 55.02, Code of Criminal Procedure. The court in which the criminal case is pending shall dismiss the case against the defendant and:

(1)  if that trial court is a district court, the court may, with the consent of the attorney representing the state, enter an order of expunction on behalf of the defendant under Section 1a(a-3), Article 55.02, Code of Criminal Procedure; or

(2)  if that trial court is not a district court, the court may, with the consent of the attorney representing the state, forward the appropriate dismissal and expunction information to enable a district court with jurisdiction to enter an order of expunction on behalf of the defendant under Section 1a(a-3), Article 55.02, Code of Criminal Procedure.

Sec. 127.002.  ESTABLISHMENT OF PROGRAM; DEFENDANT ELIGIBILITY. (a) The commissioners court of a county shall, subject to Subsection (d), establish a youth pretrial intervention program for persons arrested for or charged with an offense that is punishable as a Class B misdemeanor or any higher category of offense, other than an offense listed in Article 42A.054(a), Code of Criminal Procedure.

(b)  A defendant is eligible to participate in a youth pretrial intervention program established under this chapter only if:

(1)  the defendant is a child as defined by Section 51.02, Family Code; and

(2)  the defendant has not previously been convicted of or placed on deferred adjudication community supervision for an offense other than a traffic offense that is punishable by fine only.

(c)  The court in which the criminal case is pending shall allow an eligible defendant to choose whether to proceed through the youth pretrial intervention program or otherwise through the criminal justice system.

(d)  The commissioners court of a county is not required to establish a specialty court in accordance with this chapter and may require the community supervision and corrections department serving the county to operate a program under the authority of Section 76.011(a). A program that is operated by a community supervision and corrections department is considered to be a youth pretrial intervention program for purposes of this chapter.

Sec. 127.003.  DUTIES OF YOUTH PRETRIAL INTERVENTION PROGRAM. (a) A youth pretrial intervention program established under this chapter must:

(1)  ensure that a defendant eligible for participation in the program is provided legal counsel before electing to proceed through the program and while participating in the program;

(2)  allow a participant to withdraw from the program at any time before a trial on the merits has been initiated; and

(3)  provide a participant with a court-ordered individualized treatment plan indicating the services that will be provided to the participant.

(b)  A youth pretrial intervention program established under this chapter shall make, establish, and publish local procedures to ensure maximum participation of eligible defendants in the county or counties in which those defendants reside.

(c)  A youth pretrial intervention program may allow a participant to comply with the participant's court-ordered individualized treatment plan or to fulfill certain other court obligations through the use of videoconferencing software or other Internet-based communications.

(d)  This chapter does not prevent the initiation of procedures under Chapter 46B, Code of Criminal Procedure.

Sec. 127.004.  CONDITIONS OF PROGRAM. (a) A program participant charged with an offense punishable as a Class B misdemeanor may not be required to spend more than one year in the program and may not be required to perform more than 24 hours of community service as part of the program.

(b)  A program participant charged with an offense punishable as a Class A misdemeanor or state jail felony may not be required to spend more than two years in the program and may not be required to perform more than 24 hours of community service as part of the program.

(c)  A program participant charged with an offense punishable as a felony of the third degree may not be required to spend more than three years in the program and may not be required to perform more than 50 hours of community service as part of the program.

(d)  A program participant charged with an offense punishable as a felony of the second degree may not be required to spend more than four years in the program and may not be required to perform more than 75 hours of community service as part of the program.

(e)  A program participant charged with an offense punishable as a felony of the first degree may not be required to spend more than five years in the program and may not be required to perform more than 100 hours of community service as part of the program.

Sec. 127.005.  SUPERVISION OF PARTICIPANTS. The community supervision and corrections department serving the county in which the program is operated shall supervise program participants.

Sec. 127.006.  ESTABLISHMENT OF REGIONAL PROGRAM. The commissioners courts of two or more counties may elect to establish a regional youth pretrial intervention program under this chapter for the participating counties.

Sec. 127.007.  REIMBURSEMENT FEES. (a) A youth pretrial intervention program established under this chapter may collect from a participant in the program:

(1)  a reasonable reimbursement fee for the program; and

(2)  a testing, counseling, and treatment reimbursement fee in an amount necessary to cover the costs of any testing, counseling, or treatment performed or provided under the program.

(b)  Reimbursement fees collected under this section may be paid on a periodic basis or on a deferred payment schedule at the discretion of the judge, magistrate, or coordinator.  The fees must be:

(1)  based on the participant's ability to pay; and

(2)  used only for purposes specific to the program.

Sec. 127.008.  COURTESY SUPERVISION. (a) A youth pretrial intervention program that accepts placement of a defendant may transfer responsibility for supervising the defendant's participation in the program to another youth pretrial intervention program that is located in the county where the defendant works or resides. The defendant's supervision may be transferred under this section only with the consent of both youth pretrial intervention programs and the defendant.

(b)  A defendant who consents to the transfer of the defendant's supervision must agree to abide by all rules, requirements, and instructions of the youth pretrial intervention program that accepts the transfer.

(c)  If a defendant whose supervision is transferred under this section does not successfully complete the program, the youth pretrial intervention program supervising the defendant shall return the responsibility for the defendant's supervision to the youth pretrial intervention program that initiated the transfer.

SECTION 1.02.  Article 59.062(f), Code of Criminal Procedure, is amended to read as follows:

(f)  A civil penalty collected under this article shall be deposited to the credit of the drug court account in the general revenue fund to help fund specialty court programs established under Chapter 122, 123, 124, 125, 127, or 129, Government Code, or former law.

SECTION 1.03.  Section 509.011, Government Code, is amended by adding Subsection (a-1) to read as follows:

(a-1)  The supervision by a department of a participant in a youth pretrial intervention program under Chapter 127 or other law constitutes supervision by the department pursuant to lawful authority for purposes of Subsection (a).

SECTION 1.04.  Section 772.0061(a)(2), Government Code, is amended to read as follows:

(2)  "Specialty court" means:

(A)  a commercially sexually exploited persons court program established under Chapter 126 or former law;

(B)  a family drug court program established under Chapter 122 or former law;

(C)  a drug court program established under Chapter 123 or former law;

(D)  a veterans treatment court program established under Chapter 124 or former law;

(E)  a mental health court program established under Chapter 125 or former law;

(F)  a youth pretrial intervention program established under Chapter 127; and

(G) [~~(F)~~]  a public safety employees treatment court program established under Chapter 129.

SECTION 1.05.  Section 772.0061(b), Government Code, is amended to read as follows:

(b)  The governor shall establish the Specialty Courts Advisory Council within the criminal justice division established under Section 772.006 to:

(1)  evaluate applications for grant funding for specialty courts in this state and to make funding recommendations to the criminal justice division; and

(2)  make recommendations to the criminal justice division regarding best practices for specialty courts established under Chapter 122, 123, 124, 125, 127, or 129 or former law.

ARTICLE 2. AUTOMATIC EXPUNCTION

SECTION 2.01.  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);

(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

(C)  convicted of an offense committed before September 1, 2021, under Section 46.02(a), Penal Code, as that section existed before that date; 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 mental health court program created under Chapter 125, Government Code, or former law, subject to Subsection (a-4);

(c)  the person completed a youth pretrial intervention program created under Chapter 127, Government Code;

(d)  the person completed a pretrial 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, [~~or~~] a mental health court program created under Chapter 125, Government Code, or former law, or a youth pretrial intervention program created under Chapter 127, Government Code;

(e) [~~(d)~~]  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

(f) [~~(e)~~]  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 2.02.  Section 1a, Article 55.02, Code of Criminal Procedure, is amended by adding Subsection (a-3) to read as follows:

(a-3)  A trial court dismissing a case following a person's successful completion of a youth pretrial intervention program created under Chapter 127, Government Code, if the trial court is a district court or a district court in the county in which the trial court is located, may, with the consent of the attorney representing the state, enter an order of expunction for a person entitled to expunction under Article 55.01(a)(2)(A)(ii)(c) not later than the 30th day after the date the court dismisses the case or receives the information regarding that dismissal, as applicable. Notwithstanding any other law, a court that enters an order for expunction under this subsection may not charge any fee or assess any cost for the expunction.

SECTION 2.03.  Article 102.006(b-1), Code of Criminal Procedure, is amended to read as follows:

(b-1)  The fees under Subsection (a) shall be waived if the petitioner is entitled to expunction:

(1)  under Article 55.01(a)(2)(A)(ii)(a) after successful completion of a veterans treatment court program created under Chapter 124, Government Code, or former law; [~~or~~]

(2)  under Article 55.01(a)(2)(A)(ii)(b) after successful completion of a mental health court program created under Chapter 125, Government Code, or former law; or

(3)  under Article 55.01(a)(2)(A)(ii)(c) after successful completion of a youth pretrial intervention program created under Chapter 127, Government Code.

ARTICLE 3. TRANSITION; EFFECTIVE DATE

SECTION 3.01.  The changes in law made by this Act apply only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 3.02.  This Act takes effect September 1, 2023.