

BILL ANALYSIS

Senate Research Center
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C.S.H.B. 2139
By: McClendon et al. (Hinojosa)
Criminal Justice
5/22/2009
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

While current law contains provisions for diverting first-time minor offenders from trial and incarceration to alternative programs, these programs generally are administered at the discretion of prosecutors and judges. Current law does not provide for official input from victims in these proceedings. It is necessary to allow victims of certain misdemeanors and state jail felonies to take an active role in the rehabilitation of a defendant who wishes to take responsibility for the defendant's actions.

C.S.H.B. 2139 amends current law relating to the establishment, operation, and funding of victim-offender mediation programs.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 56, Code of Criminal Procedure, by adding Subchapter A-1, as follows:

SUBCHAPTER A-1. PRETRIAL VICTIM-OFFENDER MEDIATION PROGRAM

Art. 56.21. **AUTHORITY TO ESTABLISH PROGRAM.** Authorizes the commissioners court of a county or governing body of a municipality to establish a pretrial victim-offender mediation program for persons who have been arrested for or charged with a misdemeanor or state jail felony under Title 7 (Offenses Against Property), Penal Code, and have not previously been convicted of a felony or a misdemeanor, other than a misdemeanor regulating traffic and punishable by fine only.

Art. 56.22. **PROGRAM.** (a) Requires that a pretrial victim-offender mediation program established under Article 56.21 identify defendants who are eligible to participate in the program, including a consideration of whether the defendant meets any additional locally developed eligibility criteria; the consent of the victim, the defendant, and the attorney representing the state to be obtained before an eligible defendant is authorized to proceed with pretrial victim-offender mediation; and the defendant to enter into a binding mediation agreement with Article 56.23 that includes an apology by the defendant, and requires the defendant to pay restitution to the victim or perform community service.

(b) Provides that all communications made in a pretrial victim-offender mediation program are confidential and are prohibited from being introduced into evidence except in a proceeding involving a question concerning the meaning of a mediation agreement.

(c) Authorizes a pretrial victim-offender mediation program to require the staff and other resources of pretrial services departments and community supervision correction departments to assist in monitoring the defendant's compliance with a mediation agreement reached through the program.

(d) Authorizes pretrial victim-offender mediations to be conducted by any person designated by the court, other than the attorney representing the state or an attorney representing the defendant in the criminal action, regardless of whether the designated person is a trained mediator.

(e) Authorizes the court, if a defendant enters a pretrial victim-offender mediation program, to defer the proceedings without accepting a plea of guilty or nolo contendere or entering an adjudication of guilt. Prohibits the court from requiring the defendant to admit guilt or enter a plea of guilty or nolo contendere to enter the program.

(f) Requires that the case be returned to the docket and proceed through the regular criminal justice system if a pretrial victim-offender mediation does not result in a mediation agreement, or the defendant fails to successfully fulfill the terms of the mediation agreement by the date specified in the mediation agreement.

(g) Provides that the defendant, if a case is returned to the docket under Subsection (f), retains all of the rights that the defendant possessed before entering the pretrial victim-offender mediation program under this subchapter. Provides that for purposes of determining the duration and expiration of an applicable statute of limitation under Chapter 12 (Limitation), notwithstanding any other law, the running of the period of limitation is tolled while the defendant is enrolled in a program under this subchapter.

(h) Requires the court, on the motion of the attorney representing the state, to dismiss the indictment or information charging the defendant with the commission of the offense, if the defendant successfully completes the mediation agreement as determined by the attorney representing the state, and either pays all court costs, or enters a payment plan approved by the court or the attorney representing the state for such payment.

(i) Provides that a determination by the court regarding whether the mediation agreement has been successfully completed is final and is prohibited from being appealed, although the attorney for the state or the court is authorized to extend the period for compliance.

(j) Requires the court, if the defendant is not arrested or convicted of a subsequent felony or misdemeanor other than a misdemeanor regulating traffic and punishable by fine only on or before the first anniversary of the date the defendant successfully completed a mediation agreement under this subchapter, on the motion of the defendant, to enter an order of nondisclosure under Section 411.081 (Application of Subchapter), Government Code, as if the defendant had received a discharge and dismissal under Section 5(c) (relating to the expiration of a community supervision period), Article 42.12 (Community Supervision), with respect to all records and files related to the defendant's arrest for the offense for which the defendant entered the pretrial victim-offender mediation program.

Art. 56.23. MEDIATION AGREEMENT. (a) Requires that a mediation agreement under this subchapter be signed by the defendant and the victim, and ratified by the attorney representing the state in a request for court order documenting and approving the mediation agreement.

(b) Authorizes a mediation agreement 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.

(c) Provides that a mediation agreement is not valid for more than one year after the date on which the mediation agreement is ratified unless the court and the attorney representing the state approve the extension of the agreement.

(d) Provides that a mediation agreement under this subchapter does not constitute a plea or legal admission of responsibility.

Art. 56.24. OVERSIGHT. (a) Authorizes the lieutenant governor and the speaker of the house of representatives to assign to appropriate legislative committees duties relating to the oversight of pretrial victim-offender mediation programs established under this subchapter.

(b) Authorizes a legislative committee or the governor to request the state auditor to perform a management, operations, or financial or accounting audit of a pretrial victim-offender mediation program established under this subchapter.

(c) Provides that a county or municipality that establishes a pretrial victim-offender mediation program:

(1) is required to notify the attorney general's office when the county or municipality begins implementation of the program;

(2) is authorized to provide information regarding the performance of the program to the attorney general's office on request; and

(3) is authorized to apply for funds for the program in accordance with Article 102.0179(g).

Art. 56.25. FEES. (a) Authorizes a pretrial victim-offender mediation program established under this subchapter to collect from a defendant in the program a reasonable program fee not to exceed \$500; and an alcohol or controlled substance testing, counseling, and treatment fee in an amount necessary to cover the costs of the testing, counseling, or treatment if such testing, counseling, or treatment is required by the mediation agreement.

(b) Authorizes that fees collected under this article be paid on a periodic basis or on a deferred payment schedule at the discretion of the judge, magistrate, or program director administering the pretrial victim-offender mediation program. Requires that the fees be based on the defendant's ability to pay, and used only for purposes specific to the program.

SECTION 2. Amends Subchapter A, Chapter 102, Code of Criminal Procedure, by adding Article 102.0179, as follows:

Art. 102.0179. COSTS ATTENDANT TO CERTAIN NONVIOLENT CONVICTIONS INVOLVING PROPERTY. (a) Requires a person, in addition to other costs on conviction imposed by this chapter, to pay \$15 as a court cost on conviction of a felony or misdemeanor under Title 7, Penal Code.

(b) Provides that for purposes for this article, 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.

(c) Provides that court costs under this article are collected in the same manner as other fines or costs. Requires an office collecting the costs to keep separate records of funds collected as costs under this article and deposit funds in the county or municipal treasury, as appropriate.

(d) Requires the custodian of a county or municipal treasury to keep records of the amount of funds on deposit collected under this article, and except as provided by Subsection (e), send to the comptroller of public accounts (comptroller) before the last day of the first month following each calendar quarter the funds collected under this article during the preceding quarter.

(e) Entitles a county or municipality to, if the county or municipality has established a pretrial victim-offender mediation program, retain 40 percent of the funds collected under this article by an officer of the county or municipality, to be used exclusively for the maintenance of a pretrial victim-offender mediation program operated in the county or municipality; and if the custodian of the county or municipal treasury complies with Subsection (d), retain as a collection fee 10 percent of an amount equal to the difference between the amount of funds collected under this article by an officer of the county or municipality, and any amount the county or municipality is entitled to retain under Subdivision (1).

(f) Requires the custodian of the treasury, if no funds due as costs under this article are deposited in a county or municipal treasury in a calendar quarter, to file the report required for the quarter in the regular manner and state that no refunds were collected.

(g) Requires the comptroller to deposit funds received under this article to the credit of the pretrial victim-offender mediation program account in the general revenue fund to help fund pretrial victim-offender mediation programs established under Subchapter A-1, Chapter 56. Requires the legislature to 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.

(h) Provides that funds collected under this article are subject to audit by the comptroller.

SECTION 3. Amends Subchapter B, Chapter 102, Government Code, by adding Section 102.0216, as follows:

Sec. 102.0216. **ADDITIONAL COURT COSTS ON CONVICTION: CODE OF CRIMINAL PROCEDURE.** Requires a person convicted of an offense under Title 7, Penal Code, to pay a cost on conviction, in addition to all other costs, to help fund pretrial victim-offender mediation programs established under Subchapter A-1, Chapter 56, Code of Criminal Procedure (Art. 102.0179, Code of Criminal Procedure) . . . \$15.

SECTION 4. Amends Subchapter B, Chapter 103, Government Code, by adding Section 103.0217, as follows:

Sec. 103.0217. **ADDITIONAL FEES IN CRIMINAL CASES: CODE OF CRIMINAL PROCEDURE.** Authorizes a defendant who participates in a pretrial victim-offender mediation program under Subchapter A-1, Chapter 56, Code of Criminal Procedure, to be required to pay a program fee in an amount not to exceed \$500 and the costs of certain testing, counseling, and treatment.

SECTION 5. Amends Title 3, Family Code, by adding Chapter 62, as follows:

CHAPTER 62. JUVENILE VICTIM-OFFENDER MEDIATION PILOT PROGRAM

Sec. 62.001. **DEFINITIONS.** Defines "commission," "department," and "program."

Sec. 62.002. **ESTABLISHMENT AND IMPLEMENTATION OF PILOT PROGRAM.**

(a) Requires the Texas Juvenile Probation Commission (TJPC) to establish a juvenile victim-offender mediation pilot program (program) for children in Bexar County using funds appropriated for that purpose.

(b) Requires TJPC, in implementing the program, to:

(1) establish a resource network on the subject of victim-offender mediation that includes representatives from the Bexar County Juvenile Probation Department (department), the local dispute resolution center, the juvenile courts, the district attorney's office, and the local juvenile defense bar association;

(2) develop the program consistent with best practices identified by TJPC;
and

(3) identify outcome measures that may be used to measure the effectiveness of the program.

Sec. 62.003. REPORT. Requires the Bexar County Juvenile Probation Department (department), not later than December 1, 2010, to submit a report to TJPC regarding the program. Requires that the report include a comprehensive analysis of the effectiveness of the program, and the department's findings and recommendations regarding continuation or expansion of the program.

Sec. 62.004. PROGRAM FUNDING. Requires TJPC, subject to Section 62.005, to provide sufficient funds to the department for the program and report, if funds are appropriated for purposes of this chapter.

Sec. 62.005. IMPLEMENTATION CONTINGENT ON FEDERAL FUNDING. Provides that TJPC is required to implement this chapter only if TJPC receives, for the purpose of implementing this chapter, federal supplemental appropriations under the American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111-5) or any other similar federal legislation that is enacted on or after January 1, 2009.

Sec. 62.006. EXPIRATION. Provides that this chapter expires September 2, 2011.

SECTION 6. Makes application of this Act prospective.

SECTION 7. Effective date: upon passage or September 1, 2009.