

SUBJECT: Authorizing local victim-offender mediation programs for certain crimes

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 7 ayes — Moody, Hunter, Canales, Gervin-Hawkins, Hefner, Lang,
Wilson

0 nays

WITNESSES: For — Haley Stevens, Texas Criminal Justice Coalition; Michael Haugen,
Texas Public Policy Foundation; (*Registered, but did not testify*: Katija
Gruene, Green Party of Texas; Mark Mendez, Tarrant County; Lauren
Rose, Texans Care for Children; Bee Moorhead, Texas Impact; Jennifer
Allmon, The Texas Catholic Conference of Bishops; Lauren Johnson)

Against — D. Gene Valentini, Lubbock County

On — Kaci Singer, Texas Juvenile Justice Department; Marilyn Armour,
University of Texas

DIGEST: CSHB 72 would give counties and cities authorization to establish, along
with the local prosecutor, victim-offender mediation programs.

The programs would be for those who have been arrested for or charged
with misdemeanor property offenses under Title 7 of the Penal Code and
have no previous criminal convictions, except for fine-only traffic
offenses. Cities and counties could allow referrals to the program of those
who had not been formally charged with an offense and could approve
additional requirements as recommended by the prosecutor.

Programs. The victim-offender mediation programs would have to
require:

- designation of those eligible to participate by the standards in the
bill and those developed locally;
- prosecutors to consent to the referral of participants;

- consent of the victim documented in a court record; and
- defendants to enter binding mediation agreements in which they took responsibility for their actions, which could include an apology, restitution, and community service.

If a defendant entered a pretrial victim-offender mediation program, courts could defer proceedings without entering a plea or adjudication of guilt. Courts could not require defendants to admit guilt or plead guilty or no contest to enter the program.

Programs could use resources from local pretrial services and probation departments to help courts or prosecutors monitor compliance with an agreement.

Cases would have to be returned to the regular criminal justice system if:

- the mediation did not result in an agreement;
- defendants failed to fulfill the terms of agreements 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.

If a defendant successfully completed a program, courts would be required to dismiss the case, if certain conditions were met. Courts would have to notify the prosecutor and hold a hearing and determine that a dismissal of the charge was in the best interest of justice. The determination could not be appealed.

If a defendant was not arrested for or convicted of a new offense, except for a fine-only traffic offense, within a year of successfully completing a mediation agreement, courts would have to order nondisclosure of the criminal records in the case.

All communications made in the program would be confidential and could not be introduced into evidence except in a court proceeding to determine the meaning of a mediation agreement.

Mediation agreements. CSHB 72 would set parameters on mediation agreements, including requiring ratification by the prosecutor, specifying services that programs could include, and limiting them to one year from when they were ratified, unless an extension was agreed upon by the court and the prosecutor. Program mediators could be subject to certain training requirements.

Fees. The bill would allow the collection from defendants of participation fees of up to \$500 and other fees to cover programs or testing. The fees would have to be based on defendants' ability to pay and used only for the program.

Defendants also would pay court costs of \$15. Court clerks would have to deposit the funds in a victim-offender mediation program fund, and cities and counties could use the funds only to maintain their programs.

Juvenile programs. The Texas Juvenile Justice Board would have to establish guidelines by December 1, 2017, for victim-offender mediation programs for local juvenile probation departments. Victims would have a right to request victim-offender mediations. Participation by juveniles and victims would have to be voluntary and, if a case had been forwarded to a prosecutor, would require prosecutor approval. If a mediation agreement was not reached or not successfully completed, a case would proceed in the regular juvenile justice system. TJJD would be required to monitor the success of victim-offender mediation programs.

Juvenile courts could order sealing of a juvenile's records after completion of victim-offender mediation. If records were sealed, prosecutors and juvenile probation departments could maintain a separate record of some information about the case until the youth turned 17 years old.

Other provisions. The bill would allow for review of the programs by legislative committees as part of their interim duties and would allow cities and counties to request management, financial and other reviews.

The requirements of CSHB 72 would apply to defendants who entered a

program established under the bill regardless of when an offense took place. Court costs under the bill would apply only to offenses committed on or after the bill's effective date of September 1, 2017.

**SUPPORTERS
SAY:**

CSHB 72 would create a pretrial victim-offender mediation program designed to provide a form of restorative justice focused on meeting the needs of victims while holding accountable first-time, low-level offenders who commit property offenses such as criminal mischief or graffiti. Victim-offender mediation can result in greater victim satisfaction with the criminal justice process and reduce recidivism, especially among young offenders. Mediation would provide a safe forum for dialogue between the victim and offender, and defendants can make amends to the victim through an apology, compensation, and community service. In addition, the programs are more cost effective than purely punitive measures, saving court resources, incarceration costs, and the expenses associated with the defendant committing additional offenses.

CSHB 72 would establish a framework for the agreements but would not require any county or city to establish them. A framework in the criminal statutes is needed to move these programs from the civil side into the criminal justice toolbox. The goal of the criminal justice system is to seek justice, and in some cases this might be done through a victim-offender mediation program. The courts and prosecutors would be involved from start to finish, making the programs another tool for the criminal justice system, not a substitute for it.

The framework in CSHB 72 would be broad enough to allow counties and cities to develop programs to fit their own circumstances and needs while ensuring that all programs met minimum standards. The bill would limit the programs to a one-time chance for low-level, first-time property crimes such as criminal mischief or graffiti to ensure they were used in appropriate cases.

**OPPONENTS
SAY:**

Mediation is a process used in civil litigation that generally is not well-suited as a substitute for the criminal justice system. While victim-offender mediation programs can have merit in some cases, they should

operate in addition to, rather than instead of, the criminal justice process. When a crime is committed, the criminal justice system's primary duty is to seek justice for the broader interest of the community and the state, along with justice for individual victims. There are tools currently available in the criminal justice system to handle low-level, first-time offenders, including pre-trial diversion and deferred adjudication.

**OTHER
OPPONENTS
SAY:**

CSHB 72 is unnecessary because victim-offender mediation programs currently operate throughout the state under current civil and criminal laws. These programs can be flexible to meet the needs and circumstances of the communities where they operate, something that could be negatively impacted by the uniform framework the bill would establish.

NOTES:

A companion bill, SB 857, was referred to the Senate Criminal Justice Committee on February 27.