

## **BILL ANALYSIS**

Senate Research Center

H.B. 1572  
By: Haggerty (Staples)  
Criminal Justice  
5/9/2001  
Engrossed

### **DIGEST AND PURPOSE**

Current law provides that communications made by a participant in an alternative dispute resolution procedure are confidential. Victim-offender mediation dialogue, however, is not considered confidential, although both the victim and the offender participating in such dialogue may prefer that their remarks not be made public. H.B. 1572 adds and amends statutory provisions to provide that mediation includes victim offender mediation dialogue, and thereby extends confidentiality to the dialogue. The bill also amends and adds to provisions regarding the rights of crime victims, participation by victims and witnesses in some criminal proceedings, and the payment of restitution to victims.

### **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 Chapter 36, Code of Criminal Procedure, by adding Article 36.03, as follows:

Art. 36.03. INVOCATION OF RULE. (a) Authorizes a court, notwithstanding Rule 614, Texas Rules of Evidence, at the request of a party, to order the exclusion of a witness who for the purposes of the prosecution is a victim, close relative of a deceased victim, or guardian of a victim only if the witness is to testify and the court determines that the testimony of the witness would be materially affected if the witness hears other testimony at the trial.

- (b) Authorizes the court, on the objection of the opposing party, to require the party requesting exclusion of a witness under Subsection (a) to make an offer of proof to justify the exclusion.
- (c) Provides that Subsection (a) does not limit the authority of the court on its own motion to exclude a witness or other person to maintain decorum in the courtroom.
- (d) Defines “close relative of a deceased victim,” “guardian of a victim,” and “victim.”
- (e) Requires the court, at the commencement of a trial, to admonish each witness who is to testify as to those persons whom the court determines the witness may talk to about the case before the trial ends and those persons whom the witness may not talk to about the case. Authorizes the court to punish as contempt a witness who violates the admonishment provided by the court.

SECTION 2. Amends Article 42.037, Code of Criminal Procedure, by adding Subsection (o), to authorize the pardons and paroles division to waive a supervision fee or an administrative fee imposed on an inmate under Section 508.182, Government Code, during any period in which the inmate is required to pay restitution under this article.

SECTION 3. Amends Articles 56.02(a) and (b), Code of Criminal Procedure, to provide that a victim, guardian of a victim, or close relative of a deceased victim has is entitled to certain rights within the criminal justice system. Provides that a victim, guardian of a victim, or close relative of a deceased victim is entitled to the right to be present at all public court proceedings related to the offense, subject to the approval of the judge in the case.

SECTION 4. Amends Article 56.03(e), Code of Criminal Procedure, to require the court, before sentencing the defendant, to permit the defendant or his counsel a reasonable time to read the statement, excluding the victim's name, address, and telephone number, comment on the statement, and, with the approval of the court, introduce testimony or other information alleging a factual inaccuracy in the statement. Requires the court, if the court sentences the defendant to a term of community supervision, rather than probation, to forward any victim's impact statement received in the case to the community supervision and corrections, rather than probation, department supervising the defendant, along with the papers in the case.

SECTION 5. Amends Article 56.08, Code of Criminal Procedure, by adding Subsection (e), to require the brief general statement describing the plea bargaining stage in a criminal trial required by Subsection (a)(1) to include a certain statement.

SECTION 6. Amends Article 56.12, Code of Criminal Procedure, as follows:

Art. 56.12. New heading: NOTIFICATION OF ESCAPE OR TRANSFER. (a) Requires the Texas Department of Criminal Justice (TDCJ) to immediately notify, rather than immediately make a reasonable attempt to notify, the victim of an offense, the victim's guardian, or the victim's close relative, if the victim is deceased, if the victim, victim's guardian, or victim's close relative has notified the institutional division as provided by Subsection (b) of this article, under certain conditions. Deletes existing text regarding the escape from a certain facility by an offender. Deletes existing text regarding the attempt by TDCJ to give notice.

(b) Makes a conforming change.

(c) Requires the institutional division, in providing notice under Subsection (a)(2), to include the name, address, and telephone number of the peace officer receiving the inmate into custody. Requires the victim services division of TDCJ, on returning the inmate to the custody of the institutional division, to notify the victim, the victim's guardian, or the victim's close relative if the victim is deceased, of that fact.

SECTION 7. Amends Chapter 56A, Code of Criminal Procedure, by adding Articles 56.13 and 56.14, as follows:

Art. 56.13. VICTIM-OFFENDER MEDIATION. Requires the victim services division of TDCJ to train volunteers to act as mediators between victims, guardians of victims, and close relatives of deceased victims and offenders whose criminal conduct caused bodily injury or death to victims and provide mediation services through referral of a trained volunteer, if requested by a victim, guardian of a victim, or close relative of a deceased victim.

Art. 56.14. CLEARINGHOUSE ANNUAL CONFERENCE. (a) Authorizes the Texas Crime Victim Clearinghouse (clearinghouse) to conduct an annual conference to provide to participants in the criminal justice system training containing information on crime victims' rights.

(b) Authorizes the clearinghouse to charge fees to persons attending the conference described by Subsection (a).

SECTION 8. Amends Chapter 56A, Code of Criminal Procedure, by adding Article 56.15, as

follows:

Art. 56.15. CUSTODY AND COURT INFORMATION AND NOTIFICATION SYSTEM. (a) Requires the victim services office of TDCJ to establish, through funding from the compensation to victims of crime fund, a program to implement and operate a custody and court information and notification system for certain purposes.

(b) Provides that it is the responsibility of the victim or a concerned individual desiring notice under Subsection (a)(2) to provide the victim services office of TDCJ with the telephone number, facsimile number, electronic mail address, or address of the victim, concerned individual, or other person through whom the victim or individual may be contacted and to notify the victim services office of any change in telephone or facsimile number, electronic mail address, or address of the victim, individual, or other person. Provides that information obtained and maintained by the victim services office under this subsection is privileged and confidential.

(c) Authorizes a county to elect to participate in the program by receiving computer equipment for county courts and corrections facilities from the victim services office of TDCJ under Subsection (e)(2) and providing information to the victim services office. Requires the victim services office to notify a victim or a concerned individual immediately if the victim services office receives from a participating county certain information.

(d) Requires the victim services office of TDCJ to make available information and notification services provided under this article in English, Spanish, and any other languages selected by the program.

(e) Requires the victim services office of TDCJ, as part of the information and notification system, to take certain enumerated actions.

(f) Prohibits this article from being construed as altering any duty that a law enforcement agency has under the laws of this state to notify a crime victim or a person designated by the victim to receive notice.

(g) Provides that the victim services office of TDCJ is immune from liability for good faith conduct under this section.

SECTION 9. Amends Article 56.541, Code of Criminal Procedure, by adding Subsection (g), to require the victim services office of TDCJ to use money appropriated from the compensation to victims of crime fund for grants or contracts supporting a custody and court information and notification system established under Article 56.15.

SECTION 10. Amends Section 57.002, Family Code, to provide that a victim, guardian of a victim, or close relative of a deceased victim is entitled to certain rights within the juvenile justice system. Requires the Texas Youth Commission, in notifying a victim of the release or escape of a person, to use the same procedure established for the notification of the release or escape of an adult offender under Article 56.11, Code of Criminal Procedure.

SECTION 11. Amends Section 76.016, Government Code, to make a conforming change. Deletes existing text of Subsection (b) and reletters existing text of Subsection (c) as Subsection (b).

SECTION 12. Amends Chapter 508B, Government Code, by adding Section 508.0481, as follows:

Sec. 508.0481. VICTIM'S RIGHT TO REPRESENTATION. (a) Provides that if a victim, close relative of a deceased victim, or guardian of a victim is required by a subpoena issued

under Section 508.048 to appear at a hearing, the victim, relative, or guardian is entitled to representation by counsel at the hearing.

(b) Provides that this section does not require the state to provide representation by counsel to a victim, close relative of a deceased victim, or guardian of a victim.

(c) Defines “victim,” “close relative of a deceased victim,” and “guardian of a victim.”

SECTION 13. Amends Section 2009.053(a), Government Code, to provide that a governmental body's appointment of the impartial third party is subject to the approval of the parties, with certain exceptions, including a victim-offender mediation.

SECTION 14. Amends Section 154.023, Civil Practice and Remedies Code, by adding Subsection (c), to provide that mediation includes victim-offender mediation by TDCJ described in Article 56.13, Code of Criminal Procedure.

SECTION 15. Amends Section 154.073, Civil Practice and Remedies Code, by adding Subsection (g), to provide that this section applies to a victim-offender mediation by TDCJ as described in Article 56.13, Code of Criminal Procedure.

SECTION 16. Amends Section 1701.253(b), Occupations Code, to require the Commission on Law Enforcement Officer Standards and Education (commission), in establishing requirements under this section, to require courses and programs to provide certain training.

SECTION 17. Provides that the amendments to Section 2009.053(a), Government Code, and Sections 154.023 and 154.073, Civil Practice and Remedies Code, apply to a mediation procedure provided by TDCJ before, on, or after the effective date of this Act.

SECTION 18. Effective date: September 1, 2001.