

SUBJECT: Prohibiting the use of mediation in family violence 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 District Attorney's Office
Against — None

BACKGROUND: 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.

Mediation is a form of alternative dispute resolution in which a court-supervised arbitrator facilitates the negotiation of a mutually arrived agreement that is signed by both parties and by their attorneys, if present, and is approved by the court.

Family Code, sec. 71.004 defines family violence as an act or a reasonably perceived threat by a member of a family or household against another member of the family or household that is intended to result in physical harm, bodily injury, assault, or sexual assault.

DIGEST: HB 3065 would prohibit a court from referring or ordering a victim or defendant in a case involving family violence to participate in mediation, dispute resolution, arbitration, or a similar procedure. It also would prohibit a court from such a referral for cases involving community supervision as a sentence term, notwithstanding sections of the Code of Criminal Procedure that provide for victim-defendant mediation.

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

**SUPPORTERS
SAY:**

HB 3065 would end the unfair leverage a defendant has over the victim of family violence in mediation cases. In many cases, a defendant threatens a victim into agreeing to a court-sponsored mediation in order to gain concessions favorable to the defendant's case. Often, the victim continues to live with the defendant and, to avoid further violence, gives in to the defendant's threats or manipulation. In many instances, after mediation, a victim may insist to a prosecutor that the charges against the defendant be reduced or dismissed. In one study, an estimated 40 percent of men resumed their abusive behavior after mediation.

Mediation may lead to absurd outcomes, such as connecting the violence of the defendant with something the victim did. In Harris County, some victims of family violence have brought copies of mediation agreements to legal advocacy centers that included statements such as, "she won't burn the beans and he won't hit her." Harris County no longer allows mediation before a criminal plea is entered or adjudicated. Similarly, Iowa no longer allows mediation in family violence cases. While mediation can be useful in civil cases, it should not be an option for family violence cases.

**OPPONENTS
SAY:**

Mediation is a useful tool for resolving many disagreements without the formalities of a full court proceeding. Courts order mediation to expedite disputes that can be solved best by the parties themselves. HB 3065 would remove much a court's discretion with regard to family law cases. The result would be an increase in the family law docket.

NOTES:

The companion bill, SB 1124 by Armbrister, passed the Senate on April 26 and has been referred to the House Criminal Jurisprudence Committee.

A similar bill, HB 819 by Naishtat, which would limit the use of alternative dispute resolution in certain family law cases, passed the House on April 15. The Senate Jurisprudence Committee reported HB 819 favorably as substituted on May 5 and recommended it for the Local and Uncontested Calendar.