

BILL ANALYSIS

C.S.H.B. 167
By: McClendon
Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Texas statutes do not currently provide a mechanism for victim-offender mediation programs, which allow offenders to take responsibility for their actions and for victims to have expedited relief for the harm suffered. Interested parties contend that legislation providing for restorative justice programs, such as victim-offender mediation programs, in cases involving certain offenses is necessary because these programs reduce recidivism and are more cost-effective than incarceration. In an effort to hold defendants who commit property misdemeanors accountable for the criminal conduct and to allow victims to circumvent slow legal proceedings, C.S.H.B. 167 authorizes a county and a municipality to establish a victim-offender mediation program.

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. 167 amends the Code of Criminal Procedure to authorize the commissioners court of a county or governing body of a municipality, in coordination with the office of the attorney representing the state in the county or municipality, to establish a pretrial victim-offender mediation program for a person who has been arrested for or charged with a misdemeanor property offense in any court in Texas other than a district court and has not previously been convicted of a felony or a misdemeanor other than a misdemeanor regulating traffic and punishable by fine only. The bill authorizes a county court, statutory county court, municipal court, or justice court that implements a program to adopt administrative rules and local rules of procedure as necessary or appropriate to implement or operate the program. The bill authorizes the commissioners court of a county or governing body of a municipality that establishes a pretrial victim-offender mediation program to allow for referral to the program of an arrested person who otherwise meets the program criteria but has not yet been formally charged with an offense; to adopt administrative rules and local rules of procedure as necessary or appropriate to implement or operate the program; and to approve additional program requirements as recommended by the attorney representing the state.

C.S.H.B. 167 sets out pretrial victim-offender mediation program requirements relating to the designation of defendants who are eligible to participate, the requisite victim's consent, the requisite consent of the attorney representing the state, and the binding mediation agreement into which the defendant must enter. The bill provides for the confidentiality of all communications made in a pretrial victim-offender mediation program, the use of staff and other resources of pretrial services departments and community supervision and corrections departments to assist the court or the attorney representing the state in monitoring a defendant's compliance with a mediation agreement, and the authority of a court-appointed mediator who meets certain training requirements or any other appropriate person designated by the court to conduct a pretrial victim-offender mediation. The bill prohibits the attorney representing the state and the attorney representing the defendant in the criminal action from serving as a mediator under the program.

C.S.H.B. 167 authorizes a court to defer the proceedings without accepting a plea of guilty or nolo contendere or entering an adjudication of guilt for a defendant who enters a pretrial victim-offender mediation program and prohibits the court from requiring the defendant to admit guilt or enter a plea of guilty or nolo contendere to enter the program. The bill sets out the circumstances under which the case of a defendant participating in a pretrial victim-offender mediation program must be returned to the docket and proceed through the regular criminal justice system and provides for the defendant's retention of rights when a case is returned to the docket and for the running of the period of the applicable statute of limitation while the defendant is enrolled in the program. The bill authorizes the attorney representing the state or the court to extend the initial compliance period granted to the defendant. The bill makes final a determination by the court regarding whether the mediation agreement has been successfully completed.

C.S.H.B. 167 requires the court, on the defendant's motion and only 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, to enter an order of nondisclosure as if the defendant had received a discharge and dismissal for deferred adjudication 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.

C.S.H.B. 167 requires a mediation agreement to be written, signed by the defendant and the victim, and ratified by the attorney representing the state in the attorney's request for a court order to document and approve the mediation agreement for the record. The bill 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. The bill limits the period during which a mediation agreement is valid to not 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, and establishes that such an agreement does not constitute a plea or legal admission of responsibility.

C.S.H.B. 167 provides for legislative review of pretrial victim-offender mediation programs and authorizes the commissioners court of a county or governing body of a municipality to request a management, operations, or financial or accounting audit of a pretrial victim-offender mediation program. The bill requires such a program to collect from a defendant in the program a reasonable program participation fee not to exceed \$500 and authorizes the program to collect from the defendant an alcohol or controlled substance testing, counseling, and treatment fee in an amount necessary to cover the costs of any testing, counseling, or treatment required by the mediation agreement. The bill provides for the payment of such fees on a periodic basis or on a deferred payment schedule and requires the fees to be based on the defendant's ability to pay and to be used only for purposes specific to the program. The bill requires the office of an attorney representing the state that participates in a pretrial victim-offender mediation program to notify the public by posting information about the program on the office's website.

C.S.H.B. 167 sets a \$15 court cost, in addition to the program participation fee, to be collected from a defendant who participates in and successfully completes a pretrial victim-offender mediation program or is convicted. The bill establishes procedures for the collection and deposit of such costs into certain county or municipal funds and the purposes for which the money is required to be spent by a county or municipality that collects such costs.

C.S.H.B. 167 amends the Government Code to make conforming changes relating to the additional court costs collected to help fund pretrial victim-offender mediation programs.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 167 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. 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;

HOUSE COMMITTEE SUBSTITUTE

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

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- (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 2. 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.

Art. 56.22. PROGRAM. (a) A pretrial victim-offender mediation program established under Article 56.21 must require:

(1) the designation of individual defendants who are eligible to participate in the program, based on standards established by Article 56.21 and any local standards approved by the commissioners court of the county or the governing body of the municipality, as applicable;

(2) the consent of the victim to be obtained and documented in the record of the court by the attorney representing the state 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;

(ii) perform community service; or

(iii) both pay restitution and 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 an open court proceeding instituted to determine the meaning of a mediation agreement.

- (8) Discovery;
- (9) Entrapment; [~~and~~]
- (10) Motion for appointment of interpreter; and
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(1) the designation of individual defendants who are eligible to participate in the program, based on standards established by Article 56.21 and any local standards approved by the commissioners court of the county or the governing body of the municipality, as applicable;

(2) the attorney representing the state to consent to a defendant's participation in the program;

(3) the consent of the victim to be obtained and documented in the record of the court by the attorney representing the state before the case may proceed to pretrial victim-offender mediation; and

(4) the defendant to enter into a binding mediation agreement in accordance with Article 56.23 that:

(A) includes an apology by the defendant; and

(B) requires the defendant to:

(i) pay restitution to the victim;

(ii) perform community service; or

(iii) both pay restitution and 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 an open court proceeding instituted to determine 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 and corrections departments to assist the court or the attorney representing the state 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 fulfill the terms of the mediation agreement successfully 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, and on the motion of the attorney representing the defendant may, dismiss any indictment or information charging the defendant with the commission of the offense, if the defendant:

(1) successfully completes the mediation agreement as represented to the court by the

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(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.

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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.

(j) A determination by the court regarding whether the mediation agreement has been successfully completed is final and may not be appealed.

(k) 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 may hold a pretrial hearing to determine whether to allow an eligible defendant to enter a pretrial victim-offender mediation program under this subchapter on its own motion or on the motion of either party. If the attorney representing the state has documented in the record of the court that the consent of the victim has been obtained, a pretrial hearing to determine whether to allow the pretrial mediation is not required.

(b) A pretrial hearing under this article must be conducted 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 to enter a pretrial victim-offender mediation program.

Art. 56.24. MEDIATION AGREEMENT.

Art. 56.25. LEGISLATIVE REVIEW.

(h) The attorney representing the state or the court may extend the initial compliance period granted to the defendant.

(i) 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.

No equivalent provision.

Art. 56.23. MEDIATION AGREEMENT.

Art. 56.24. LEGISLATIVE REVIEW.

Art. 56.26. LOCAL REVIEW.

Art. 56.27. FEES.

No equivalent provision.

SECTION 3. Subchapter A, Chapter 102, Code of Criminal Procedure, is amended.

SECTION 4. Subchapter B, Chapter 102, Government Code, is amended.

SECTION 5. (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.

SECTION 6. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2013.

Art. 56.25. LOCAL REVIEW.

Art. 56.26. FEES.

Art. 56.27. NOTICE. The office of an attorney representing the state that participates in a pretrial victim-offender mediation program established under this subchapter shall notify the public by posting information about the program on the office's website.

SECTION 3. Substantially the same as introduced version.

SECTION 4. Same as introduced version.

SECTION 5. Same as introduced version.

SECTION 6. Same as introduced version.