

By: Gallego

H.B. No. 3691

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the provision by certain judges or community
3 supervision and corrections departments of certain programs and
4 services, including certain pretrial programs and services, and to
5 the imposition of certain sanctions against defendants supervised
6 by those departments.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

8 SECTION 1. Section 76.002, Government Code, is amended by
9 adding Subsections (a-1) and (f) and amending Subsection (e) to
10 read as follows:

11 (a-1) The statutory county court judges trying criminal
12 cases in the county or counties served by the judicial district may
13 establish a pretrial victim-offender mediation program in
14 accordance with Subchapter A-1, Chapter 56, Code of Criminal
15 Procedure.

16 (e) The board shall ~~may~~ adopt rules allowing departments
17 to contract with one another for services or facilities or to
18 contract as provided by Subsection (f).

19 (f) In lieu of establishing a department as required by
20 Subsection (a), programs and services may be provided under this
21 chapter in a judicial district through a contract with a department
22 established for another judicial district.

23 SECTION 2. Chapter 76, Government Code, is amended by
24 adding Section 76.0021 to read as follows:

1 Sec. 76.0021. SYSTEM OF PROGRESSIVE INTERMEDIATE
2 SANCTIONS. (a) In addition to performing the duties delegated
3 under Section 76.002, the judges described by that section shall,
4 for the district courts and county courts at law in the judicial
5 district that try criminal cases:

6 (1) adopt a single system of progressive intermediate
7 sanctions for violations of conditions of community supervision
8 that includes:

9 (A) sanctions for a failure to report, to
10 participate in a program or service, to refrain from the use of
11 alcohol or a controlled substance, or to pay fines, fees, and costs;
12 and

13 (B) sanctions targeted for special cases or high
14 risk offenders; and

15 (2) establish a review process to follow in
16 considering a reduction in or early termination of community
17 supervision.

18 (b) In adopting a system of progressive intermediate
19 sanctions under this section, the judges described by Section
20 76.002 shall consider and may adopt the model list of intermediate
21 sanctions established under Section 509.017, Government Code.

22 SECTION 3. Section 1, Article 28.01, Code of Criminal
23 Procedure, is amended to read as follows:

24 Sec. 1. The court may set any criminal case for a pre-trial
25 hearing before it is set for trial upon its merits, and direct the
26 defendant and his attorney, if any of record, and the State's
27 attorney, to appear before the court at the time and place stated in

1 the court's order for a conference and hearing. The defendant must
2 be present at the arraignment, and his presence is required during
3 any pre-trial proceeding. The pre-trial hearing shall be to
4 determine any of the following matters:

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

8 (2) Pleadings of the defendant;

9 (3) Special pleas, if any;

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

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

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

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

25 (8) Discovery;

26 (9) Entrapment; ~~and~~

27 (10) Motion for appointment of interpreter; and

1 (11) Motion to allow the defendant to enter a pretrial
2 victim-offender mediation program established under Section
3 76.002, Government Code.

4 SECTION 4. Section 10, Article 42.12, Code of Criminal
5 Procedure, is amended by amending Subsections (a), (d), and (e) and
6 adding Subsections (d-1) and (d-2) to read as follows:

7 (a) Only the court in which the defendant was tried may
8 grant community supervision, impose conditions, revoke the
9 community supervision, or discharge the defendant, unless the judge
10 has transferred jurisdiction of the case to another court with the
11 latter's consent. Except as provided by Subsections [~~Subsection~~
12 (d) and (d-1) of this section, only the judge may alter conditions
13 of community supervision. In a felony case, only the judge who
14 originally sentenced the defendant may suspend execution thereof
15 and place the defendant under community supervision pursuant to
16 Section 6 of this article. If the judge who originally sentenced
17 the defendant is deceased or disabled or if the office is vacant and
18 the judge who originally sentenced the defendant is deceased or
19 disabled or if the office is vacant and a motion is filed in
20 accordance with Section 6 of this article, the clerk of the court
21 shall promptly forward a copy of the motion to the presiding judge
22 of the administrative judicial district for that court, who may
23 deny the motion without a hearing or appoint a judge to hold a
24 hearing on the motion.

25 (d) A judge that places a defendant on community supervision
26 may authorize the supervision officer supervising the defendant [~~or~~
27 ~~a magistrate appointed by the district courts in the county that~~

1 ~~give preference to criminal cases]~~ to modify the conditions of
2 community supervision for the limited purpose of imposing an
3 intermediate sanction under Subsection (d-1) [~~transferring the~~
4 ~~defendant to different programs within the community supervision~~
5 ~~continuum of programs and sanctions]~~. Before imposing an
6 intermediate sanction, a supervision officer shall provide written
7 notice to the defendant of the nature of the violation or violations
8 involved, the date on which each violation occurred, and the
9 intermediate sanction to be imposed.

10 (d-1) The imposition of an intermediate sanction under this
11 section must conform with the system of progressive intermediate
12 sanctions adopted under Section 76.0021, Government Code. On
13 receipt of notice under Subsection (d), the defendant shall
14 immediately accept or object to the imposition of the intermediate
15 sanction. A defendant who objects to the imposition of the
16 intermediate sanction is entitled to an administrative review to be
17 conducted by the community supervision and corrections department
18 supervising the defendant not later than the fifth day after the
19 date the defendant received the notice. At the conclusion of the
20 administrative review, the director of the community supervision
21 and corrections department, or the director's designee, shall
22 dismiss or affirm the imposition of the intermediate sanction. If
23 the director or director's designee, as applicable, affirms the
24 imposition of the intermediate sanction, the intermediate sanction
25 becomes effective immediately. On successful completion of an
26 intermediate sanction, the court may not revoke community
27 supervision, proceed to an adjudication in the case, or impose any

1 other sanction based on the violation for which the intermediate
2 sanction was imposed.

3 (d-2) A supervision officer may not:

4 (1) impose an intermediate sanction under Subsection
5 (d) or (d-1) in response to a violation of the terms of community
6 supervision if the violation is based on the commission of a felony
7 offense; or

8 (2) impose as an intermediate sanction under
9 Subsection (d) or (d-1) any condition extending the term of
10 community supervision, increasing a fine, or placing a defendant in
11 a correctional facility, as defined by Section 1.07, Penal Code.

12 (e) A [~~If a~~] supervision officer who [~~or magistrate~~]
13 modifies the conditions of community supervision by imposing an
14 intermediate sanction[~~, the officer or magistrate~~] shall:

15 (1) deliver a copy of the modified conditions to the
16 defendant;

17 (2) [~~shall~~] file a copy of the modified conditions
18 with the sentencing court; [~~7~~] and

19 (3) [~~shall~~] note the date of delivery of the copy in
20 the defendant's file. [~~If the defendant agrees to the modification~~
21 in writing, the officer or magistrate shall file a copy of the
22 modified conditions with the district clerk and the conditions
23 shall be enforced as modified. If the defendant does not agree to
24 the modification in writing, the supervision officer or magistrate
25 shall refer the case to the judge of the court for modification in
26 the manner provided by Section 22 of this article.]

27 SECTION 5. Section 11(a), Article 42.12, Code of Criminal

1 Procedure, is amended to read as follows:

2 (a) The judge of the court having jurisdiction of the case
3 shall determine the conditions of community supervision and may, at
4 any time during the period of community supervision, alter or
5 modify the conditions. The judge may impose any reasonable
6 condition that is designed to protect or restore the community,
7 protect or restore the victim, or punish, rehabilitate, or reform
8 the defendant. Conditions of community supervision may include,
9 but shall not be limited to, the conditions that the defendant
10 shall:

11 (1) Commit no offense against the laws of this State or
12 of any other State or of the United States;

13 (2) Avoid injurious or vicious habits;

14 (3) Avoid persons or places of disreputable or harmful
15 character, including any person, other than a family member of the
16 defendant, who is an active member of a criminal street gang;

17 (4) Report to the supervision officer as directed by
18 the judge or supervision officer, ~~and~~ obey all rules and
19 regulations of the community supervision and corrections
20 department, and comply with any intermediate sanction imposed by
21 the supervision officer under Section 10, unless the condition is
22 dismissed by the director of the community supervision and
23 corrections department or by the director's designee;

24 (5) Permit the supervision officer to visit the
25 defendant at the defendant's home or elsewhere;

26 (6) Work faithfully at suitable employment as far as
27 possible;

- 1 (7) Remain within a specified place;
- 2 (8) Pay the defendant's fine, if one is assessed, and
3 all court costs whether a fine is assessed or not, in one or several
4 sums;
- 5 (9) Support the defendant's dependents;
- 6 (10) Participate, for a time specified by the judge,
7 in any community-based program, including a community-service work
8 program under Section 16 of this article;
- 9 (11) Reimburse the county in which the prosecution was
10 instituted for compensation paid to appointed counsel for defending
11 the defendant in the case, if counsel was appointed, or if the
12 defendant was represented by a county-paid public defender, in an
13 amount that would have been paid to an appointed attorney had the
14 county not had a public defender;
- 15 (12) Remain under custodial supervision in a community
16 corrections facility, obey all rules and regulations of the
17 facility, and pay a percentage of the defendant's income to the
18 facility for room and board;
- 19 (13) Pay a percentage of the defendant's income to the
20 defendant's dependents for their support while under custodial
21 supervision in a community corrections facility;
- 22 (14) Submit to testing for alcohol or controlled
23 substances;
- 24 (15) Attend counseling sessions for substance abusers
25 or participate in substance abuse treatment services in a program
26 or facility approved or licensed by the Texas Commission on Alcohol
27 and Drug Abuse;

1 (16) With the consent of the victim of a misdemeanor
2 offense or of any offense under Title 7, Penal Code, participate in
3 victim-defendant mediation;

4 (17) Submit to electronic monitoring;

5 (18) Reimburse the compensation to victims of crime
6 fund for any amounts paid from that fund to or on behalf of a victim,
7 as defined by Article 56.32, of the defendant's offense or if no
8 reimbursement is required, make one payment to the compensation to
9 victims of crime fund in an amount not to exceed \$50 if the offense
10 is a misdemeanor or not to exceed \$100 if the offense is a felony;

11 (19) Reimburse a law enforcement agency for the
12 analysis, storage, or disposal of raw materials, controlled
13 substances, chemical precursors, drug paraphernalia, or other
14 materials seized in connection with the offense;

15 (20) Pay all or part of the reasonable and necessary
16 costs incurred by the victim for psychological counseling made
17 necessary by the offense or for counseling and education relating
18 to acquired immune deficiency syndrome or human immunodeficiency
19 virus made necessary by the offense;

20 (21) Make one payment in an amount not to exceed \$50 to
21 a crime stoppers organization as defined by Section 414.001,
22 Government Code, and as certified by the Texas Crime Stoppers
23 Council;

24 (22) Submit a DNA sample to the Department of Public
25 Safety under Subchapter G, Chapter 411, Government Code, for the
26 purpose of creating a DNA record of the defendant;

27 (23) In any manner required by the judge, provide

1 public notice of the offense for which the defendant was placed on
2 community supervision in the county in which the offense was
3 committed; and

4 (24) Reimburse the county in which the prosecution was
5 instituted for compensation paid to any interpreter in the case.

6 SECTION 6. Chapter 56, Code of Criminal Procedure, is
7 amended by adding Subchapter A-1 to read as follows:

8 SUBCHAPTER A-1. PRETRIAL VICTIM-OFFENDER MEDIATION PROGRAM

9 Art. 56.21. AUTHORITY TO ESTABLISH PROGRAM. (a) A
10 statutory county court judge may establish a pretrial
11 victim-offender mediation program under Section 76.002, Government
12 Code, for persons who:

13 (1) have been arrested for or charged with a
14 misdemeanor under Title 7, Penal Code, in a statutory county court
15 in this state; and

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

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

24 (c) The judge of a statutory county court that establishes a
25 pretrial victim-offender mediation program under this subchapter
26 may:

27 (1) allow for the referral to the program of arrested

1 persons who have not yet been indicted or otherwise formally
2 charged; and

3 (2) adopt administrative procedures as necessary to
4 implement and operate the program, including additional program
5 requirements that have been approved by the attorney representing
6 the state.

7 Art. 56.22. PROGRAM. (a) A pretrial victim-offender
8 mediation program established under Section 76.002, Government
9 Code, is coordinated by the attorney representing the state and
10 must require:

11 (1) the attorney representing the state:

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

16 (B) to the extent feasible, to provide to each
17 victim of an offense described by Article 56.21(a)(1) information
18 and literature indicating that a victim-offender mediation program
19 may be available in the criminal case if certain eligibility
20 criteria are met by the defendant;

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

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

26 (A) includes an apology by the defendant; and

27 (B) requires the defendant to:

1 (i) pay restitution to the victim; or

2 (ii) perform community service.

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

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

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

20 (e) If a defendant enters a pretrial victim-offender
21 mediation program, the court may defer the proceedings without
22 accepting a plea of guilty or nolo contendere or entering an
23 adjudication of guilt. The court may not require the defendant to
24 admit guilt or enter a plea of guilty or nolo contendere to enter
25 the program.

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

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

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

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

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

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

19 (2) either:

20 (A) pays all court costs; or

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

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

1 (j) If the defendant is not arrested or convicted of a
2 subsequent felony or misdemeanor other than a misdemeanor
3 regulating traffic and punishable by fine only on or before the
4 first anniversary of the date the defendant successfully completed
5 a mediation agreement under this subchapter, on the motion of the
6 defendant, the court shall enter an order of nondisclosure under
7 Section 411.081, Government Code, as if the defendant had received
8 a discharge and dismissal under Section 5(c), Article 42.12, with
9 respect to all records and files related to the defendant's arrest
10 for the offense for which the defendant entered the pretrial
11 victim-offender mediation program.

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

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

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

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

- 26 (1) signed by the defendant and the victim; and
27 (2) ratified by the attorney representing the state in

1 a request for a court order documenting and approving the mediation
2 agreement.

3 (b) A mediation agreement under this subchapter may require
4 testing, counseling, and treatment of the defendant to address
5 alcohol abuse, abuse of controlled substances, mental health, or
6 anger management or any other service that is reasonably related to
7 the offense for which the defendant was arrested or charged.

8 (c) A mediation agreement under this subchapter is not valid
9 for more than one year after the date on which the mediation
10 agreement is ratified unless the court and the attorney
11 representing the state approve the extension of the agreement.

12 (d) A mediation agreement under this subchapter does not
13 constitute a plea or legal admission of responsibility.

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

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

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

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

1 (2) an alcohol or controlled substance testing,
2 counseling, and treatment fee in an amount necessary to cover the
3 costs of the testing, counseling, or treatment if such testing,
4 counseling, or treatment is required by the mediation agreement.

5 (b) Fees collected under this article may be paid on a
6 periodic basis or on a deferred payment schedule at the discretion
7 of the judge, magistrate, or program director administering the
8 pretrial victim-offender mediation program. The fees must be:

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

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

11 SECTION 7. Subchapter A, Chapter 102, Code of Criminal
12 Procedure, is amended by adding Article 102.0179 to read as
13 follows:

14 Art. 102.0179. COSTS ATTENDANT TO PRETRIAL VICTIM-OFFENDER
15 MEDIATION. (a) A defendant who participates in a pretrial
16 victim-offender mediation program established under Section
17 76.002, Government Code, on successful completion of the terms of
18 the defendant's mediation agreement or on conviction, shall pay as
19 court costs \$15 plus an additional program participation fee as
20 described by Article 56.26 in the amount prescribed by that
21 article.

22 (b) The court clerk shall collect the costs imposed under
23 this article. The clerk shall keep a separate record of any money
24 collected under this article and shall pay any money collected to
25 the county treasurer or to any other official who discharges the
26 duties commonly delegated to the county treasurer for deposit in a
27 fund to be known as the county pretrial victim-offender mediation

1 program fund.

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

6 SECTION 8. Subchapter B, Chapter 102, Government Code, is
7 amended by adding Section 102.0216 to read as follows:

8 Sec. 102.0216. ADDITIONAL COURT COSTS: CODE OF CRIMINAL
9 PROCEDURE. A defendant who participates in a pretrial
10 victim-offender mediation program established under Section 76.002
11 shall pay on successful completion of the terms of the defendant's
12 mediation agreement or on conviction, in addition to all other
13 costs, to help fund pretrial victim-offender mediation programs
14 established under that section (Art. 102.0179, Code of Criminal
15 Procedure) . . . \$15 plus an additional program participation fee
16 in an amount not to exceed \$500.

17 SECTION 9. Chapter 509, Government Code, is amended by
18 adding Section 509.017 to read as follows:

19 Sec. 509.017. MODEL LIST OF PROGRESSIVE INTERMEDIATE
20 SANCTIONS. The division shall establish a model list of
21 progressive intermediate sanctions that may be adopted in a
22 judicial district under Section 76.0021.

23 SECTION 10. (a) The change in law made by this Act in
24 adding Section 76.002(a-1), Government Code, and Subchapter A-1,
25 Chapter 56, Code of Criminal Procedure, applies to a defendant who
26 enters a pretrial victim-offender mediation program under that
27 subchapter regardless of whether the defendant committed the

1 offense for which the defendant enters the program before, on, or
2 after the effective date of this Act.

3 (b) The change in law made by this Act in adding Article
4 102.0179, Code of Criminal Procedure, and Section 102.0216,
5 Government Code, applies only to an offense committed on or after
6 the effective date of this Act. An offense committed before the
7 effective date of this Act is governed by the law in effect when the
8 offense was committed, and the former law is continued in effect for
9 that purpose. For purposes of this subsection, an offense was
10 committed before the effective date of this Act if any element of
11 the offense was committed before that date.

12 SECTION 11. (a) The judges described by Section 76.002,
13 Government Code, shall adopt the system and establish the review
14 process required by Section 76.0021, Government Code, as added by
15 this Act, not later than January 1, 2012.

16 (b) The community justice assistance division of the Texas
17 Department of Criminal Justice shall adopt the model list of
18 progressive intermediate sanctions as required by Section 509.017,
19 Government Code, as added by this Act, not later than November 1,
20 2011.

21 SECTION 12. This Act takes effect immediately if it
22 receives a vote of two-thirds of all the members elected to each
23 house, as provided by Section 39, Article III, Texas Constitution.
24 If this Act does not receive the vote necessary for immediate
25 effect, this Act takes effect September 1, 2011.