

BILL ANALYSIS

C.S.H.B. 72
By: Keough
Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties contend that victim-offender mediation programs serve an invaluable purpose for communities in allowing offenders to take responsibility for their actions, in providing victims expedited relief for the harm they have suffered, and even in reducing recidivism. C.S.H.B. 72 seeks to enable counties and municipalities to use and design victim-offender mediation programs in such a way as to reduce the need for trials and costs of incarceration.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Juvenile Justice Board in SECTION 4 of this bill.

ANALYSIS

C.S.H.B. 72 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 persons who have been arrested for or charged with a misdemeanor property offense and have not previously been convicted of a felony or a misdemeanor, other than a fine-only misdemeanor traffic offense. The bill authorizes a court that implements such a program to adopt administrative rules and local rules of procedure as necessary or appropriate to implement or operate the program. The bill authorizes a commissioners court of a county or governing body of a municipality that establishes such a 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. 72 specifies that a court's authority to set any criminal case for a pretrial hearing before it is set for trial upon its merits and to direct the defendant, 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 applies regardless of whether the defendant has been formally charged. The bill includes a motion to allow a defendant to enter a pretrial victim-offender mediation program among the matters to be determined at a pretrial hearing.

C.S.H.B. 72 sets out pretrial victim-offender mediation program requirements for a program established on or after September 1, 2017, relating to the designation of defendants who are eligible to participate; the requisite consent from the attorney representing the state; the requisite

consent from the victim; and the binding mediation agreement into which the defendant must enter. The bill authorizes a court to elect to apply these requirements in implementing such a program that was established by the commissioners court of a county or governing body of a municipality before September 1, 2017. The bill sets out provisions relating to 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 the 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 in the defendant's pretrial victim-offender mediation program. The bill authorizes the court, if a defendant enters such a program, to defer the proceedings without accepting a plea of guilty or nolo contendere or entering an adjudication of guilt. The bill prohibits the court from requiring the defendant to admit guilt or enter a plea of guilty or nolo contendere to enter the program.

C.S.H.B. 72 sets out the circumstances under which the case of a defendant participating in a pretrial victim-offender mediation program is required to be returned to the docket and proceed through the regular criminal justice system and specifies that the defendant retains all of the rights the defendant possessed before entering the mediation program if a case is returned to the docket and that the running of the period of the applicable statute of limitations is tolled while the defendant is enrolled in the program. The bill requires the court, 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 if the defendant successfully completes the mediation agreement as represented to the court by the attorney representing the state. The bill authorizes the court or the attorney representing the state to extend the initial compliance period granted to the defendant and establishes that a determination by the court regarding whether the mediation agreement has been successfully completed is final and may not be appealed. The bill requires the court, if the defendant is not arrested or convicted of a subsequent felony or misdemeanor other than a fine-only misdemeanor traffic offense on or before the first anniversary of the date the defendant successfully completed a mediation agreement, to enter, on the motion of the defendant, an order of nondisclosure of criminal history record information as if the defendant had received a discharge and dismissal for a deferred adjudication community supervision period 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. 72 requires a mediation agreement to be in writing, 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 a mediation agreement does not constitute a plea or legal admission of responsibility.

C.S.H.B. 72 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 and authorizes those committees to make recommendations to the legislature for appropriate policies to monitor, improve, or provide state resources for those programs. The bill 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.

C.S.H.B. 72 requires a pretrial victim-offender mediation 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 the testing, counseling, or treatment, if such testing, counseling, or treatment is required by the mediation agreement. 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 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. 72 requires a defendant who participates in a pretrial victim-offender mediation program, on successful completion of the terms of the defendant's mediation agreement or on conviction, to pay as court costs \$15 plus the additional program participation fee and requires the court clerk to collect the imposed costs. The bill requires the clerk to keep a separate record of any money collected in this manner 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. The bill restricts use of the money in either fund to an expenditure by the applicable county or municipality for the maintenance of the pretrial victim-offender mediation program operated in the county or municipality, as applicable.

C.S.H.B. 72 amends the Family Code to require the Texas Juvenile Justice Board, not later than December 1, 2017, to establish by rule guidelines permitting victim-offender mediation programs to be implemented and administered by juvenile boards. The bill requires each applicable victim, in such a mediation program, to be informed of the victim's right to request victim-offender mediation. The bill requires participation in a victim-offender mediation program by a child and by a victim to be voluntary and, if a child's case is forwarded to the office of the prosecuting attorney prior to judicial proceedings, requires the prosecuting attorney to consent to the mediation in which the child may participate under the program. The bill requires a child's case to proceed in accordance with the applicable provisions of the juvenile justice code 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. The bill's provisions regarding a victim-offender mediation program in which the offender is a child apply only to a victim-offender mediation that occurs on or after January 1, 2018, regardless of whether the conduct that is the basis of the mediation occurs before, on, or after that date.

C.S.H.B. 72 entitles a victim of the delinquent conduct of a child, the guardian of a victim of such conduct, or a close relative of a deceased victim of such conduct to the right to request the victim-offender mediation. The bill authorizes a juvenile court, with certain exceptions, 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 the bill's provisions and authorizes the court to immediately order the sealing of the records without a hearing or to hold a hearing to determine whether to seal the records. The bill authorizes a prosecuting attorney or juvenile probation department, if the court orders the sealing of a child's records, 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. The bill 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.

C.S.H.B. 72 amends the Human Resources Code to require the Texas Juvenile Justice Department to monitor the success of victim-offender mediation programs in which the offender

is a child.

C.S.H.B. 72 amends the Government Code to make conforming changes.

EFFECTIVE DATE

September 1, 2017.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 72 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted 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.

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. (a) The commissioners court of a county or governing body of a municipality may, 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, Penal Code; and

(2) have not previously been convicted of a felony or a misdemeanor, other than a misdemeanor traffic offense punishable by fine only.

(b) A court that implements a program under this subchapter may adopt administrative rules and local rules of procedure as necessary or appropriate to implement or operate the program.

(c) The commissioners court of a county or governing body of a municipality that establishes a program under this subchapter may:

(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

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Same as introduced version.

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. (a) The commissioners court of a county or governing body of a municipality may, 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 under Title 7, Penal Code; and

(2) have not previously been convicted of a felony or a misdemeanor, other than a misdemeanor traffic offense punishable by fine only.

(b) A court that implements a program under this subchapter may adopt administrative rules and local rules of procedure as necessary or appropriate to implement or operate the program.

(c) The commissioners court of a county or governing body of a municipality that establishes a program under this subchapter may:

(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.

Art. 56.23. MEDIATION AGREEMENT.

Art. 56.24. LEGISLATIVE REVIEW.

Art. 56.25. LOCAL REVIEW.

Art. 56.26. FEES.

Art. 56.27. NOTICE.

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

SECTION 4. Chapter 54, Family Code, is amended.

SECTION 5. Section 57.002(a), Family Code, is amended.

SECTION 6. Section 58.003, Family Code, is amended.

SECTION 7. Subchapter B, Chapter 102, Government Code, is amended.

SECTION 8. Subchapter A, Chapter 221, Human Resources Code, is amended.

SECTION 9. (a) 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) 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. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this subsection, an

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.

Art. 56.23. MEDIATION AGREEMENT.

Art. 56.24. LEGISLATIVE REVIEW.

Art. 56.25. LOCAL REVIEW.

Art. 56.26. FEES.

Art. 56.27. NOTICE.

SECTION 3. Same as introduced version.

SECTION 4. Same as introduced version.

SECTION 5. Same as introduced version.

SECTION 6. Same as introduced version.

SECTION 7. Same as introduced version.

SECTION 8. Same as introduced version.

SECTION 9. Same as introduced version.

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

SECTION 10. (a) Not later than December 1, 2017, the Texas Juvenile Justice Board shall establish guidelines for victim-offender mediation programs as required by Section 54.035, Family Code, as added by this Act.

(b) 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, 2018, regardless of whether the conduct that is the basis of the mediation occurs before, on, or after that date.

SECTION 11. This Act takes effect September 1, 2017.

SECTION 10. Same as introduced version.

SECTION 11. Same as introduced version.