SUBJECT: Establishing local pretrial victim-offender mediation programs

COMMITTEE: Corrections — committee substitute recommended

VOTE: 10 ayes — McReynolds, Madden, Dutton, England, Hodge, Marquez, Martinez, S. Miller, Ortiz, Sheffield

0 nays

1 absent — Kolkhorst

WITNESSES: (*On original version*:)
For — Amanda Marzullo, Texas Fair Defense Project; Ana Yañez-Correa, Texas Criminal Justice Coalition; (*Registered, but did not testify*: Yannis Banks, Texas National Association for the Advancement of Colored People; Diane Jacoel; Marc Levin, Texas Public Policy Foundation Center for Effective Justice; Diana Richards; Cindy Segovia, Bexar County; Ann Travis, City of Houston)

Against — Kevin Petroff, Harris County District Attorney's Office; (*Registered, but did not testify*: Katrina Daniels, Bexar County District Attorney Susan D. Reed)

DIGEST: CSHB 2139 would amend Code of Criminal Procedure, ch. 56 by adding subch. A-1 to allow a county commissioner's court or municipality's governing body to establish a pretrial victim-offender mediation program.

Pretrial victim-offender mediation program requirements. Eligible persons would be those arrested for or charged with a misdemeanor or state jail felony property offense under Penal Code, title 7, and who had no previous felony or misdemeanor convictions, other than a misdemeanor traffic violation punishable by only a fine.

A program would require the identification of eligible defendants, and the prior consent of the victim and the defendant. The program also would require the defendant to enter a binding mediation agreement that included an apology to the victim and restitution or community service.

If a defendant entered a program, the court, with the consent of the state attorney, could defer proceedings without accepting a plea of guilty, nolo contendere, or entering a guilty verdict. On motion of the state attorney, the court would have to dismiss the indictment or information if the defendant completed the terms of the mediation agreement and paid or entered a payment plan to pay all court costs. The court's determination of whether or not the mediation agreement was successfully completed would be final.

The case would be reinstated if the mediation did not result in an agreement or if the defendant failed to meet the terms of the agreement. If a case were reinstated, the defendant would retain all the rights the defendant possessed before entering the program.

Program communications would be confidential and could not be introduced into evidence except in a proceeding that involved a question concerning the meaning of a mediation agreement.

The state attorney or court could extend the period for compliance with the agreement.

For the year following successful completion of a mediation agreement, if a defendant was not arrested or convicted of a subsequent felony or misdemeanor other than a misdemeanor traffic violation punishable by only a fine, the court would grant a defendant's motion for an order of nondisclosure.

A program could require the staff and resources of pretrial services and community supervision corrections department to help monitor the defendant's compliance with the program's mediation agreement.

Mediation agreement requirements. A mediation agreement would have to be signed by the defendant and be ratified by the state attorney. It could require any service, such as counseling or anger management, reasonably related to the offense for which the defendant was charged or arrested. The agreement would not constitute a plea or admission of guilt and would be valid for no more than a year from ratification, unless the state attorney approved the extension.

Mediations could be conducted by any person designated by the court, except the defense or state attorney in the criminal action, whether or not the person was a trained mediator.

Oversight. The lieutenant governor and the speaker of the House could assign oversight duties to committees, and a committee or the governor could request a program audit.

A county or municipality that established a program would have to notify the Attorney General's Office when implementation began, could provide information about the program's performance to the Attorney General's Office upon request, and could apply for funds under Code of Criminal Procedure, art. 102.0179.

Fees and funding. A program could charge a defendant a reasonable fee of no more than $500, and a fee for alcohol or controlled substance testing, counseling, and treatment, if they were required by the mediation agreement. Fees could be paid on a periodic basis and would have to be based on the defendant's ability to pay and used only for program purposes.

CSHB 2139 would amend Code of Criminal Procedure, subch. A to require a person convicted of a felony or misdemeanor property offense under Penal Code, title 7 to pay a $15 court cost, in addition to other costs the person might have to pay under Code of Criminal Procedure, ch. 102. If a sentence were imposed, the defendant received community supervision or deferred adjudication, or the court deferred final disposition, it would be considered a conviction.

The $15 court cost would be collected as would other fines or costs, and the funds would be subject to audit by the comptroller. The collecting officer would have to keep separate records of these funds and deposit them in the county or municipal treasury. The treasury custodian would have to keep records of the amount collected and send those funds to the comptroller on a quarterly basis. A quarterly report would have to be filed even if no funds were collected. The comptroller would deposit these funds in the general revenue fund to help fund pretrial victim-offender mediation programs, and the Legislature would be permitted to appropriate money from the account only to distribute to these programs.

A county or municipality could retain 40 percent of these collected funds to be used exclusively for the maintenance of the program. If the custodian complied with the recording and quarterly remittance provisions, the county or municipality could retain a collection fee of 10 percent of the difference between the amount of funds collected and the 40 percent the county or municipality was entitled to retain.

The bill would add Government Code, secs. 102.0216 and 103.0217, which would, respectively, recognize the implementation of the $15 and $500 or less costs required of defendants who participated in pretrial victim-offender mediation programs.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2009.

SUPPORTERS SAY:

By allowing the implementation of a pretrial victim-offender mediation program, CSHB 2139 would provide a form of restorative justice that would focus on meeting the needs of the victim and holding the offender accountable in a productive manner.

Mediation would provide a safe forum for a dialogue between the victim and offender. The victim would have the opportunity to ask any lingering questions, and both the victim and defendant would be able to share how the crime had impacted their lives.

The bill would provide the defendant the opportunity to make amends to the victim through an apology and compensation or community service.

Restorative justice programs will result in higher victim satisfaction, reduce recidivism, especially among young offenders, and are more cost effective than purely punitive measures.

It would be appropriate for the court to have more authority than the state attorney over the program because a court could be more impartial in its implementation.

OPPONENTS SAY:

The state attorney would not have enough of a role in determining who would be eligible for the program and its implementation. The possibility still exists that a defendant could be placed in the program over the

objection of the state attorney. CSHB 2139 would allow for some involvement of the state attorney, but not enough.

NOTES:

The committee substitute differs from the bill as filed by removing a provision that would have given the state attorney responsibility to identify eligible defendants and obtain the consent of the victim and defendant before proceeding with mediation; removing a provision that would have allowed a mediation program to require the staff and resources of juvenile probation departments and boards to help ensure the defendant's compliance; adding a provision specifying that a defendant whose case was reinstated would retain all of the rights he possessed before entering the program; requiring that a mediation agreement be ratified by the state attorney, rather than the court; and requiring that dismissal of the indictment or information be on the motion of the state attorney.