

SUBJECT: Prosecutor exemption from mediation in criminal cases

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 6 ayes — Hinojosa, Dunnam, Garcia, Keel, Nixon, Wise
0 nays
3 absent — Green, Smith, Talton

WITNESSES: For — John Healey, Harris County
Against — None

BACKGROUND: Mediation, a form of alternative dispute resolution, may be used either when both parties agree to the process or when a court orders it. Generally it used in civil rather than criminal cases. However, a growing number of courts and prosecutors have worked with defense attorneys toward resolving criminal cases through mediation.

Under Code of Criminal Procedure, art. 26.13(g), before accepting a plea of guilty or nolo contendere, a court may help the victim and the defendant participate in a victim-offender mediation program if the victim requests it.

DIGEST: HB 3066 would amend the Code of Criminal Procedure to prohibit a court from requiring a prosecutor to participate in mediation, dispute resolution, arbitration, or a similar procedure.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house.

SUPPORTERS SAY: HB 3066 would not prevent a prosecutor from entering into mediation if the prosecutor so chose, but would prohibit a court from ordering it. A court still could help the victim and defendant participate in mediation if the victim requested it before the defendant pled guilty or no contest, as under current law, but prosecutors would not be forced to participate.

In January 1999, a judge in Fort Bend County ordered a prosecutor to enter into mediation with an offender and the victim. The prosecutor asked for a writ of mandamus from the Court of Criminal Appeals to prevent this. However, the judge of the lower court revoked the order for the prosecutor to take part in mediation before the appellate court could rule on the prosecutor's petition.

Although the Texas Constitution separates the powers of the court and the state, HB 3066 is needed to clarify what that means. The bill would allow judges to turn to the statute rather than having to interpret the Constitution. HB 3066 would save hours of work by prosecutors because they would not have to ask for mandamus any time a court wrongly ordered a prosecutor to enter mediation.

Mediation can be highly effective in civil cases in which counsel for each party can help resolve issues through negotiation and compromise. However, in most criminal cases, there is no reason for mediation because a crime has been committed, and there is nothing to negotiate. Court-mandated mediation can be especially dangerous in cases of domestic violence because the offender may put pressure on the victim to request a lighter punishment. This bill would help prevent such situations.

OPPONENTS
SAY:

HB 3066 is not needed because courts understand the role of the prosecutor and rarely ask them to participate in mediation. For the most part, judges correctly interpret the Constitution and understand the separate roles the court and the state play.

The Legislature should be cautious about placing additional restrictions on victim-offender mediation ordered by the court, since this is a healthy and effective method of resolving criminal cases.

OTHER
OPPONENTS
SAY:

Not only should the court not be able to order a prosecutor to participate in mediation, but the prosecutor should not even be allowed to participate in mediation voluntarily. The state attorney's role should be kept strictly prosecutorial and should not be associated with mediation.

NOTES:

The companion bill, SB 1125 by Armbrister, passed the Senate on April 23 and was reported favorably, as amended, by the House Criminal Jurisprudence Committee on May 7.

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HB 3065 by Hinojosa, which would prohibit a court from ordering a victim or defendant in a case involving family violence to participate in mediation, dispute resolution, arbitration, or a similar procedure, also is on today's House calendar.