

BILL ANALYSIS

C.S.H.B. 2437
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Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

While current law contains provisions for diverting first-time minor offenders from trial and incarceration, these programs generally are administered entirely at the discretion of prosecutors and judges. Current law does not contain provisions for official input from victims in these proceedings. C.S.H.B. 2437 will establish a pre-trial victim-offender mediation program and will allow victims of certain misdemeanors and state jail felonies to take an active role in rehabilitation of a defendant who wishes to take responsibility for his or her actions.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 2437 amends the Code of Criminal Procedure and allows a commissioner's court or municipal government to establish a pretrial victim-offender mediation program (program) for persons who have been arrested for or charged with a misdemeanor or state jail felony under Title 7 of the Penal Code and who have not been previously convicted of a felony or misdemeanor except fine-only traffic misdemeanor offenses.

The bill provides that the program must require the state's attorney to identify defendants who are eligible to participate, including whether the defendant meets any additional locally developed eligibility criteria, and obtain consent from both the victim and the defendant before proceeding with mediation. In addition, the defendant must enter into a binding mediation agreement (agreement) that includes an apology by the defendant, and requires the defendant to pay restitution to the victim or perform community service. All communications made in the program are confidential and are not allowed to be introduced into evidence except in a proceeding involving a question concerning the meaning of a mediation agreement. Staff and other resources of pretrial services departments, community supervision correction districts, juvenile probation departments, and juvenile boards may be required to help monitor a defendant's compliance with the mediation agreement reached through the program. Any person designated by the court, other than the state's attorney and the defendant's criminal defense attorney, may conduct the mediation regardless of whether the designated person is a trained mediator. The court, with the state's attorney's consent, may defer the proceedings for a defendant who enters the program without accepting a plea of guilty or nolo contendere or entering an adjudication of guilt.

The case must be returned to the docket and proceed through the regular criminal justice system if the mediation does not result in an agreement or the defendant fails to successfully fulfill the terms of the agreement by the specified date. The court is required to dismiss the indictment or information charging the defendant with the commission of the offense, if the defendant successfully completes the terms of the agreement, and either pays all court costs or enters a payment plan approved by the court or the state's attorney for such payment. The court's determination of whether the agreement has been successfully completed is final and may not be appealed; however, the state's attorney or the court may extend time for compliance. If the defendant is not arrested or convicted of a subsequent felony or misdemeanor, other than a fine-only traffic misdemeanor, on or before the first anniversary of the date the defendant successfully completed the agreement, the court is required to enter an order of nondisclosure under Section 411.081, Government Code, as if the defendant had received a discharge and

dismissal under Section 5(c), Article 42.12, with respect to all records and files related to the defendant's arrest for which the defendant entered the program.

The agreement must be signed by the defendant and the victim and be ratified by the state's attorney or the court. The agreement is allowed to require testing, counseling, and treatment of the defendant to address alcohol abuse, abuse of controlled substances, mental health, or anger management or any other service that is reasonably related to the offense for which the defendant was arrested or charged. It also is not valid for more than one year after the date on which the agreement is ratified. The mediation agreement does not constitute a plea or legal admission of responsibility.

The lieutenant governor and the speaker of the house of representatives may assign duties relating to the oversight of the program to appropriate legislative committees. The legislative committee or the governor may request certain audits of the program from the state auditor. A county or municipality that establishes a program must notify the attorney general's office when the county or municipality begins implementation of the program and may provide information regarding the performance of the program to the attorney general's office on request.

A program may collect from a defendant a reasonable program fee not to exceed \$500 and a fee in an amount necessary to cover the costs of alcohol or controlled substance testing, counseling, or treatment if is required by the agreement. The bill allows for a periodic or deferred payment schedule for fees to be collected at the discretion of the judge, magistrate, or program director administering the program. The fees must be based on the defendant's ability to pay and used only for purposes specific to the program.

In addition, a person is required to pay \$15 as a court cost on conviction of a felony or misdemeanor under Title 7, Penal Code. A person is considered to have been convicted if a sentence is imposed, the defendant receives community supervision or deferred adjudication, or the court defers final disposition of the case. The collection of these court costs are handled in the same manner as other fines or costs, and an officer collecting these costs must keep separate records of funds collected as these costs and must deposit the funds in the county or municipal treasury, as appropriate. The custodian of a county or municipal treasury must keep records of the amount of funds on deposit collected from these costs, and send to the comptroller these funds collected during the preceding quarter, before the last day of the first month following each calendar quarter except in certain circumstances. A county or municipality is entitled to retain 40 percent of these funds collected by an officer of the county or municipality to be used exclusively for the maintenance of a program operated within the county or municipality, if the county or municipality has established a program. If the custodian of the county or municipal treasury complies with certain provisions, a county or municipality is also entitled to retain as a collection fee 10 percent of an amount equal to the difference between the amount of funds collected by an officer of the county or municipality and any amount the county or municipality is entitled to retain. If no funds due as these costs are deposited in a county or municipal treasury in a calendar quarter, the custodian of the treasury must file the report required for the quarter in the regular manner and must state that no funds were collected. The comptroller is required to deposit these funds into the pretrial victim-offender mediation program account in the general revenue fund. The legislature must appropriate money from the account solely to the attorney general's office for distribution to pretrial victim-offender mediation programs that apply for the money. Funds collected as a court cost on conviction of a felony or misdemeanor under Title 7, Penal Code, are subject to audit by the comptroller.

The bill also amends the Government Code to provide that a person convicted of an offense under Title 7, Penal Code, must pay a cost on conviction, in addition to all other costs, to help fund pretrial victim-offender mediation programs established under Subchapter C, Chapter 56, Code of Criminal Procedure (Art. 102.0179, Code of Criminal Procedure) ... \$15.

The change in law made by this Act in adding Subchapter C, Chapter 56, Code of Criminal Procedure, applies to a defendant who enters a pretrial victim-offender mediation program under that chapter regardless of whether the defendant committed the offense for which the defendant enters the program before, on, or after the effective date of this Act.

The change in law made by this Act in adding Article 102.0179, Code of Criminal Procedure, and Section 102.0216, Government Code, applies 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 when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this subsection, an offense was committed before the effective date of this Act if any element of the offense was committed before that date.

EFFECTIVE DATE

Upon passage, or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2007.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute removes the requirement that a commissioners court in counties with population above 100,000 must create a program.

The substitute also changes Article 56.83, Code of Criminal Procedure, to provide that "mediation agreement" refers to a mediation that occurred under this subchapter; whereas, the original "mediation agreement" referred to the chapter. It also provides that a mediation agreement under this subchapter is not valid for more than one year after the date on which the agreement is ratified. The original provided that a mediation agreement may not last for more than one year after the date on which the agreement is ratified.

The substitute requires that a county or municipality that establishes a program must notify the attorney general's office when the county or municipality begins implementation of the program, and may provide information regarding the performance of the program to the attorney general's office on request. The original only applied to a county that established a program and made this notification permissive, and directed notification and providing information to the criminal justice division of the governor's office.

The substitute provides that the legislature must appropriate money from the pretrial victim-offender mediation program account solely to the attorney general's office for distribution to the programs. The original bill appropriated the money solely to the criminal justice division of the governor's office.

The substitute reduces the maximum program fee from \$750 to \$500.

The substitute removes the provision in the original bill that required the court to assess and make a reasonable effort to collect the cost whether or not any other court cost is assessed or collected. The substitute also clarifies the language that provides that a county or municipality is entitled to retain 40 percent of the funds collected by an officer of the county or municipality to be used exclusively for the maintenance of a program operated within the county or municipality, if the county or municipality has established a program. The substitute also provides that if the custodian of the county or municipal treasury complies with certain provisions, a county or municipality is also entitled to retain as a collection fee 10 percent of an amount equal to the difference between the amount of funds collected by an officer of the county or municipality and any amount the county or municipality is entitled to retain. The original provided that if the custodian of the county or municipal treasury complies with certain provisions, a county or municipality is also entitled to retain an additional 10 percent of the funds collected by an officer of the county or municipality as a collection fee.

The substitute also amends the Government Code to provide that a person convicted of an offense under Title 7, Penal Code, must pay a cost on conviction, in addition to all other costs, to help fund pretrial victim-offender mediation programs established under Subchapter C, Chapter 56, Code of Criminal Procedure (Art. 102.0179, Code of Criminal Procedure) ... \$15. The original provided that in addition to all other costs, a person convicted of an offense must pay under the Code of Criminal Procedure, costs attendant to convictions for felonies and misdemeanors, other than fine-only traffic misdemeanors, to help fund pretrial victim-offender mediation programs established under Subchapter C, Chapter 56, Code of Criminal Procedure (Art. 102.0179, Code of Criminal Procedure) ... \$15.

Finally, the substitute removes the provision in the original bill that required the county commissioner's court to establish a program not later than March 1, 2008, or the first anniversary of the initial date on which the federal census indicates that the country's population exceeds 100,000.