

BILL ANALYSIS

Senate Research Center

H.B. 3184
By: McClendon et al. (Menendez)
Criminal Justice
5/22/2015
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

H.B. 3184 amends current law relating to the establishment, operation, and funding of victim-offender mediation programs and authorizes fees.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Juvenile Justice Board in SECTION 4 (Section 54.035, Family Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 1, Article 28.01, Code of Criminal Procedure, as follows:

Sec. 1. Authorizes the court to set any criminal case for a pre-trial hearing before it is set for trial upon its merits, and direct the defendant and the defendant's 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 regardless of whether the defendant has been formally charged. Requires the defendant to be present at the arraignment, and provides that the defendant's presence is required during any pre-trial proceeding. Requires that the pre-trial hearing be to determine any of the following matters:

(1)-(8) Makes no change to these subdivisions;

(9) and (10) Makes nonsubstantive changes; and

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

Makes nonsubstantive changes.

SECTION 2. Amends Chapter 56, Code of Criminal Procedure, by adding Subchapter A-1, as follows:

SUBCHAPTER A-1. PRETRIAL VICTIM-OFFENDER MEDIATION PROGRAM

Art. 56.21. **AUTHORITY TO ESTABLISH PROGRAM.** (a) Authorizes the commissioners court of a county or governing body of a municipality to, in coordination with the office of the attorney representing the state in the county or municipality, establish a pretrial victim-offender mediation program for persons who:

(1) have been arrested for or charged with a misdemeanor or state jail felony under Title 7 (Offenses Against Property), Penal Code; 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) Authorizes a court that implements a program under this subchapter to adopt administrative rules and local rules of procedure as necessary or appropriate to implement or operate the program.

(c) Authorizes the commissioners court of a county or governing body of a municipality that establishes a program under this subchapter to:

(1) allow for referral to the program of arrested persons described by Subsection (a) who have not yet been formally charged with an offense;

(2) adopt administrative rules and local rules of procedure as necessary or appropriate to implement or operate the program; and

(3) approve additional program requirements as recommended by the attorney representing the state.

Art. 56.22. PROGRAM. (a) Requires a pretrial victim-offender mediation program established under Article 56.21 to 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 attorney representing the state to consent to the referral of a defendant's matter to mediation under 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 requires the defendant to take responsibility for the defendant's actions and addresses the specific circumstances of the defendant's actions, which may:

(A) include an apology by the defendant; or

(B) require the defendant to:

(i) pay restitution to the victim;

(ii) perform community service; or

(iii) both pay restitution and perform community service.

(b) Provides that all communications made in a pretrial victim-offender mediation program are confidential and are prohibited from being introduced into evidence except in an open court proceeding instituted to determine the meaning of a mediation agreement.

(c) Authorizes a pretrial victim-offender mediation program to 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) Authorizes a pretrial victim-offender mediation to be conducted by a court-appointed mediator who meets the training requirements provided by Sections 154.052(a) (requiring a person to have completed a minimum of 40 classroom

hours of training in dispute resolution techniques) and (b) (requiring a person to complete the training required by Subsection (a) and an additional 24 hours of training in the fields of family dynamics), Civil Practice and Remedies Code, and has completed training in criminal justice mediation, or by any other appropriate person designated by the court. Provides that neither the attorney representing the state nor the attorney representing the defendant in the criminal action may serve as a mediator in the defendant's pretrial victim-offender mediation program.

(e) Authorizes the court, if a defendant enters a pretrial victim-offender mediation program, to defer the proceedings without accepting a plea of guilty or nolo contendere or entering an adjudication of guilt. Prohibits the court from requiring the defendant to admit guilt or enter a plea of guilty or nolo contendere to enter the program.

(f) Requires that the case 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;

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

(3) the mediator determines, based on the mediator's training and experience, that:

(A) the victim or defendant no longer wants to participate or cooperate; or

(B) the mediation will be ineffective.

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

(h) Requires the court, if the defendant successfully completes the mediation agreement as represented to the court by the attorney representing the state, after notice to the attorney representing the state and a hearing at which the court determines that a dismissal of any indictment or information charging the defendant with the commission of the offense is in the best interest of justice, to dismiss the criminal action against the defendant.

(i) Authorizes the court or the attorney representing the state to extend the initial compliance period granted to the defendant.

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

(k) Requires the court, 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, to enter an order of nondisclosure under Section 411.081 (Application of Subchapter), 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. MEDIATION AGREEMENT. (a) Requires that a mediation agreement under this subchapter be in writing and:

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

(2) 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.

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

Art. 56.24. LEGISLATIVE REVIEW. Authorizes the lieutenant governor and the speaker of the house of representatives to assign to appropriate legislative committees interim duties relating to the study, review, and evaluation of pretrial victim-offender mediation programs established under this subchapter, and authorizes those committees to make recommendations to the legislature for appropriate policies to monitor, improve, or provide state resources for those programs.

Art. 56.25. LOCAL REVIEW. 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 established under this subchapter.

Art. 56.26. FEES. (a) Requires a pretrial victim-offender mediation program established under this subchapter to collect from a defendant in the program a reasonable program participation fee not to exceed \$500 and to collect from the defendant 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) Provides that 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. Requires that the fees be:

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

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

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

SECTION 3. Amends Subchapter A, Chapter 102, Code of Criminal Procedure, by adding Article 102.0179, as follows:

Art. 102.0179. COSTS ATTENDANT TO PRETRIAL VICTIM-OFFENDER MEDIATION. (a) Requires 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, to 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) Requires the court clerk to collect the costs imposed under this article. Requires the clerk to keep a separate record of any money collected under this article and to 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) Requires a county or municipality that collects court costs under this article to 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 4. Amends Chapter 54, Family Code, by adding Section 54.035, as follows:

Sec. 54.035. VICTIM-OFFENDER MEDIATION. (a) Requires the Texas Juvenile Justice Board by rule to establish guidelines permitting victim-offender mediation programs to be implemented and administered by juvenile boards.

(b) Requires each victim to whom this section applies, in a mediation program authorized under this section, to be informed of the victim's right to request victim-offender mediation.

(c) Requires that participation in a victim-offender mediation program under this section by a child and by a victim be voluntary. Requires the prosecuting attorney, if a child's case is forwarded to the office of the prosecuting attorney under Section 53.01 (Preliminary Investigation and Determinations; Notice to Parents), to consent to the mediation in which the child may participate under the program.

(d) Requires the child's case, if an agreement is not reached between the victim and the child or if the child does not successfully complete the terms of the agreement, as determined by the juvenile court, to proceed in accordance with the applicable provisions of this title.

SECTION 5. Amends Section 57.002(a), Family Code, as follows:

(a) Entitles a victim, guardian of a victim, or close relative of a deceased victim to the following rights within the juvenile justice system:

(1)-(5) Makes no change to these subdivisions;

(6) the right to receive information regarding compensation to victims as provided by Subchapter B (Crime Victims' Compensation), Chapter 56 (Rights of Crime Victims), Code of Criminal Procedure, including information related to the costs that may be compensated under that subchapter and the amount of compensation, eligibility for compensation, and procedures for application for compensation under that subchapter, the payment of medical expenses under Article 56.06, Code of Criminal Procedure, rather than Section 56.06, Code of Criminal Procedure, for a victim of a sexual assault, and when requested, to referral to available social service agencies that may offer additional assistance;

(7)-(10) Makes no change to these subdivisions;

(11) Makes a nonsubstantive change;

(12) for a victim to whom Section 54.035 applies, the right to request victim-offender mediation under that section; and

(13) any other right appropriate to the victim that a victim of criminal conduct has under Article 56.02 (Crime Victims' Rights) or 56.021 (Rights of Victim of Sexual Assault), Code of Criminal Procedure.

SECTION 6. Amends Section 58.003, Family Code, by adding Subsections (c-9) and (c-10), as follows:

(c-9) Authorizes a juvenile court, notwithstanding Subsections (a) and (c) and subject to Subsection (b), to order the sealing of records concerning a child alleged to have engaged in delinquent conduct or conduct indicating a need for supervision if the child successfully completed a victim-offender mediation program under Section 54.035. Authorizes the court to:

(1) immediately order the sealing of the records without a hearing; or

(2) hold a hearing to determine whether to seal the records.

(c-10) Authorizes a prosecuting attorney or juvenile probation department, if the court orders the sealing of a child's records under Subsection (c-9), to maintain until the child's 17th birthday a separate record of the child's name and date of birth, the allegation against the child, and the date the child successfully completed the victim-offender mediation program. Requires the prosecuting attorney or juvenile probation department, as applicable, to send the record to the court as soon as practicable after the child's 17th birthday to be added to the child's other sealed records.

SECTION 7. Amends Subchapter B, Chapter 102, Government Code, by adding Section 102.0215, as follows:

Sec. 102.0215. ADDITIONAL COURT COSTS: CODE OF CRIMINAL PROCEDURE. Requires a defendant who participates in a pretrial victim-offender mediation program established under Subchapter A-1, Chapter 56, Code of Criminal Procedure, to 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 8. Amends Subchapter A, Chapter 221, Human Resources Code, by adding Section 221.013, as follows:

Sec. 221.013. MEDIATION MONITORING. Requires the Texas Juvenile Justice Department (TJJD) to monitor the success of victim-offender mediation programs established under Section 54.035, Family Code.

SECTION 9. (a) Provides that Subchapter A-1, Chapter 56, Code of Criminal Procedure, as added by this Act, 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) Provides that Article 102.0179, Code of Criminal Procedure, and Section 102.0215, Government Code, as added by this Act, apply only to an offense committed on or after the effective date of this Act. Provides that 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. Provides that, 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 10. (a) Requires the Texas Juvenile Justice Board, not later than December 1, 2015, to establish guidelines for victim-offender mediation programs as required by Section 54.035, Family Code, as added by this Act.

(b) Provides that Section 54.035, Family Code, as added by this Act, applies only to a victim-offender mediation under that section that occurs on or after January 1, 2016, regardless of whether the conduct that is the basis of the mediation occurs before, on, or after that date.

SECTION 11. Effective date: upon passage or September 1, 2015.