

## **BILL ANALYSIS**

C.S.H.B. 3184  
By: McClendon  
Criminal Jurisprudence  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Victim-offender mediation programs can serve an invaluable purpose for the community, as they allow offenders to take responsibility for their actions while giving the victims expedited relief for the harm they have suffered. Interested parties contend that restorative justice programs such as victim-offender mediation programs have proven to reduce recidivism and be cost-effective. C.S.H.B. 3184 seeks to facilitate the use of such programs.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Juvenile Justice Board in SECTION 5 of this bill.

### **ANALYSIS**

C.S.H.B. 3184 amends the Code of Criminal Procedure to authorize the commissioners court of a county or governing body of a municipality, in coordination with the office of the attorney representing the state in the county or municipality, to establish a pretrial victim-offender mediation program for persons who have been arrested for or charged with a misdemeanor or state jail felony property offense and have not previously been convicted of a felony or a misdemeanor, other than a misdemeanor regulating traffic and punishable by fine only. The bill authorizes a court that implements such a program to adopt administrative rules and local rules of procedure as necessary or appropriate to implement or operate the program. The bill authorizes a commissioners court of a county or governing body of a municipality that establishes such a program to allow for referral to the program of an arrested person who otherwise meets the program criteria but has not yet been formally charged with an offense, to adopt administrative rules and local rules of procedure as necessary or appropriate to implement or operate the program, and to approve additional program requirements as recommended by the attorney representing the state.

C.S.H.B. 3184 authorizes a court, regardless of whether the defendant has been formally charged, to set any criminal case for a pretrial hearing before it is set for trial upon its merits and to direct the defendant, the defendant's 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. The bill authorizes a court to require a defendant who has not been formally charged, the defendant's attorney of record, if any, 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 established under the bill's provisions.

C.S.H.B. 3184 sets out pretrial victim-offender mediation program requirements relating to the designation of defendants who are eligible to participate; the requisite consent from the attorney

representing the state; the requisite victim's consent; and the binding mediation agreement into which the defendant must enter. The bill sets out provisions relating to the confidentiality of all communications made in a pretrial victim-offender mediation program, the use of 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, and the authority of a court-appointed mediator who meets certain training requirements or any other appropriate person designated by the court to conduct a pretrial victim-offender mediation. The bill prohibits the attorney representing the state and the attorney representing the defendant in the criminal action from serving as a mediator in the defendant's pretrial victim-offender mediation program. The bill authorizes the court, if a defendant enters such a program, to defer the proceedings without accepting a plea of guilty or nolo contendere or entering an adjudication of guilt. The bill prohibits the court from requiring the defendant to admit guilt or enter a plea of guilty or nolo contendere to enter the program.

C.S.H.B. 3184 sets out the circumstances under which the case of a defendant participating in a pretrial victim-offender mediation program is required to be returned to the docket and proceed through the regular criminal justice system and specifies that the defendant retains all of the rights the defendant possessed before entering the mediation program if a case is returned to the docket and that the running of the period of the applicable statute of limitations is tolled while the defendant is enrolled in the program. The bill requires the court, after notice to the attorney representing the state and a hearing at which the court determines that a dismissal of any indictment or information charging the defendant with the commission of the offense is in the best interest of justice, to dismiss the criminal action against the defendant if the defendant successfully completes the mediation agreement as represented to the court by the attorney representing the state. The bill authorizes the court or the attorney representing the state to extend the initial compliance period granted to the defendant and establishes that a determination by the court regarding whether the mediation agreement has been successfully completed is final and may not be appealed. The bill requires the court, if the defendant is not arrested or convicted of a subsequent felony or misdemeanor other than a misdemeanor regulating traffic punishable by fine only on or before the first anniversary of the date the defendant successfully completed a mediation agreement, to enter, on the motion of the defendant, an order of nondisclosure as if the defendant had received a discharge and dismissal for a deferred adjudication community supervision period 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.

C.S.H.B. 3184 requires a mediation agreement to be in writing, 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. The bill 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. The bill limits the period during which a mediation agreement is valid to not 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, and establishes that a mediation agreement does not constitute a plea or legal admission of responsibility.

C.S.H.B. 3184 authorizes the lieutenant governor and the speaker of the house of representatives to assign to appropriate legislative committees interim duties relating to the study, review, and evaluation of pretrial victim-offender mediation programs and authorizes those committees to make recommendations to the legislature for appropriate policies to monitor, improve, or provide state resources for those programs. The bill 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.

C.S.H.B. 3184 requires a pretrial victim-offender mediation program to collect from a defendant in the program a reasonable program participation fee not to exceed \$500 and authorizes the program 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. The bill authorizes such fees 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. The bill requires the fees to be based on the defendant's ability to pay and used only for purposes specific to the program. The bill requires the office of an attorney representing the state that participates in a pretrial victim-offender mediation program to notify the public by posting information about the program on the office's website.

C.S.H.B. 3184 requires a defendant who participates in a pretrial victim-offender mediation program, on successful completion of the terms of the defendant's mediation agreement or on conviction, to pay as court costs \$15 plus the additional program participation fee and requires the court clerk to collect the imposed costs. The bill requires the clerk to keep a separate record of any money collected in this manner 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. The bill restricts use of the money in either fund to an expenditure by the applicable county or municipality for the maintenance of the pretrial victim-offender mediation program operated in the county or municipality, as applicable.

C.S.H.B. 3184 amends the Family Code to require the Texas Juvenile Justice Board, not later than December 1, 2015, to establish by rule guidelines permitting victim-offender mediation programs to be implemented and administered by juvenile boards. The bill requires each applicable victim in such a mediation program to be informed of the victim's right to request victim-offender mediation. The bill requires participation in a victim-offender mediation program by a child and by a victim to be voluntary and, if a child's case is forwarded to the office of the prosecuting attorney prior to judicial proceedings, requires the prosecuting attorney to consent to the mediation in which the child may participate under the program. The bill requires a child's case to proceed in accordance with the applicable provisions of the juvenile justice code if an agreement is not reached between the victim and the child or if the child does not successfully complete the terms of the agreement as determined by the juvenile court.

C.S.H.B. 3184 entitles such a victim, the guardian of such a victim, or a close relative of a deceased victim, to the right to request the victim-offender mediation. The bill authorizes a juvenile court, with certain exceptions, to order the sealing of records concerning a child alleged to have engaged in delinquent conduct or conduct indicating a need for supervision if the child successfully completed a victim-offender mediation program under the bill's provisions and authorizes the court to immediately order the sealing of the records without a hearing or to hold a hearing to determine whether to seal the records. The bill authorizes a prosecuting attorney or juvenile probation department, if the court so orders the sealing of a child's records, to maintain until the child's 17th birthday a separate record of the child's name and date of birth, the allegation against the child, and the date the child successfully completed the victim-offender mediation program. The bill requires the prosecuting attorney or juvenile probation department, as applicable, to send the record to the court as soon as practicable after the child's 17th birthday to be added to the child's other sealed records. The bill's provisions regarding a victim-offender mediation program in which the offender is a child apply only to a victim-offender mediation that occurs on or after January 1, 2016, regardless of whether the conduct that is the basis of the mediation occurs before, on, or after that date.

C.S.H.B. 3184 amends the Human Resources Code to require the Texas Juvenile Justice Department to monitor the success of victim-offender mediation programs in which the offender is a child.

C.S.H.B. 3184 amends the Government Code to make conforming changes.

**EFFECTIVE DATE**

On passage, or, if the bill does not receive the necessary vote, September 1, 2015.

**COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 3184 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

**INTRODUCED**

**HOUSE COMMITTEE SUBSTITUTE**

SECTION 1. Section 1, Article 28.01, Code of Criminal Procedure, is amended.

SECTION 1. Substantially the same as introduced version.

No equivalent provision.

SECTION 2. Chapter 28, Code of Criminal Procedure, is amended by adding Article 28.011 to read as follows:

Art. 28.011. MOTION FOR VICTIM-OFFENDER MEDIATION. The court may require a defendant who has not been formally charged, the defendant's attorney of record, if any, 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 established under Subchapter A-1, Chapter 56.

SECTION 2. Chapter 56, Code of Criminal Procedure, is amended by adding Subchapter A-1 to read as follows:

SECTION 3. Chapter 56, Code of Criminal Procedure, is amended by adding Subchapter A-1 to read as follows:

SUBCHAPTER A-1. PRETRIAL VICTIM-OFFENDER MEDIATION PROGRAM

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Art. 56.21. AUTHORITY TO ESTABLISH PROGRAM.

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Art. 56.22. PROGRAM. (a) A pretrial victim-offender mediation program established under Article 56.21 must require:

Art. 56.22. PROGRAM. (a) A pretrial victim-offender mediation program established under Article 56.21 must 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;

(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 consent of the victim to be obtained and documented in the record of the court by the attorney representing the state before the case may proceed to pretrial victim-

(2) the attorney representing the state to consent to the referral of a defendant's matter to mediation under 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 may proceed to pretrial victim-

offender mediation; and

(3) the defendant to enter into a binding mediation agreement in accordance with Article 56.23 that requires the defendant to take responsibility for the defendant's actions and addresses the specific circumstances of the defendant's actions, which may:

(A) include an apology by the defendant; or

(B) require the defendant to:

(i) pay restitution to the victim;

(ii) perform community service; or

(iii) both pay restitution and perform community service.

(b) All communications made in a pretrial victim-offender mediation program are confidential and may not be introduced into evidence except in an open court proceeding instituted to determine the meaning of a mediation agreement.

(c) A pretrial victim-offender mediation program may 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) A pretrial victim-offender mediation may be conducted by a court-appointed mediator who meets the training requirements provided by Sections 154.052(a) and (b), Civil Practice and Remedies Code, and has completed training in criminal justice mediation, or by any other appropriate person designated by the court. Neither the attorney representing the state nor the attorney representing the defendant in the criminal action may serve as a mediator in the defendant's pretrial victim-offender mediation program.

(e) If a defendant enters a pretrial victim-offender mediation program, the court may defer the proceedings without accepting a plea of guilty or nolo contendere or entering an adjudication of guilt. The court may not require the defendant to admit guilt or enter a plea of guilty or nolo contendere to enter the program.

(f) The case must be returned to the docket and proceed through the regular criminal justice system if:

(1) a pretrial victim-offender mediation does not result in a mediation agreement;

(2) the defendant fails to fulfill the terms of the mediation agreement successfully by the

offender mediation; and

(4) the defendant to enter into a binding mediation agreement in accordance with Article 56.23 that requires the defendant to take responsibility for the defendant's actions and addresses the specific circumstances of the defendant's actions, which may:

(A) include an apology by the defendant; or

(B) require the defendant to:

(i) pay restitution to the victim;

(ii) perform community service; or

(iii) both pay restitution and perform community service.

(b) All communications made in a pretrial victim-offender mediation program are confidential and may not be introduced into evidence except in an open court proceeding instituted to determine the meaning of a mediation agreement.

(c) A pretrial victim-offender mediation program may 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) A pretrial victim-offender mediation may be conducted by a court-appointed mediator who meets the training requirements provided by Sections 154.052(a) and (b), Civil Practice and Remedies Code, and has completed training in criminal justice mediation, or by any other appropriate person designated by the court. Neither the attorney representing the state nor the attorney representing the defendant in the criminal action may serve as a mediator in the defendant's pretrial victim-offender mediation program.

(e) If a defendant enters a pretrial victim-offender mediation program, the court may defer the proceedings without accepting a plea of guilty or nolo contendere or entering an adjudication of guilt. The court may not require the defendant to admit guilt or enter a plea of guilty or nolo contendere to enter the program.

(f) The case must be returned to the docket and proceed through the regular criminal justice system if:

(1) a pretrial victim-offender mediation does not result in a mediation agreement;

(2) the defendant fails to fulfill the terms of the mediation agreement successfully by the

date specified in the mediation agreement;  
or  
(3) the mediator determines, based on the mediator's training and experience, that:  
(A) the victim or defendant no longer wants to participate or cooperate; or  
(B) the mediation will be ineffective.  
(g) 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. Notwithstanding any other law, for purposes of determining the duration and expiration of an applicable statute of limitation under Chapter 12, the running of the period of limitation is tolled while the defendant is enrolled in a program under this subchapter.  
(h) The court on the motion of the attorney representing the state shall, and on the motion of the attorney representing the defendant may, dismiss any indictment or information charging the defendant with the commission of the offense, if the defendant:  
(1) successfully completes the mediation agreement as represented to the court by the attorney representing the state; and  
(2) either:  
(A) pays all court costs; or  
(B) enters a payment plan approved by the court or the attorney representing the state for such payment.

(i) The court or the attorney representing the state may extend the initial compliance period granted to the defendant.  
(j) A determination by the court regarding whether the mediation agreement has been successfully completed is final and may not be appealed.  
(k) 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, the court shall enter an order of nondisclosure under Section 411.081, Government Code, as if the defendant had received a discharge and dismissal under Section 5(c), Article 42.12, with respect to all records and files related to the defendant's arrest for the offense for which the defendant entered the pretrial

date specified in the mediation agreement;  
or  
(3) the mediator determines, based on the mediator's training and experience, that:  
(A) the victim or defendant no longer wants to participate or cooperate; or  
(B) the mediation will be ineffective.  
(g) 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. Notwithstanding any other law, for purposes of determining the duration and expiration of an applicable statute of limitation under Chapter 12, the running of the period of limitation is tolled while the defendant is enrolled in a program under this subchapter.

(h) If the defendant successfully completes the mediation agreement as represented to the court by the attorney representing the state, after notice to the attorney representing the state and a hearing at which the court determines that a dismissal of any indictment or information charging the defendant with the commission of the offense is in the best interest of justice, the court shall dismiss the criminal action against the defendant.  
(i) The court or the attorney representing the state may extend the initial compliance period granted to the defendant.  
(j) A determination by the court regarding whether the mediation agreement has been successfully completed is final and may not be appealed.  
(k) 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, the court shall enter an order of nondisclosure under Section 411.081, Government Code, as if the defendant had received a discharge and dismissal under Section 5(c), Article 42.12, 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.

Art. 56.24. LEGISLATIVE REVIEW.

Art. 56.25. LOCAL REVIEW.

Art. 56.26. FEES.

Art. 56.27. NOTICE.

SECTION 3. Subchapter A, Chapter 102, Code of Criminal Procedure, is amended.

SECTION 4. Chapter 54, Family Code, is amended by adding Section 54.035 to read as follows:

Sec. 54.035. VICTIM-OFFENDER MEDIATION.

(a) This section applies only to a child whose delinquent conduct or conduct indicating a need for supervision:

(1) causes a victim to suffer a pecuniary loss; and

(2) does not cause the victim or another to suffer physical injury or harm.

(b) The Texas Juvenile Justice Board by rule shall establish guidelines for victim-offender mediation programs to be administered by juvenile boards. Each juvenile board shall implement and administer a victim-offender mediation program in accordance with the guidelines adopted by the Texas Juvenile Justice Board. A juvenile court is required to inform a victim to whom this section applies of the victim's right to request victim-offender mediation.

(c) Under a victim-offender mediation program, a victim to whom this section applies may request mediation with the child who is alleged to have engaged in the delinquent conduct or conduct indicating a need for supervision. If the child agrees to participate in the victim-offender mediation and successfully completes the terms of any agreement reached during the mediation, the child is not subject to a disposition hearing under Section 54.04.

(d) Any agreement reached between the victim and the child during victim-offender mediation is binding and enforceable by the juvenile court. If an agreement is not reached between the victim and the child or

victim-offender mediation program.

Art. 56.23. MEDIATION AGREEMENT.

Art. 56.24. LEGISLATIVE REVIEW.

Art. 56.25. LOCAL REVIEW.

Art. 56.26. FEES.

Art. 56.27. NOTICE.

SECTION 4. Same as introduced version.

SECTION 5. Chapter 54, Family Code, is amended by adding Section 54.035 to read as follows:

Sec. 54.035. VICTIM-OFFENDER MEDIATION.

(a) The Texas Juvenile Justice Board by rule shall establish guidelines permitting victim-offender mediation programs to be implemented and administered by juvenile boards.

(b) In a mediation program authorized under this section, each victim to whom this section applies must be informed of the victim's right to request victim-offender mediation.

(c) Participation in a victim-offender mediation program under this section by a child and by a victim must be voluntary. If a child's case is forwarded to the office of the prosecuting attorney under Section 53.01, the prosecuting attorney must consent to the mediation in which the child may participate under the program.

(d) If an agreement is not reached between the victim and the child or if the child does

if the child does not successfully complete the terms of the agreement, as determined by the juvenile court, the child is subject to a disposition hearing under Section 54.04.

SECTION 5. Section 57.002(a), Family Code, is amended.

No equivalent provision.

SECTION 6. Subchapter B, Chapter 102, Government Code, is amended.

SECTION 7. Subchapter A, Chapter 221, Human Resources Code, is amended by adding Section 221.013 to read as follows:

Sec. 221.013. RESTITUTION MONITORING. The department shall monitor the success of juvenile probation departments in collecting restitution from a child who:

(1) has been adjudicated as having engaged in delinquent conduct or conduct indicating a need for supervision; and

(2) is required by a juvenile court to make restitution to the victim of the child's

not successfully complete the terms of the agreement, as determined by the juvenile court, the child's case shall proceed in accordance with the applicable provisions of this title.

SECTION 6. Substantially the same as introduced version.

SECTION 7. Section 58.003, Family Code, is amended by adding Subsections (c-9) and (c-10) to read as follows:

(c-9) Notwithstanding Subsections (a) and (c) and subject to Subsection (b), a juvenile court may order the sealing of records concerning a child alleged to have engaged in delinquent conduct or conduct indicating a need for supervision if the child successfully completed a victim-offender mediation program under Section 54.035.

The court may:

(1) immediately order the sealing of the records without a hearing; or

(2) hold a hearing to determine whether to seal the records.

(c-10) If the court orders the sealing of a child's records under Subsection (c-9), a prosecuting attorney or juvenile probation department may maintain until the child's 17th birthday a separate record of the child's name and date of birth, the allegation against the child, and the date the child successfully completed the victim-offender mediation program. The prosecuting attorney or juvenile probation department, as applicable, shall send the record to the court as soon as practicable after the child's 17th birthday to be added to the child's other sealed records.

SECTION 8. Same as introduced version.

SECTION 9. Subchapter A, Chapter 221, Human Resources Code, is amended by adding Section 221.013 to read as follows:

Sec. 221.013. MEDIATION MONITORING. The department shall monitor the success of victim-offender mediation programs established under Section 54.035, Family Code.



conduct.

SECTION 8. (a) Subchapter A-1, Chapter 56, Code of Criminal Procedure, as added by this Act, 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) Article 102.0179, Code of Criminal Procedure, and Section 102.0215, Government Code, as added by this Act, apply only to an offense committed on or after the effective date of this Act. 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. 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 9. (a) Not later than December 1, 2015, the Texas Juvenile Justice Board shall establish guidelines for victim-offender mediation programs as required by Section 54.035, Family Code, as added by this Act.

(b) Section 54.035, Family Code, as added by this Act, applies only to a victim-offender mediation under that section that occurs on or after January 1, 2016, regardless of whether the conduct that is the basis of the mediation occurs before, on, or after that date.

SECTION 10. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2015.

SECTION 10. Same as introduced version.

SECTION 11. Same as introduced version.

SECTION 12. Same as introduced version.