

SUBJECT: Expanding time allowed in pretrial intervention program to two years

COMMITTEE: Criminal Jurisprudence — favorable without amendment

VOTE: 5 ayes — Keel, Denny, Pena, Raymond, Reyna

0 nays

4 absent — Riddle, Escobar, Hodge, P. Moreno

WITNESSES: None

BACKGROUND: Government Code sec. 76.011 allows local community corrections and supervision (probation) departments to operate programs for the supervision and rehabilitation of persons in pretrial intervention programs. The section sets a one-year limit on the time that a person can be in such a program.

Code of Criminal Procedure art. 102.012 authorizes the assessment of a fee up to \$500 on persons in a pretrial intervention program. The fee must equal the actual cost to a local probation department for supervision or programs provided to the defendant. Government Code 103.021 authorizes miscellaneous fees that can be assessed in criminal cases. It requires defendants to pay the fees if ordered by the court or otherwise required. The list includes authorization for the above fee of up to \$500.

DIGEST: HB 2485 would extend the time limit that persons could be in a pretrial intervention program from one year to two years. It would eliminate the \$500 cap on the fee that can be charged defendants and would authorize courts to order defendants to pay a fee of up to \$60 per month. It also would authorize, in addition to or in lieu of the \$60 fee, courts to order defendants to pay or reimburse the county for other expenses incurred by being in the program or that were necessary to successfully complete the program.

The bill would take effect September 1, 2005.

SUPPORTERS
SAY:

HB 2485 would give prosecutors and courts more options when dealing with persons in pretrial diversion programs who may need more time than one year to successfully complete a treatment program or other program. It also would implement a more realistic fee structure for defendants in the program.

Currently, defendants may stay in a pretrial diversion program only for one year. In some cases, offenders involved in drug or alcohol rehabilitation programs or mental health treatment programs need more than one-year of treatment or need to return to the program following a relapse. In many cases, the one-year limit keeps offenders from receiving continued treatment necessary to keep them from entering the criminal justice system. HB 2485 would support the goal of pretrial intervention programs, which is to divert offenders from the criminal justice system by placing them in effective and appropriate rehabilitation programs that are less costly than incarceration and work to deter them from committing additional crimes.

By extending to two years the maximum time a defendant could be in a pretrial intervention program, the bill would give courts and prosecutors the flexibility to keep defendants who were making satisfactory progress in a treatment program or to send those who relapsed back to the program, all of which could keep them out of the criminal justice system. This would help local jurisdictions and the state reserve criminal justice resources for other offenders. As under current law, prosecutors and courts would retain oversight of these defendants and continue to receive information about their progress and would retain the authority to initiate criminal proceedings at any time during the two-year period, if warranted.

HB 2485 also would implement a more realistic fee structure for these defendants and give courts some flexibility in setting the fee according to the circumstances of each defendant and requiring defendants to pay for the cost of treatment, if appropriate.

For some defendants a \$500 fee seems so large that paying it is insurmountable, whereas a monthly assessment would set an appropriate amount that more easily could be paid. In other circumstances, such as a term of probation, criminal defendants are assessed monthly fees. Removing the overall cap of \$500 would allow defendants who could afford it to pay more. Courts would be cognizant of defendants' ability to pay and would not assess fees that were burdensome or unpayable.

OPPONENTS
SAY:

The current one-year cap on the time a defendant can spend in a pretrial diversion program ensures that defendants either make progress or return to the criminal justice system. Expanding this time limit could result in people lingering in pretrial diversion programs who should be sent to prison.

Removing the total cap of \$500 on the fee that could be assessed of defendants in pretrial diversion programs and allowing monthly fees of up to \$60 plus expenses could result in defendants being assessed more than they could pay or was appropriate.

NOTES:

The companion bill, SB 1006 by Harris, passed the Senate on April 14 on the Local and Uncontested Calendar and was reported favorably, without amendment, by the House Criminal Jurisprudence Committee on April 26, making it eligible to be considered in lieu of HB 2485.