

BILL ANALYSIS

Senate Research Center

S.B. 1237
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Jurisprudence
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, there is no express statutory authorization for adult criminal cases to be referred for a fee to mediation or victim-offender conferencing in Texas. Such programs seek to resolve the perpetrator's acts against a victim without formal judicial intervention by directly redressing a victim's losses and the victim's need to be made whole.

In other jurisdictions that have begun using victim offender conferencing, research shows that 89 percent of agreements were successfully completed, 79 percent of victims were satisfied, and 72 percent of such programs reduced recidivism by an average of seven percent. These rates far exceed the rates of restitution paid and victim satisfaction obtained following formal justice system processes. The diversion of cases to criminal alternative dispute resolution (ADR) has also been shown to reduce costs to taxpayers by reducing the number of cases that must be resolved through traditional court proceedings.

S.B. 1237 amends the Civil Practice and Remedies Code to provide an avenue for ADR for criminal cases in participating counties by providing a procedure for prosecutorial referral, with the approval of the victim and the defendant's voluntary waiver of his or her right to trial and appeal, and the collection of a participant fee from the defendant.

S.B. 1237 amends current law relating to referral of disputes for alternative dispute resolution, including victim-directed referrals, and authorizes a fee.

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 Section 152.002(b), Civil Practices and Remedies Code, to authorize the commissioners court to do all necessary acts to make the alternative dispute resolution system effective, including making reasonable rules relating to the system, including rules specifying whether criminal cases are authorized to be referred to the system, in addition to certain other actions.

SECTION 2. Amends Section 152.003, Civil Practice and Remedies Code, as follows:

Sec. 152.003. REFERRAL OF CASES. (a) Creates this subsection from existing text. Authorizes a judge of a district court, county court, statutory county court, probate court, or justice of the peace court in a county in which an alternative dispute resolution system has been established to, on motion of a party or on the judge's or justice's own motion, refer a civil or, if the system accepts criminal cases and on the request of an attorney representing the state, a criminal case to the system regardless of whether the defendant in the criminal case has been formally charged.

(b) Requires an attorney representing the state to obtain the consent of the victim and the defendant to the referral before requesting a referral of a criminal case under this section.

(c) Prohibits a criminal case from being referred to the system if the defendant is charged with or convicted of an offense listed in Section 3g(a)(1) (relating to providing that the provisions of Section 3 of this article do not apply to a defendant adjudged guilty of certain offenses), Article 42.12 (Community Supervision), Code of Criminal Procedure, or convicted of an offense, the judgment for which contains an affirmative finding under Section 3g(a)(2) (relating to providing that the provisions of Section 3 of this article do not apply to a defendant when it is shown that a deadly weapon as defined in Section 1.07, Penal Code, was used or exhibited during the commission of a felony offense or during immediate flight therefrom, and that the defendant used or exhibited the deadly weapon or was a party to the offense and knew that a deadly weapon would be used or exhibited), Article 42.12, Code of Criminal Procedure.

SECTION 3. Amends Section 152.006, Civil Practice and Remedies Code, as follows:

Sec. 152.006. FEE FOR ALTERNATIVE DISPUTE RESOLUTION CENTERS. Authorizes an entity described by Section 152.002(a) (relating to authorizing the commissioners court of a county by order to establish an alternate dispute resolution system) or (b)(1) (relating to authorizing the commissioners court to contract with a private nonprofit corporation, a political subdivision, a public corporation, or a combination of these entities to administer the alternative dispute resolution system) that provides services for the resolution of disputes to collect a reasonable fee set by the commissioners court. Deletes existing text authorizing an entity described by Section 152.002(b)(1) that provides services for the resolution of disputes in a county that borders the Gulf of Mexico with a population of 250,000 or more but less than 300,000 to collect a reasonable fee in any amount set by the commissioners court from a person who receives the services. Deletes existing text prohibiting this section from being construed to affect the collection of a fee by any other entity described by Section 152.002(b)(1).

SECTION 4. Amends Chapter 152, Civil Practice and Remedies Code, by adding Section 152.007, as follows:

Sec. 152.007. PARTICIPANT FEE FOR CRIMINAL DISPUTE RESOLUTION. (a) Authorizes an entity that provides services for the resolution of criminal disputes under this chapter to collect a reasonable fee set by the commissioners court from a person who receives the services, not to exceed \$350, except that a fee is prohibited from being collected from an alleged victim of the crime.

(b) Authorizes fees collected under this section to 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 the fees to be based on the defendant's ability to pay.

SECTION 5. (a) Provides that the changes in law made by this Act with respect to criminal cases apply only to a criminal case in which the defendant is arrested for or charged with an offense that occurs on or after the effective date of this Act. Provides that a criminal case in which the defendant is arrested for or charged with an offense that occurs 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. Provides that for purposes of this section, an offense was committed before the effective date of this Act if any element of the offense was committed before that date.

(b) Provides that the changes in law made by this Act with respect to civil cases apply only to a civil case referred to a county alternative dispute resolution system on or after the effective date of this Act. Provides that a civil case referred before the effective date of this Act is governed by the law applicable to the case immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

SECTION 6. Effective date: September 1, 2013.