

**SUBJECT:** Establishing local pretrial victim-offender mediation programs

**COMMITTEE:** Criminal Jurisprudence — committee substitute recommended

**VOTE:** 5 ayes — Herrero, Burnam, Canales, Leach, Moody  
0 nays  
3 absent — Hughes, Schaefer, Toth  
1 present not voting — Carter

**WITNESSES:** For — Travis Leete, The Texas Criminal Justice Coalition; Marc Levin, Texas Public Policy Foundation Center for Effective Justice; (*Registered, but did not testify*: Yannis Banks, Texas NAACP; Rebecca Bernhardt, Texas Defender Service; John Dahill, Texas Conference of Urban Counties; Kristin Etter, Texas Criminal Defense Lawyers Association; Meredith Kincaid, American Civil Liberties Union of Texas; Andrea Marsh, Texas Fair Defense Project; Mark Mendez, Tarrant County; Kandice Sanaie, Texas Association of Business)  
  
Against — (*Registered, but did not testify*: Curtis Wilson)  
  
On — Marilyn Armour, University of Texas at Austin; Shannon Edmonds, Texas District and County Attorneys Association; (*Registered, but did not testify*: D. Gene Valentini, Lubbock County, Office of Dispute Resolution)

**DIGEST:** CSHB 2139 would amend the Code of Criminal Procedure, art. 28.01, sec. 1, to allow a court to set any criminal case for a pre-trial hearing and direct the defendant and his or her attorney, along with the prosecutor, to appear before the court regardless of whether the defendant had formally been charged.  
  
The bill would add Code of Criminal Procedure, ch. 56, subch. A-1 to allow a county commissioner’s court or a municipality’s governing body to establish a pretrial victim-offender mediation program.  
  
**Pretrial victim-offender mediation program requirements.** A person eligible under the program would be:

- a person arrested for or charged with a misdemeanor property offense under Penal Code, title 7; and
- a person who had no previous felony or misdemeanor convictions, other than a misdemeanor traffic violation punishable by only a fine.

A program would require the designation of eligible individual defendants based on state and local standards and the prior consent of the victim and the prosecutor. The program also would require the defendant to enter a binding mediation agreement that included an apology to the victim and restitution and/or community service.

If a defendant entered a program, the court could defer proceedings without accepting a plea of guilty, nolo contendere, or entering a guilty verdict. The court could not require the defendant to admit guilt to enter the program. The prosecutor or the court could extend the initial compliance period granted to the defendant. 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 he or she possessed before entering the program.

Program communications would be confidential and could not be introduced into evidence except in an open court proceeding instituted to determine the meaning of a mediation 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.

**Notice.** The prosecutor participating in the program would notify the public by posting information about the programs on the office's website.

**Mediation agreement requirements.** A mediation agreement would have to be signed by the defendant and ratified by the prosecutor. 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 prosecutor 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.

**Legislative and local review.** The lieutenant governor and the speaker of the House could assign oversight duties to committees relating to the study, review, and evaluation of these programs. The committees could make recommendations to the Legislature for appropriate policies to monitor, improve, or provide state resources for those programs.

The commissioners court of a local government could request a management, operations, or financial or accounting audit of the program.

**Fees and funding.** A program would charge a defendant a reasonable fee of no more than \$500. The program could collect 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 defendant who participated in the program to pay court costs of \$15 plus an additional program participation fee of \$500 or less.

The court clerk would collect the costs, keep records, and pay the local treasurer for deposit in the county or municipal pretrial victim-offender mediation program fund, which would be used exclusively for the maintenance of the program.

Government Code, sec. 102.0216 would be added to recognize the implementation of the new court fees required of defendants participating 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, 2013.

**SUPPORTERS  
SAY:**

CSHB 167 would create a pretrial victim-offender mediation program designed to provide a form of restorative justice that would focus on meeting the needs of the victim while holding the offender accountable in a productive manner. Restorative justice programs would result in greater victim satisfaction and reduce recidivism, especially among young offenders. In addition, they are more cost effective than purely punitive measures.

The bill would provide the defendant the opportunity to make amends to the victim through an apology and compensation and/or community service. Mediation would provide a safe forum for dialogue between the victim and offender. The victim would have the opportunity to ask lingering questions, and the victim and defendant both would be able to share how the crime had impacted their lives.

**OPPONENTS  
SAY:**

While a pretrial victim-offender mediation program might be beneficial, CSHB 167 could create a burden on smaller counties participating in the program, especially considering the mediation agreement could last up to a year.

CSHB 167 also could be problematic by requiring a defendant to enter a binding mediation agreement that included an apology to the victim and restitution and/or community service. While the bill provides that the court could not require the defendant to admit guilt to enter the program, an apology could be construed as an admission of guilt.

The bill also would be problematic in that it could give the court authority to order someone to appear in court who had not been formally charged.