

[2015 Session] Modify the Texas Government Code to Permit Probation Departments and Pretrial Services Entities to Supervise Pretrial Diversion Programs and Collect Fees for Participation

Policy Background:

Increasingly, counties have sought to expand the use of pre-charge and other pretrial diversion programs in order to reduce the collateral consequences of court involvement. These counties have struggled, however, to identify the proper entity to supervise participants in these programs.

Section 76.011 of the Texas Government Code authorizes community supervision (probation) departments to supervise persons in pretrial intervention programs, but the statute fails to define “pretrial intervention.” Ambiguity exists, therefore, as to whether this section permits probation departments to supervise persons in pre-charge intervention programs not under the supervision of a court. Moreover, Article 17.42 of the Code of Criminal Procedure, which authorizes pretrial services, similarly fails to give explicit authority to pretrial services entities to supervise participants in these programs. This ambiguity has hampered efforts to help those who become system involved and who deserve a second chance through pre-charge and other pretrial division programs.

Finally, there is currently no clear authority for either probation departments or pretrial services entities to collect fees from participants for any pre-charge supervision. While the Government Code authorizes a “district attorney, criminal district attorney, or county attorney [to] collect a fee in an amount not to exceed \$500 to be used to reimburse a county for expenses . . . related to a defendant’s participation in a pretrial intervention program offered in that county,” no similar provisions permit the collection of fees directly by probation departments or pretrial services entities.

Texas policy-makers should expressly grant authority to pretrial services entities and community supervision (probation) departments to supervise individuals engaged in pre-charge and other pretrial diversion programs, and to collect a fee from participants in these programs.

Key Facts:

- As of December 1, 2014, Texas county jails housed a total of 64,587 individuals, 39,121 (61%) of which were in pretrial detention.^[1]

These individuals have not been convicted of the crime for which they are accused. They are awaiting trial but many cannot afford to pay the bond amounts that would allow for their release. Especially for the men and women who do not pose a risk to public safety, this creates unnecessary and costly jail crowding.

^[1] Texas Commission on Jail Standards, *Texas County Jail Population*, December 1, 2014; <http://www.tcjs.state.tx.us/index.php?linkID=325>