

- SUBJECT:** Establishing a victim-offender mediation program for criminal offenses
- COMMITTEE:** Criminal Jurisprudence — committee substitute recommended
- VOTE:** 6 ayes — Herrero, Moody, Canales, Hunter, Leach, Simpson
- 0 nays
- 1 absent — Shaheen
- WITNESSES:** For — Douglas Smith, Texas Criminal Justice Coalition; Marc Levin, Texas Public Policy Foundation Center for Effective Justice; (*Registered, but did not testify*: Seth Mitchell, Bexar County Commissioners Court; William Martin, Rice University’s Baker Institute; Lauren Rose, Texans Care for Children; Patricia Cummings, Texas Criminal Defense Lawyers Association; Rebecca Bernhardt, Texas Fair Defense Project; Paul Quinzi)
- Against — (*Registered, but did not testify*: Will Ramsay, 8th Judicial District Attorney’s Office; William Squires, Bexar County District Attorney; Jennifer Tharp, Comal County Criminal District Attorney; Stacey LaBarr, Guadalupe County Juvenile Services; Justin Wood, Harris County District Attorney’s Office; Brian Eppes, Tarrant County Criminal District Attorney’s Office)
- On — Lynne Wilkerson, Bexar County Juvenile Probation; D. Gene Valentini, Office of Dispute Resolution for Lubbock County; Shannon Edmonds, TDCAA; (*Registered, but did not testify*: Chelsea Buchholtz, Texas Juvenile Justice Department)
- BACKGROUND:** Currently, a victim-offender mediation program exists under Civil Practice and Remedies Code, ch. 152. However, if a county does not have a civil dispute resolution system that accepts criminal cases, the law authorizing the mediation program does not apply to criminal cases in that county.
- DIGEST:** **Pretrial victim-offender mediation program.** CSHB 3184 would amend

the Code of Criminal Procedure to create a pretrial victim-offender mediation program for individuals who had been arrested for or charged with a misdemeanor or state jail-felony and had not previously been convicted of a felony or a misdemeanor, other than a misdemeanor regulating traffic and punishable by fine only.

An established mediation program would require:

- designation of defendants who were eligible to participate in the program;
- the prosecutor to consent to the referral;
- the consent of the victim to be documented in the court record; and
- the defendant to enter a binding mediation agreement in which the defendant took responsibility for his or her actions.

The bill would specify that all communications made in the mediation program were confidential and generally could not be introduced into evidence, that the program might require other resources to assist the court in monitoring the defendant's compliance with the agreement reached, and that program mediators be subject to certain requirements.

The bill would require that an agreement be in writing, signed by the defendant, and ratified by the prosecutor. The bill would specify what a mediation agreement could require and how long it would remain valid.

CSHB 3184 would require that the case proceed through the regular criminal justice system if:

- the mediation did not result in an agreement;
- the defendant failed to fulfill the terms of the mediation agreement by the specified date; or
- the mediator determined that the victim or defendant no longer wanted to participate or that the mediation would be ineffective.

The bill would ensure that if a case was returned to the docket, the running of the statute of limitation would be tolled while the defendant was

enrolled in the program. If the defendant completed the mediation agreement and the court decided that dismissing the charges would be in the interests of justice, the bill would require the court to dismiss the charges. This determination would be final. If a defendant was not arrested or convicted of a crime for a year after successfully completing mediation, the court would enter an order of nondisclosure on the motion of the defendant.

The bill would allow for review of the mediation programs by the Legislature, the commissioners court of a county or a governing body of a municipality, or juvenile justice departments.

Costs of mediation program. The bill would require that a defendant pay \$15 court costs plus additional fees not to exceed \$500 and based on a defendant's ability to pay. The bill would require fees to be collected by the court clerk and would limit the money to being used only for the maintenance of the mediation program in the county or municipality.

Court requirements. The bill would allow the commissioners court of any county or governing body of a municipality that established a mediation program to:

- refer persons arrested for a misdemeanor or state- jail felony who had no previous convictions and had not yet been formally charged with an offense;
- adopt administrative rules and local rules of procedure as necessary to implement the program;
- approve additional program requirements as recommended by the attorney representing the state; and
- defer proceedings without accepting a plea of guilty or nolo contendere or entering an adjudication of guilt.

A court could set a criminal case for a pre-trial hearing and direct the defendant to appear before the court regardless of whether the defendant had been formally charged. The bill would add a motion to allow the defendant to enter a pretrial victim-offender mediation program under the

matters that could be determined at a pretrial hearing. The bill would allow a court to require a defendant who had not been formally charged, the defendant's attorney, and the state's attorney to appear before the court on a motion to allow the defendant to enter a pretrial victim-offender mediation program.

Juvenile victim-offender mediation. The bill would amend the Family Code to require the Texas Juvenile Justice Board to establish guidelines before December 1, 2015, permitting victim-offender mediation programs to be implemented and administered by juvenile boards. The bill would require that all victims to whom this applied be informed of their right to request victim-offender mediation.

Any participation in mediation by a child and by a victim would be voluntary, and if a child's case was forwarded to a prosecutor prior to judicial proceedings, the attorney would have to consent to the mediation. If an agreement was not reached or the child did not successfully complete the terms of the agreement, the child's case would proceed in the regular juvenile justice system. The bill would require that this section only apply to mediations that occur after January 1, 2016.

A court could order the sealing of certain records of the child if the child completed a mediation program. The bill would allow the court to order the sealing of records with or without a hearing. If the records were sealed, the bill would still allow a separate record to be maintained until the child's 17th birthday.

The bill would apply to a defendant who entered a mediation program regardless of whether the defendant committed the offense before, on, or after the bill's effective date.

This 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, 2015.