

SUBJECT: Creating a youth pretrial intervention program

COMMITTEE: Juvenile Justice and Family Issues — committee substitute recommended

VOTE: 9 ayes — Neave, Swanson, Cook, Frank, Leach, Ramos, Talarico, Vasut, Wu
0 nays

WITNESSES: For — Minister Dominique Alexander, Next Generation Action Network; Rachana Chhin, Texas Catholic Conference of Bishops; (*Registered, but did not testify*: Matthew Lovitt, National Alliance on Mental Illness (NAMI) Texas; Shea Place, Texas Criminal Defense Lawyers Association; Suzi Kennon, Texas PTA)

Against — None

On — Andrea Bode and Amber Givens, Texas Probation Association; (*Registered, but did not testify*: Stephanie Mitchell-Huff)

BACKGROUND: Interested parties note that pretrial diversion programs serve as an effective rehabilitation option for certain offenders under the age of 18. Some have called for the state to develop a youth pretrial intervention program as a specialty court for nonviolent first-time offenders.

DIGEST: CSHB 3315 would create a pretrial intervention program for offenders under the age of 18. The bill would establish program eligibility requirements for youthful offenders and authorize a fee for participation. Youth who successfully completed the program would have their criminal case dismissed by the court and their criminal record expunged.

The commissioners court of a county would be required to establish a youth pretrial intervention program as a specialty court for persons arrested for or charged with an offense that was punishable as a class B misdemeanor or any higher category of offense, other than an offense that was ineligible for judge-ordered community supervision.

Program characteristics. The bill would define the essential characteristics of a youth pretrial intervention program to mean the following:

- the integration of services in the processing of cases in the judicial system;
- the use of a non-adversarial approach involving prosecutors and defense attorneys to promote public safety and to protect the due process rights of program participants;
- early identification and prompt placement of eligible participants in the program;
- access to a continuum of alcohol, controlled substance, mental health, and other related treatment and rehabilitative services;
- careful monitoring of treatment and services to program participants;
- a coordinated strategy to govern program responses to participants' compliance;
- ongoing judicial interaction with program participants;
- monitoring and evaluation of program goals and effectiveness;
- continuing interdisciplinary education to promote effective program planning, implementation, and operations;
- development of partnerships with public agencies and community organizations; and
- inclusion of a participant's family members who agreed to be involved in the treatment and services provided to the participant under the program.

If a defendant successfully completed a youth pretrial intervention program, after a hearing in the youth pretrial intervention court at which that court determined dismissal was in the best interest of justice, the court in which the criminal case was pending against a participant would be required to dismiss the case against the defendant. The youth pretrial intervention court would have to provide the court in which the criminal case was pending information about the dismissal and include all the

information required about the defendant for a petition for the expunction of criminal records.

Expunction. A district court could, with the consent of the attorney representing the state, enter an order of expunction on behalf of the defendant. If the trial court in which the participant's criminal case was pending was not a district court, the court could, 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. An order of expunction would be entered not later than the 30th day after the date the court dismissed the case or received the information regarding the dismissal, as applicable. The court that entered the expunction order could not charge a fee or assess any cost for the expunction.

Eligible youth. A defendant would be eligible to participate in a youth pretrial intervention program only if:

- the defendant was younger than 18 years of age at the time of the offense; and
- the defendant had not previously been convicted of or placed on deferred adjudication community supervision for an offense other than a traffic offense that was punishable by fine only.

The court in which the criminal case was pending would be required to allow an eligible defendant to choose whether to participate through the youth pretrial intervention program or otherwise through the criminal justice system.

Program duties. A youth pretrial intervention program would be required to:

- ensure that a defendant eligible for participation in the program was provided legal counsel before electing to proceed through the program and while participating in the program;
- allow a participant to withdraw from the program at any time

- before a trial on the merits had been initiated; and
- provide a participant with a court-ordered individualized treatment plan indicating the services that would be provided to the participant.

A program could allow a participant to comply with the court-order plan through internet-base communications.

In the county or counties in which eligible defendants reside, the program would be required to make, establish, and publish local procedures to ensure maximum participation.

Length of participation. The bill would establish limits on the length of participation in the program and of community service based on the level of offense. A program participant charged with an offense punishable as:

- a class B misdemeanor could not be required to spend more than one year in the program and perform more than 24 hours of community service as part of the program;
- a class A misdemeanor or state jail felony could not be required to spend more than two years in the program and perform more than 24 hours of community service;
- a third-degree felony could not be required to spend more than three years in the program and perform more than 50 hours of community service;
- a second-degree felony could not spend more than four years in the program and perform more than 75 hours of community service;
- a first-degree felony could not spend more than five years in the program and perform more than 100 hours of community service.

Program supervision. The community supervision and corrections department serving the county in which a program was operated would be required to supervise the program participants.

A program that accepted placement of a defendant could transfer responsibility for supervising the defendant's participation to another

youth pretrial intervention program that was located in the county where the defendant worked or resided. A transfer of supervision could occur only with the consent of both youth pretrial intervention programs and the defendant. A defendant who consented to the transfer would have to abide by all the rules, requirements, and instructions of the program that accepted the transfer. Transferred participants who failed to successfully complete the program would be returned to the responsibility of the program that initiated the transfer.

Reimbursement fee. A youth pretrial intervention program could collect from program participants a reasonable reimbursement fee in addition to a testing, counseling, and treatment reimbursement fee in an amount necessary to cover the costs of any testing, counseling, or treatment performed or provided by the program.

Reimbursement fees collected could be paid on a periodic basis or on a deferred payment schedule at the discretion of the judge, magistrate, or coordinator. Fees would be required to be based on the participant's ability to pay and used only for purposes specific to the program.

Other provisions. The bill would amend the definition of specialty court in the Government Code to include a youth pretrial intervention program.

The bill also would amend the Code of Criminal Procedure art. 55.01(a) governing the right to expunction of all criminal records by adding persons who successfully completed a youth pretrial intervention program.

The bill would take effect September 1, 2021, and would apply only to an offense committed on or after that date.