

BILL ANALYSIS

C.S.H.B. 2139
By: McClendon
Corrections
Committee Report (Substituted)

BACKGROUND AND PURPOSE

While current law contains provisions for diverting first-time minor offenders from trial and incarceration to alternative programs, these programs generally are administered at the discretion of prosecutors and judges. Current law does not provide for official input from victims in these proceedings. It is necessary to allow victims of certain misdemeanors and state jail felonies to take an active role in the rehabilitation of a defendant who wishes to take responsibility for the defendant's actions.

C.S.H.B. 2139 establishes a pretrial victim-offender mediation program.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 2139 amends the Code of Criminal Procedure to authorize the commissioners court of a county or the governing body of a 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 offense against property and who have not previously been convicted of a felony or a misdemeanor, other than a misdemeanor regulating traffic and punishable by fine only.

C.S.H.B. 2139 requires the program to require the identification of defendants who are eligible to participate in the program, including a consideration of whether the defendant meets any additional locally developed eligibility criteria; the consent of the victim and the defendant to be obtained before an eligible defendant may proceed with pretrial victim-offender mediation; and the defendant to enter into a binding mediation agreement. The bill requires the mediation agreement to include an apology by the defendant and to require the defendant to pay restitution to the victim or perform community service. The bill provides that all communications made in a program are confidential and may not be introduced into evidence except in a proceeding involving a question concerning the meaning of a mediation agreement.

C.S.H.B. 2139 authorizes a program to require the staff and other resources of pretrial services departments and community supervision correction departments to assist in monitoring the defendant's compliance with a mediation agreement reached through the program. The bill authorizes pretrial victim-offender mediations to be conducted by any person designated by the court, other than the attorney representing the state or an attorney representing the defendant in the criminal action, regardless of whether the designated person is a trained mediator. The bill authorizes the court conducting the proceedings, with the consent of the attorney representing the state, to defer the proceedings without accepting a plea of guilty or nolo contendere or entering an adjudication of guilt if a defendant enters a pretrial victim-offender mediation program.

C.S.H.B. 2139 requires a case to be returned to the docket and to proceed through the regular

criminal justice system if a pretrial victim-mediation does not result in a mediation agreement or if the defendant fails to successfully fulfill the terms of the mediation agreement by the date specified in the agreement. The bill specifies that the defendant retains all of the rights that the defendant possessed before entering the program if a case is returned to the docket. The bill requires the court, on the motion of the attorney representing the state, to dismiss the indictment or information charging the defendant with the commission of the offense if the defendant successfully completes the mediation agreement as determined by the attorney representing the state and either pays all court costs or enters a payment plan approved by the court or the attorney representing the state for such payment.

C.S.H.B. 2139 provides that a determination by the court regarding whether the mediation agreement has been successfully completed is final and prohibits such a determination from being appealed, although the attorney for the state or the court is authorized to extend the period for compliance. The bill requires the court to enter an order of nondisclosure of criminal history record information if the defendant is not arrested or convicted of a subsequent felony or misdemeanor other than a misdemeanor regulating traffic and punishable by a fine only on or before the first anniversary of the date the defendant successfully completed a mediation agreement under the pretrial victim-offender mediation program, with respect to all records and files related to the defendant's arrest for the offense for which the defendant entered the program. The bill provides that the order of nondisclosure is as if the defendant had received a discharge and dismissal on the expiration of a deferred adjudication community supervision period.

C.S.H.B. 2139 requires a mediation agreement to be signed by the defendant and the victim and to be ratified by the attorney representing the state in a request for a court order documenting and approving the mediation agreement. The bill authorizes the 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 provides that a mediation agreement is not valid for more than one year after the date on which the agreement is ratified unless the court and the attorney representing the state approve the extension of the agreement and that a mediation agreement resulting from a pretrial victim-offender mediation program does not constitute a plea or legal admission of responsibility.

C.S.H.B. 2139 authorizes the lieutenant governor and the speaker of the house of representatives to assign duties relating to the oversight of pretrial victim-offender mediation programs to appropriate legislative committees. The bill authorizes a legislative committee or the governor to request the state auditor to perform a management, operations, or financial or accounting audit of a pretrial victim-offender mediation program. The bill requires a county or municipality that establishes a pretrial victim-offender mediation program to notify the attorney general's office when the county or municipality begins implementation of the program, and authorizes the county or municipality to provide information regarding the performance of the program to the attorney general's office on request and to apply for funds for the program out of the pretrial victim-offender mediation program account in the general revenue fund.

C.S.H.B. 2139 authorizes a pretrial victim-offender mediation program to collect from a defendant in the program a reasonable program fee not to exceed \$500 and an alcohol or controlled substance testing, counseling, and treatment fee in an amount necessary to cover the costs of such testing, counseling, or treatment if required by the mediation agreement. The bill authorizes the fees collected 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 program and requires the fees to be based on the defendant's ability to pay and to be used only for purposes specific to the program.

C.S.H.B. 2139 requires a person to pay, in addition to other costs on conviction, a \$15 court cost on conviction of a felony or misdemeanor offense against property. The bill specifies that a person is considered to have been convicted if a sentence is imposed, if the defendant receives

community supervision or deferred adjudication, or if a court defers final disposition of the case. The bill sets forth provisions regarding the collection of such court costs, the deposit of the funds from such court costs in a county or municipal treasury, as appropriate, and the submission of the funds to the comptroller of public accounts. The bill entitles a county or municipality that has established a pretrial victim-offender mediation program to retain 40 percent of the funds collected from costs imposed under the program, to be used exclusively for the maintenance of such a program operated in the county or municipality and, if the county or municipal treasury keeps records of the funds and submits the funds to the comptroller, to retain as a collection fee 10 percent of an amount equal to the difference between the amount of funds collected from costs of the program by an officer of a county or municipality and any amount the county or municipality is entitled to retain. The bill requires the custodian of a county or municipal treasury to file the report required for the quarter in the regular manner and to state that no funds were collected, if no funds due as costs under the program are deposited in the county or municipal treasury in a calendar quarter. The bill requires the comptroller to deposit the funds received under these provisions to the credit of the pretrial victim-offender mediation program account in the general revenue fund to help fund the programs. The bill requires the legislature to appropriate money from the account solely to the attorney general's office for distribution to pretrial victim-offender mediation programs that apply for the money. The bill makes the money collected under these provisions subject to audit by the comptroller.

C.S.H.B. 2139 amends the Government Code to make conforming changes regarding the \$15 and \$500 court costs involved in pretrial victim-offender mediation programs.

EFFECTIVE DATE

On passage, or, if the act does not receive the necessary vote, the act takes effect September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 2139 differs from the original, in the provision in the original requiring the attorney representing the state to identify defendants who are eligible to participate in a pretrial victim-offender mediation program and to obtain the consent of the victim and the defendant before an eligible defendant may proceed with pretrial victim-offender mediation, by removing the specification that the attorney representing the state perform those actions.

C.S.H.B. 2139 differs from the original by removing the authority of a mediation program to require the staff and other resources of juvenile probation departments and juvenile boards to assist in monitoring the defendant's compliance with a mediation agreement reached through the program. The substitute adds a provision not in the original that specifies that the defendant retains all of the rights that the defendant possessed before entering the program if a case is returned to the docket.

C.S.H.B. 2139 differs from the original by requiring the court to dismiss the indictment or information charging the defendant with the commission of the offense if the defendant successfully completes the mediation agreement as determined by the attorney representing the state, rather than by the court as in the original. The substitute adds language specifying that such a dismissal is required on the motion of the attorney representing the state. The substitute differs from the original by requiring a mediation agreement to be ratified by the attorney representing the state in a request for a court order documenting and approving the mediation agreement rather than by the attorney representing the state or the court as in the original.

C.S.H.B. 2139 adds a provision not in the original authorizing a county or municipality that establishes a pretrial victim-offender mediation program to apply for funds for the program out of the pretrial victim-offender mediation program account in the general revenue fund.