

## **BILL ANALYSIS**

Senate Research Center  
83R19869 ADM-D

H.B. 167  
By: McClendon et al. (Zaffirini)  
Criminal Justice  
5/13/2013  
Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Victim offender mediation is a face-to-face meeting with a trained mediator between the victim of a crime and the person who committed that crime. In this meeting, both the victim and the offender discuss the incident and how it has affected their lives and feelings. In the end, they may choose to create a mutually agreeable plan to repair any damages that occurred as a result of the crime.

Currently, Texas does not have a statutory mechanism for victim-offender mediation programs. Some counties have created their own programs, but some counties do not have the option. Recent research shows that victim-offender programs produce several positive outcomes including reducing recidivism and being cost effective in terms of trial expenditures. Not only do victim-offender programs allow offenders to take responsibility for their actions, but they also allow for victims to have expedited relief from the harm they have suffered. H.B. 167 seeks to establish, operate, and fund victim-offender mediation programs.

The purpose of this bill is not only to allow an option for mediation between offenders and victims to require offenders to be accountable for their conduct, but also to allow victims to receive justice without having to rely on slow legal proceedings. The bill thus will allow a commissioner's court to establish victim-offender mediation programs at the county and municipal level.

The victim and defendant will both have to agree to the mediation program, and eligible defendants who participate in the program would be required to submit an apology to the victim, pay restitution to the victim, and perform community service. The bill also will authorize the prosecutor's office to collect fees from the defendant for the defendant's participation in the program. These fees can be used to sustain the program and pay costs associated with performing the duties under the program.

H.B. 167 amends current law relating to the establishment, operation, and funding of victim-offender mediation programs, 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 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 his 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 that the pre-trial hearing be to determine any of the following matters:

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

(9)-(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 (Rights of Crime Victims).

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 under Title 7 (Offenses Against Property), Penal Code, in any court in this state other than a district court; 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 county court, statutory county court, municipal court, or justice 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 that a pretrial victim-offender mediation program established under Article 56.21 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 a defendant's participation in 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 is authorized to proceed to pretrial victim-offender mediation; and

(4) the defendant to enter into a binding mediation agreement in accordance with Article 56.23 that:

(A) includes an apology by the defendant; and

(B) requires the defendant to pay restitution to the victim; perform community service; or 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) (relating to requiring a person, to qualify for certain appointments, to have completed a minimum of 40 classroom hours of training in dispute resolution techniques) and (b) (relating to requiring a person, to qualify for certain appointments, to have completed the training required by Subsection (a) and an additional 24 hours of training in certain fields), Civil Practice and Remedies Code, 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 is authorized to serve as a mediator under the 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 a pretrial victim-offender mediation does not result in a mediation agreement or the defendant fails to fulfill the terms of the mediation agreement successfully by the date specified in the mediation agreement.

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

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

(i) Provides that a determination by the court regarding whether the mediation agreement has been successfully completed is final and is prohibited from being appealed.

(j) 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) (relating to requiring the judge to dismiss proceedings against the defendant and discharge him if he cannot adjudicate guilt), Article 42.12 (Community Supervision), 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 written and 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.

(b) 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.

(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 duties relating to the study, review, and evaluation of pretrial victim-offender mediation programs established under this subchapter, and 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 that a pretrial victim-offender mediation program established under this subchapter collect from a defendant in the program a reasonable program participation fee not to exceed \$500 and is authorized 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) Authorizes fees collected under this article 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 that the fees be based on the defendant's ability to pay and used only for purposes specific to the program.

Art. 56.27. **NOTICE.** Requires that the office of an attorney representing the state that participates in a pretrial victim-offender mediation program established under this subchapter 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 Subchapter B, Chapter 102, Government Code, by adding Section 102.0216, as follows:

Sec. 102.0216. **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) a \$15 fee plus an additional program participation fee in an amount not to exceed \$500.

SECTION 5. (a) Provides that the change in law made by this Act in adding Subchapter A-1, Chapter 56, Code of Criminal Procedure, 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 the change in law made by this Act in adding Article 102.0179, Code of Criminal Procedure, and Section 102.0216, Government Code, applies 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 6. Effective date: upon passage or September 1, 2013.