

Amend CSSB 1717 (house committee printing) by adding the following appropriately numbered ARTICLE to the bill and renumbering subsequent ARTICLES and SECTIONS of the bill accordingly:

ARTICLE _____. VICTIM-OFFENDER MEDIATION

SECTION _____.01. Section 1, Article 28.01, Code of Criminal Procedure, is amended to read as follows:

Sec. 1. The court may set any criminal case for a pre-trial hearing before it is set for trial upon its merits, and direct the defendant and his attorney, if any of record, and the State's attorney, to appear before the court at the time and place stated in the court's order for a conference and hearing. The defendant must be present at the arraignment, and his presence is required during any pre-trial proceeding. The pre-trial hearing shall be to determine any of the following matters:

(1) Arraignment of the defendant, if such be necessary; and appointment of counsel to represent the defendant, if such be necessary;

(2) Pleadings of the defendant;

(3) Special pleas, if any;

(4) Exceptions to the form or substance of the indictment or information;

(5) Motions for continuance either by the State or defendant; provided that grounds for continuance not existing or not known at the time may be presented and considered at any time before the defendant announces ready for trial;

(6) Motions to suppress evidence--When a hearing on the motion to suppress evidence is granted, the court may determine the merits of said motion on the motions themselves, or upon opposing affidavits, or upon oral testimony, subject to the discretion of the court;

(7) Motions for change of venue by the State or the defendant; provided, however, that such motions for change of venue, if overruled at the pre-trial hearing, may be renewed by the State or the defendant during the voir dire examination of the jury;

(8) Discovery;

(9) Entrapment; ~~and~~

(10) Motion for appointment of interpreter; and

(11) Motion to allow the defendant to enter a pretrial victim-offender mediation program established under Subchapter A-1, Chapter 56.

SECTION _____.02. Chapter 56, Code of Criminal Procedure, is amended by adding Subchapter A-1 to read as follows:

SUBCHAPTER A-1. PRETRIAL VICTIM-OFFENDER MEDIATION PROGRAM

Art. 56.21. AUTHORITY TO ESTABLISH PROGRAM. (a) The commissioners court of a county or governing body of a municipality may establish a pretrial victim-offender mediation program for persons who:

(1) have been arrested for or charged with a misdemeanor under Title 7, Penal Code, in any court in this state other than a district court; and

(2) have not previously been convicted of a felony or a misdemeanor, other than a misdemeanor regulating traffic and punishable by fine only.

(b) A county court, statutory county court, municipal court, or justice court that implements a program under this subchapter may adopt administrative rules as necessary or convenient to implement or operate the program, including additional criteria related to a defendant's eligibility to enter the program.

(c) The commissioners court of a county or governing body of a municipality that establishes a pretrial victim-offender mediation program under this subchapter may:

(1) allow for the referral to the program of arrested persons who have not yet been indicted or otherwise formally charged; and

(2) adopt administrative procedures as necessary to implement and operate the program, including additional program requirements that have been approved by the attorney representing the state in the county or municipality, as applicable.

Art. 56.22. PROGRAM. (a) A pretrial victim-offender mediation program established under Article 56.21 is coordinated by the attorney representing the state and must require:

(1) the attorney representing the state:

(A) to identify defendants who are eligible to participate in the program, including a consideration by the attorney representing the state of whether the defendant meets any additional locally developed eligibility criteria; and

(B) to the extent feasible and using existing resources, to make available to complaining witnesses and victims in appropriate criminal cases information and literature indicating that a victim-offender mediation program may be available in a case if certain eligibility criteria are met by the defendant;

(2) the consent of the victim, the defendant, and the attorney representing the state to be obtained before the case may proceed to pretrial victim-offender mediation; and

(3) the defendant to enter into a binding mediation agreement in accordance with Article 56.24 that:

(A) includes an apology by the defendant; and

(B) requires the defendant to:

(i) pay restitution to the victim; or

(ii) perform community service.

(b) All communications made in a pretrial victim-offender mediation program are confidential and may not be introduced into evidence except in a proceeding involving a question concerning the meaning of a mediation agreement.

(c) A pretrial victim-offender mediation program may 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) A pretrial victim-offender mediation may be conducted by a court-appointed mediator who meets the training requirements provided by Sections 154.052(a) and (b), Civil Practice and Remedies Code, or by any other appropriate person designated by the court. Neither the attorney representing the state nor the attorney representing the defendant in the criminal action may serve as a mediator under the pretrial victim-offender mediation program.

(e) If a defendant enters a pretrial victim-offender

mediation program, the court may defer the proceedings without accepting a plea of guilty or nolo contendere or entering an adjudication of guilt. The court may not require the defendant to admit guilt or enter a plea of guilty or nolo contendere to enter the program.

(f) The case must be returned to the docket and proceed through the regular criminal justice system if:

(1) a pretrial victim-offender mediation does not result in a mediation agreement; or

(2) the defendant fails to successfully fulfill the terms of the mediation agreement by the date specified in the mediation agreement.

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

(h) The court on the motion of the attorney representing the state shall dismiss the indictment or information charging the defendant with the commission of the offense, if the defendant:

(1) successfully completes the mediation agreement as determined by the attorney representing the state; and

(2) either:

(A) pays all court costs; or

(B) enters a payment plan approved by the court or the attorney representing the state for such payment.

(i) The attorney representing the state or the court may extend the initial compliance period granted to the defendant. A determination by the court regarding whether the mediation agreement has been successfully completed is final and may not be appealed.

(j) 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, the court shall 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 the offense for which the defendant entered the pretrial victim-offender mediation program.

Art. 56.23. MOTION AND HEARING. (a) The court on its own motion may, and on the motion of either party shall, hold a pretrial hearing to determine whether to allow an eligible defendant to enter a pretrial victim-offender mediation program under this subchapter.

(b) The court shall conduct a pretrial hearing under this article in accordance with Chapter 28 and the rules of evidence.

(c) At a pretrial hearing under this article, either party may present any evidence relevant to the defendant's eligibility under Article 56.22 and other additional locally developed eligibility criteria to enter a pretrial victim-offender mediation program.

Art. 56.24. MEDIATION AGREEMENT. (a) A mediation agreement under this subchapter must be:

(1) signed by the defendant and the victim; and

(2) ratified by the attorney representing the state in a request for a court order documenting and approving the mediation agreement.

(b) A mediation agreement under this subchapter may 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) A mediation agreement under this subchapter 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) A mediation agreement under this subchapter does not constitute a plea or legal admission of responsibility.

Art. 56.25. OVERSIGHT. (a) The lieutenant governor and the speaker of the house of representatives may assign to appropriate legislative committees duties relating to the oversight of pretrial victim-offender mediation programs established under this subchapter.

(b) A legislative committee or the governor may 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.

Art. 56.26. FEES. (a) A pretrial victim-offender mediation program established under this subchapter may collect from a defendant in the program:

(1) a reasonable program participation fee not to exceed \$500; and

(2) 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) Fees collected under this article may 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. The fees must be:

(1) based on the defendant's ability to pay; and

(2) used only for purposes specific to the program.

SECTION _____.03. Subchapter A, Chapter 102, Code of Criminal Procedure, is amended by adding Article 102.0179 to read as follows:

Art. 102.0179. COSTS ATTENDANT TO PRETRIAL VICTIM-OFFENDER MEDIATION. (a) A defendant who participates in a pretrial victim-offender mediation program established under Subchapter A-1, Chapter 56, on successful completion of the terms of the defendant's mediation agreement or on conviction, shall pay as court costs \$15 plus an additional program participation fee as described by Article 56.26 in the amount prescribed by that article.

(b) The court clerk shall collect the costs imposed under this article. The clerk shall keep a separate record of any money

collected under this article and shall pay any money collected to the county or municipal treasurer, as appropriate, or to any other official who discharges the duties commonly delegated to a treasurer, for deposit in a fund to be known as the county pretrial victim-offender mediation program fund or in a fund to be known as the municipal pretrial victim-offender mediation program fund, as appropriate.

(c) A county or municipality that collects court costs under this article shall use the money in a fund described by Subsection (b) exclusively for the maintenance of the pretrial victim-offender mediation program operated in the county or municipality.

SECTION _____.04. Subchapter B, Chapter 102, Government Code, is amended by adding Section 102.0216 to read as follows:

Sec. 102.0216. ADDITIONAL COURT COSTS: CODE OF CRIMINAL PROCEDURE. A defendant who participates in a pretrial victim-offender mediation program established under Subchapter A-1, Chapter 56, Code of Criminal Procedure, shall pay on successful completion of the terms of the defendant's mediation agreement or on conviction, in addition to all other costs, to help fund pretrial victim-offender mediation programs established under that subchapter (Art. 102.0179, Code of Criminal Procedure) . . . \$15 plus an additional program participation fee in an amount not to exceed \$500.

SECTION _____.05. (a) The change in law made by this Act in adding Subchapter A-1, Chapter 56, Code of Criminal Procedure, applies to a defendant who enters a pretrial victim-offender mediation program under that subchapter 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.

(b) 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.