

## **BILL ANALYSIS**

C.S.H.B. 2019  
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Criminal Jurisprudence  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Observers note that providing an option for mediation between certain misdemeanor offenders and victims would allow offenders to take responsibility for their actions and would provide victims and the state an expedited means of obtaining justice. Interested parties assert that legislation is needed to establish a pretrial victim-offender mediation program at the county and municipal levels, in which, among other requirements, the victim must give consent to the mediation and a participating defendant must submit an apology to the victim and pay restitution to the victim or perform community service. C.S.H.B. 2019 seeks to provide for the establishment, operation, and funding of pretrial victim-offender mediation programs.

### **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. 2019 amends the Code of Criminal Procedure to authorize the commissioners court of a county or 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 property offense in any court in Texas other than a district court 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 county court, statutory county court, municipal court, or justice court that implements such a program to adopt administrative rules as necessary or convenient to implement or operate the program, including additional criteria related to a defendant's eligibility to enter the program. The bill authorizes the commissioners court of a county or governing body of a municipality that establishes a pretrial victim-offender mediation program to allow for the referral to the program of arrested persons who have not yet been indicted or otherwise formally charged and to adopt administrative procedures as necessary to implement and operate the program, including additional program requirements that have been approved by the attorney representing the state in the county or municipality, as applicable.

C.S.H.B. 2019 establishes that a pretrial victim-offender mediation program established under the bill's provisions is coordinated by the attorney representing the state. The bill requires a pretrial victim-offender mediation program to require the attorney representing the state to identify defendants who are eligible to participate in the program, including a consideration by the attorney representing the state of whether the defendant meets any additional locally developed eligibility criteria and, to the extent feasible, provide each victim of a misdemeanor property offense information and literature indicating that a victim-offender mediation program may be available in the criminal case if certain eligibility criteria are met by the defendant. The bill requires a pretrial victim-offender mediation program to require the consent of the victim, the defendant, and the attorney representing the state to be obtained before the case may proceed to pretrial victim-offender mediation and to require the defendant to enter into a binding mediation agreement that includes an apology by the defendant and requires the defendant to pay

restitution to the victim or perform community service. The bill establishes that all communications made in a pretrial victim-offender mediation program are confidential and prohibits such communications from being introduced into evidence except in a proceeding involving a question concerning the meaning of a mediation agreement. The bill authorizes a mediation 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.

C.S.H.B. 2019 authorizes a pretrial victim-offender mediation program to be conducted by a court-appointed mediator who meets the training requirements provided by statutory provisions governing qualifications of an impartial third party or by any other appropriate person designated by the court. The bill prohibits the attorney representing the state and the attorney representing the defendant in the criminal action from serving as a mediator under the mediation program. The bill authorizes the court to defer the proceedings without accepting a plea of guilty or nolo contendere or entering an adjudication of guilt if a defendant enters a mediation program. 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. 2019 requires a case to be returned to the docket and proceed through the regular criminal justice system if a pretrial victim-offender 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 mediation agreement. The bill provides that a defendant retains all of the rights that the defendant possessed before entering the mediation program if the case is returned to the docket. The bill establishes that, for purposes of determining the duration and expiration of an applicable statute of limitation on an offense, the running of the period of limitation is tolled while the defendant is enrolled in a mediation program.

C.S.H.B. 2019 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. The bill authorizes the attorney representing the state or the court to extend the initial compliance period granted to the defendant. The bill makes final a determination by the court regarding whether the mediation agreement has been successfully completed and prohibits any appeal.

C.S.H.B. 2019 requires a court on the defendant's motion, 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, to enter an order of nondisclosure relating to criminal history record information as if the defendant had received a discharge and dismissal for deferred adjudication community supervision with respect to all records and files related to the defendant's arrest for the offense for which the defendant entered the mediation program.

C.S.H.B. 2019 authorizes the court on its own motion, and requires the court on the motion of either party, to hold a pretrial hearing to determine whether to allow an eligible defendant to enter a mediation program. The bill requires the court to conduct the hearing in accordance with state law and the Texas Rules of Evidence. The bill authorizes either party to present at a pretrial hearing any evidence relevant to the defendant's eligibility to participate in a mediation program and other additional locally developed eligibility criteria to enter a mediation program.

C.S.H.B. 2019 requires a mediation agreement to be signed by the defendant and the victim and ratified by the attorney representing the state in a request for a court order documenting and approving the agreement. 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 provides that a mediation agreement does not constitute a plea or legal admission of responsibility and 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.

C.S.H.B. 2019 authorizes the lieutenant governor and the speaker of the house of representatives to assign to appropriate legislative committees duties relating to the oversight of pretrial victim-offender mediation programs. 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 mediation program. The bill authorizes a mediation program to collect from a participating defendant a reasonable program participation 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 those services if required by the agreement. The bill authorizes the fees collected by a mediation program to be paid on a periodic basis or on a deferred payment schedule at the discretion of the judge, magistrate, or program director and requires the fees to be based on the defendant's ability to pay and used only for purposes specific to the program.

C.S.H.B. 2019 sets a \$15 court cost, in addition to the program participation fee, to be collected from a defendant who participates and successfully completes a pretrial victim-offender mediation program, sets forth procedures for the collection and deposit of such costs into a fund to be known as the county pretrial victim-offender mediation program fund or a fund to be known as the municipal pretrial victim-offender mediation program fund, as appropriate. The bill requires a county or municipality that collects such court costs to use the money in a fund exclusively for the maintenance of the mediation program operated in the county or municipality. The bill makes a conforming change in provisions authorizing a court to set a criminal case for a pretrial hearing to determine certain matters.

C.S.H.B. 2019 amends the Government Code to make conforming changes relating to the additional court costs collected to help fund pretrial victim-offender mediation programs.

#### **EFFECTIVE DATE**

On passage, or, if the bill does not receive the necessary vote, September 1, 2011.

#### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.H.B. 2019 contains provisions not included in the original authorizing the commissioners court of a county or governing body of a municipality that establishes a pretrial victim-offender mediation program to allow for the referral to the program of arrested persons who have not yet been indicted or otherwise formally charged and to adopt administrative procedures as necessary to implement and operate the program.

C.S.H.B. 2019 contains a provision not included in the original establishing that a pretrial victim-offender mediation program is coordinated by the attorney representing the state.

C.S.H.B. 2019 differs from the original by requiring a pretrial victim-offender mediation program to require the attorney representing the state to identify defendants who are eligible to participate in the program, including a consideration by the attorney representing the state of whether the defendant meets any additional locally developed eligibility criteria, whereas the original, in that requirement, does not specify the entity that is required to make that identification or consideration. The substitute contains a provision not included in the original requiring a pretrial victim-offender mediation program to require the attorney representing the state, to the extent feasible, to provide each victim of a misdemeanor property offense information and literature indicating that a victim-offender mediation program may be available in the criminal case if certain eligibility criteria are met by the defendant. The substitute differs from the original by requiring a pretrial victim-offender mediation program to require the

consent of the victim, the defendant, and the attorney representing the state to be obtained before the case may proceed to pretrial victim-offender mediation, whereas the original requires the consent of only the victim to be obtained before proceeding to mediation.

C.S.H.B. 2019 omits a provision included in the original authorizing 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 and meets certain payment requirements on the motion of the attorney representing the defendant.

C.S.H.B. 2019 differs from the original in nonsubstantive ways.