

BILL ANALYSIS

C.S.S.B. 1237
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Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Current law does not expressly authorize adult criminal cases to be referred for a fee to mediation or victim-offender conferencing. Such programs seek to resolve the offender's acts against a victim without formal judicial intervention by directly redressing a victim's losses and the victim's needs to be made whole. Research shows that the use of victim-offender conferencing in other jurisdictions has resulted in high rates of both agreement completion and victim satisfaction and has reduced recidivism rates. Interested parties contend that victim-offender conferencing more often results in payment of restitution and victim satisfaction than does handling cases through the formal justice system processes. Those parties further contend that the diversion of cases to criminal alternative dispute resolution has also been shown to reduce costs to taxpayers by reducing the number of cases that must be resolved through traditional court proceedings. C.S.S.B. 1237 seeks to establish procedures through which a criminal case may be referred to a participating county's alternate dispute resolution system and addresses the fees that may be collected by certain entities that provide dispute resolution services.

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.S.B. 1237 amends the Civil Practice and Remedies Code to specify that a commissioners court's authority to make reasonable rules relating to the alternative dispute resolution system established by the county includes the authority to make rules specifying whether criminal cases may be referred to the system. The bill 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 that accepts criminal cases has been established to refer a criminal case to the system on the request of an attorney representing the state regardless of whether the defendant in the criminal case has been formally charged. The bill requires the attorney representing the state to obtain the consent of the victim and the defendant to the referral before making such a request. The bill prohibits the referral of a criminal case to the system if the defendant is charged with or convicted of certain offenses for which a judge is prohibited from ordering community supervision or if the defendant is convicted of an offense, the judgment for which contains a specified affirmative finding relating to the use or exhibition of a deadly weapon during the commission of a felony offense or during immediate flight from the commission of a felony offense.

C.S.S.B. 1237, in a statutory provision authorizing the collection of a reasonable fee by certain entities that contract with a commissioners court and provide dispute resolution services, removes the specification that such services be provided in a county that borders the Gulf of Mexico with a population of 250,000 or more but less than 300,000 and, in that same provision, removes the specification that the fee is collected from a person who receives the services. The

bill adds a commissioners court that provides dispute resolution services as an entity authorized to collect a reasonable fee set by the commissioners court.

C.S.S.B. 1237 authorizes an entity that provides services for the resolution of criminal disputes under a county's alternative dispute resolution system to collect a reasonable fee set by the commissioners court from a person who receives the services. The bill caps the fee at \$350 and prohibits such a fee from being collected from an alleged victim of the crime. The bill authorizes such fees 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. The bill requires such fees to be based on the defendant's ability to pay.

EFFECTIVE DATE

September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.S.B. 1237 may differ from the engrossed version in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the engrossed and committee substitute versions of the bill.

SENATE ENGROSSED

SECTION 1. Subsection (b), Section 152.002, Civil Practice and Remedies Code, is amended.

SECTION 2. Section 152.003, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 152.003. REFERRAL OF CASES. (a) 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 may, 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. Referral under this section does not prejudice the case.

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

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Same as engrossed version.

SECTION 2. Section 152.003, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 152.003. REFERRAL OF CASES. (a) 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 may, 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. Referral under this section does not prejudice the case.

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

(c) A criminal case may not be referred to the system if the defendant is charged with or convicted of an offense listed in Section 3g(a)(1), Article 42.12, Code of Criminal Procedure, or convicted of an offense, the

judgment for which contains an affirmative finding under Section 3g(a)(2), Article 42.12, Code of Criminal Procedure.

SECTION 3. Section 152.006, Civil Practice and Remedies Code, is amended.

SECTION 3. Same as engrossed version.

SECTION 4. Chapter 152, Civil Practice and Remedies Code, is amended by adding Section 152.007 to read as follows:

SECTION 4. Chapter 152, Civil Practice and Remedies Code, is amended by adding Section 152.007 to read as follows:

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

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

(b) If the referring court determines that a participant in services described by Subsection (a) has the financial resources to enable the participant to offset in part or in whole the costs of legal services provided to the participant under Article 26.04, Code of Criminal Procedure, in connection with the criminal dispute resolution, including any expenses and costs, the court may order the participant to reimburse the county in which the referral was made an amount that the court finds the participant is able to pay.

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

SECTION 5. (a) 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. 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. For purposes of this section, an offense was committed before the effective

SECTION 5. Same as engrossed version.

date of this Act if any element of the offense was committed before that date.

(b) 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. 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. This Act takes effect September 1, 2013.

SECTION 6. Same as engrossed version.