

By: McClendon, Keough, et al.

H.B. No. 3184

A BILL TO BE ENTITLED

AN ACT

relating to the establishment, operation, and funding of victim-offender mediation programs; authorizing fees.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 1, Article 28.01, Code of Criminal Procedure, is amended to read as follows:

Sec. 1. The court may set any criminal case for a pre-trial hearing before it is set for trial upon its merits, and direct the defendant and the defendant's ~~his~~ 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 regardless of whether the defendant has been formally charged. The defendant must be present at the arraignment, and the defendant's ~~his~~ presence is required during any pre-trial proceeding. The pre-trial hearing shall be to determine any of the following matters:

(1) Arraignment of the defendant, if such be necessary; and appointment of counsel to represent the defendant, if such be necessary;

(2) Pleadings of the defendant;

(3) Special pleas, if any;

(4) Exceptions to the form or substance of the indictment or information;

(5) Motions for continuance either by the State or

defendant; provided that grounds for continuance not existing or not known at the time may be presented and considered at any time before the defendant announces ready for trial;

(6) Motions to suppress evidence--When a hearing on the motion to suppress evidence is granted, the court may determine the merits of said motion on the motions themselves, or upon opposing affidavits, or upon oral testimony, subject to the discretion of the court;

(7) Motions for change of venue by the State or the defendant; provided, however, that such motions for change of venue, if overruled at the pre-trial hearing, may be renewed by the State or the defendant during the voir dire examination of the jury;

(8) Discovery;

(9) Entrapment; ~~and~~

(10) Motion for appointment of interpreter; and

(11) 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:

SUBCHAPTER A-1. PRETRIAL VICTIM-OFFENDER MEDIATION PROGRAM

Art. 56.21. AUTHORITY TO ESTABLISH PROGRAM. (a) The commissioners court of a county or governing body of a municipality may, in coordination with the office of the attorney representing the state in the county or municipality, establish a pretrial victim-offender mediation program for persons who:

(1) have been arrested for or charged with a

1 misdemeanor or state jail felony under Title 7, Penal Code; and

2 (2) have not previously been convicted of a felony or a
3 misdemeanor, other than a misdemeanor regulating traffic and
4 punishable by fine only.

5 (b) A court that implements a program under this subchapter
6 may adopt administrative rules and local rules of procedure as
7 necessary or appropriate to implement or operate the program.

8 (c) The commissioners court of a county or governing body of
9 a municipality that establishes a program under this subchapter
10 may:

11 (1) allow for referral to the program of arrested
12 persons described by Subsection (a) who have not yet been formally
13 charged with an offense;

14 (2) adopt administrative rules and local rules of
15 procedure as necessary or appropriate to implement or operate the
16 program; and

17 (3) approve additional program requirements as
18 recommended by the attorney representing the state.

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

21 (1) the designation of individual defendants who are
22 eligible to participate in the program, based on standards
23 established by Article 56.21 and any local standards approved by
24 the commissioners court of the county or the governing body of the
25 municipality, as applicable;

26 (2) the attorney representing the state to consent to
27 the referral of a defendant's matter to mediation under the

1 program;

2 (3) the consent of the victim to be obtained and
3 documented in the record of the court by the attorney representing
4 the state before the case may proceed to pretrial victim-offender
5 mediation; and

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

11 (A) include an apology by the defendant; or

12 (B) require the defendant to:

13 (i) pay restitution to the victim;

14 (ii) perform community service; or

15 (iii) both pay restitution and perform
16 community service.

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

21 (c) A pretrial victim-offender mediation program may
22 require the staff and other resources of pretrial services
23 departments and community supervision and corrections departments
24 to assist the court or the attorney representing the state in
25 monitoring the defendant's compliance with a mediation agreement
26 reached through the program.

27 (d) A pretrial victim-offender mediation may be conducted

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

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

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

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

19 (2) the defendant fails to fulfill the terms of the
20 mediation agreement successfully by the date specified in the
21 mediation agreement; or

22 (3) the mediator determines, based on the mediator's
23 training and experience, that:

24 (A) the victim or defendant no longer wants to
25 participate or cooperate; or

26 (B) the mediation will be ineffective.

27 (g) If a case is returned to the docket under Subsection

1 (f), the defendant retains all of the rights that the defendant
2 possessed before entering the pretrial victim-offender mediation
3 program under this subchapter. Notwithstanding any other law, for
4 purposes of determining the duration and expiration of an
5 applicable statute of limitation under Chapter 12, the running of
6 the period of limitation is tolled while the defendant is enrolled
7 in a program under this subchapter.

8 (h) If the defendant successfully completes the mediation
9 agreement as represented to the court by the attorney representing
10 the state, after notice to the attorney representing the state and a
11 hearing at which the court determines that a dismissal of any
12 indictment or information charging the defendant with the
13 commission of the offense is in the best interest of justice, the
14 court shall dismiss the criminal action against the defendant.

15 (i) The court or the attorney representing the state may
16 extend the initial compliance period granted to the defendant.

17 (j) A determination by the court regarding whether the
18 mediation agreement has been successfully completed is final and
19 may not be appealed.

20 (k) If the defendant is not arrested or convicted of a
21 subsequent felony or misdemeanor other than a misdemeanor
22 regulating traffic and punishable by fine only on or before the
23 first anniversary of the date the defendant successfully completed
24 a mediation agreement under this subchapter, on the motion of the
25 defendant, the court shall enter an order of nondisclosure under
26 Section [411.081](#), Government Code, as if the defendant had received
27 a discharge and dismissal under Section 5(c), Article [42.12](#), with

1 respect to all records and files related to the defendant's arrest
2 for the offense for which the defendant entered the pretrial
3 victim-offender mediation program.

4 Art. 56.23. MEDIATION AGREEMENT. (a) A mediation
5 agreement under this subchapter must be in writing and:

6 (1) signed by the defendant and the victim; and

7 (2) ratified by the attorney representing the state in
8 the attorney's request for a court order to document and approve the
9 mediation agreement for the record.

10 (b) A mediation agreement may require testing, counseling,
11 and treatment of the defendant to address alcohol abuse, abuse of
12 controlled substances, mental health, or anger management or any
13 other service that is reasonably related to the offense for which
14 the defendant was arrested or charged.

15 (c) A mediation agreement is not valid for more than one
16 year after the date on which the mediation agreement is ratified
17 unless the court and the attorney representing the state approve
18 the extension of the agreement.

19 (d) A mediation agreement under this subchapter does not
20 constitute a plea or legal admission of responsibility.

21 Art. 56.24. LEGISLATIVE REVIEW. The lieutenant governor
22 and the speaker of the house of representatives may assign to
23 appropriate legislative committees interim duties relating to the
24 study, review, and evaluation of pretrial victim-offender
25 mediation programs established under this subchapter, and those
26 committees may make recommendations to the legislature for
27 appropriate policies to monitor, improve, or provide state

1 resources for those programs.

2 Art. 56.25. LOCAL REVIEW. The commissioners court of a
3 county or governing body of a municipality may request a
4 management, operations, or financial or accounting audit of a
5 pretrial victim-offender mediation program established under this
6 subchapter.

7 Art. 56.26. FEES. (a) A pretrial victim-offender
8 mediation program established under this subchapter shall collect
9 from a defendant in the program a reasonable program participation
10 fee not to exceed \$500 and may collect from the defendant an alcohol
11 or controlled substance testing, counseling, and treatment fee in
12 an amount necessary to cover the costs of the testing, counseling,
13 or treatment, if such testing, counseling, or treatment is required
14 by the mediation agreement.

15 (b) Fees collected under this article may be paid on a
16 periodic basis or on a deferred payment schedule at the discretion
17 of the judge, magistrate, or program director administering the
18 pretrial victim-offender mediation program. The fees must be:

19 (1) based on the defendant's ability to pay; and

20 (2) used only for purposes specific to the program.

21 Art. 56.27. NOTICE. The office of an attorney representing
22 the state that participates in a pretrial victim-offender mediation
23 program established under this subchapter shall notify the public
24 by posting information about the program on the office's website.

25 SECTION 3. Subchapter A, Chapter 102, Code of Criminal
26 Procedure, is amended by adding Article 102.0179 to read as
27 follows:

1 Art. 102.0179. COSTS ATTENDANT TO PRETRIAL VICTIM-OFFENDER
2 MEDIATION. (a) A defendant who participates in a pretrial
3 victim-offender mediation program established under Subchapter
4 A-1, Chapter 56, on successful completion of the terms of the
5 defendant's mediation agreement or on conviction, shall pay as
6 court costs \$15 plus an additional program participation fee as
7 described by Article 56.26 in the amount prescribed by that
8 article.

9 (b) The court clerk shall collect the costs imposed under
10 this article. The clerk shall keep a separate record of any money
11 collected under this article and shall pay any money collected to
12 the county or municipal treasurer, as appropriate, or to any other
13 official who discharges the duties commonly delegated to a
14 treasurer, for deposit in a fund to be known as the county pretrial
15 victim-offender mediation program fund or in a fund to be known as
16 the municipal pretrial victim-offender mediation program fund, as
17 appropriate.

18 (c) A county or municipality that collects court costs under
19 this article shall use the money in a fund described by Subsection
20 (b) exclusively for the maintenance of the pretrial victim-offender
21 mediation program operated in the county or municipality.

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

24 Sec. 54.035. VICTIM-OFFENDER MEDIATION. (a) The Texas
25 Juvenile Justice Board by rule shall establish guidelines
26 permitting victim-offender mediation programs to be implemented
27 and administered by juvenile boards.

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

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

9 (d) If an agreement is not reached between the victim and
10 the child or if the child does not successfully complete the terms
11 of the agreement, as determined by the juvenile court, the child's
12 case shall proceed in accordance with the applicable provisions of
13 this title.

14 SECTION 5. Section 57.002(a), Family Code, is amended to
15 read as follows:

16 (a) A victim, guardian of a victim, or close relative of a
17 deceased victim is entitled to the following rights within the
18 juvenile justice system:

19 (1) the right to receive from law enforcement agencies
20 adequate protection from harm and threats of harm arising from
21 cooperation with prosecution efforts;

22 (2) the right to have the court or person appointed by
23 the court take the safety of the victim or the victim's family into
24 consideration as an element in determining whether the child should
25 be detained before the child's conduct is adjudicated;

26 (3) the right, if requested, to be informed of
27 relevant court proceedings, including appellate proceedings, and

1 to be informed in a timely manner if those court proceedings have
2 been canceled or rescheduled;

3 (4) the right to be informed, when requested, by the
4 court or a person appointed by the court concerning the procedures
5 in the juvenile justice system, including general procedures
6 relating to:

7 (A) the preliminary investigation and deferred
8 prosecution of a case; and

9 (B) the appeal of the case;

10 (5) the right to provide pertinent information to a
11 juvenile court conducting a disposition hearing concerning the
12 impact of the offense on the victim and the victim's family by
13 testimony, written statement, or any other manner before the court
14 renders its disposition;

15 (6) the right to receive information regarding
16 compensation to victims as provided by Subchapter B, Chapter 56,
17 Code of Criminal Procedure, including information related to the
18 costs that may be compensated under that subchapter and the amount
19 of compensation, eligibility for compensation, and procedures for
20 application for compensation under that subchapter, the payment of
21 medical expenses under Article [Section] 56.06, Code of Criminal
22 Procedure, for a victim of a sexual assault, and when requested, to
23 referral to available social service agencies that may offer
24 additional assistance;

25 (7) the right to be informed, upon request, of
26 procedures for release under supervision or transfer of the person
27 to the custody of the Texas Department of Criminal Justice for

1 parole, to participate in the release or transfer for parole
2 process, to be notified, if requested, of the person's release,
3 escape, or transfer for parole proceedings concerning the person,
4 to provide to the Texas Juvenile Justice Department for inclusion
5 in the person's file information to be considered by the commission
6 before the release under supervision or transfer for parole of the
7 person, and to be notified, if requested, of the person's release or
8 transfer for parole;

9 (8) the right to be provided with a waiting area,
10 separate or secure from other witnesses, including the child
11 alleged to have committed the conduct and relatives of the child,
12 before testifying in any proceeding concerning the child, or, if a
13 separate waiting area is not available, other safeguards should be
14 taken to minimize the victim's contact with the child and the
15 child's relatives and witnesses, before and during court
16 proceedings;

17 (9) the right to prompt return of any property of the
18 victim that is held by a law enforcement agency or the attorney for
19 the state as evidence when the property is no longer required for
20 that purpose;

21 (10) the right to have the attorney for the state
22 notify the employer of the victim, if requested, of the necessity of
23 the victim's cooperation and testimony in a proceeding that may
24 necessitate the absence of the victim from work for good cause;

25 (11) the right to be present at all public court
26 proceedings related to the conduct of the child as provided by
27 Section 54.08, subject to that section; ~~and~~

1 (12) for a victim to whom Section 54.035 applies, the
2 right to request victim-offender mediation under that section; and

3 (13) any other right appropriate to the victim that a
4 victim of criminal conduct has under Article 56.02 or 56.021, Code
5 of Criminal Procedure.

6 SECTION 6. Section 58.003, Family Code, is amended by
7 adding Subsections (c-9) and (c-10) to read as follows:

8 (c-9) Notwithstanding Subsections (a) and (c) and subject
9 to Subsection (b), a juvenile court may order the sealing of records
10 concerning a child alleged to have engaged in delinquent conduct or
11 conduct indicating a need for supervision if the child successfully
12 completed a victim-offender mediation program under Section
13 54.035. The court may:

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

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

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

SECTION 7. Subchapter B, Chapter 102, Government Code, is amended by adding Section 102.0215 to read as follows:

Sec. 102.0215. ADDITIONAL COURT COSTS: CODE OF CRIMINAL PROCEDURE. A defendant who participates in a pretrial victim-offender mediation program established under Subchapter A-1, Chapter 56, Code of Criminal Procedure, shall pay on successful completion of the terms of the defendant's mediation agreement or on conviction, in addition to all other costs, to help fund pretrial victim-offender mediation programs established under that subchapter (Art. 102.0179, Code of Criminal Procedure) . . . \$15 plus an additional program participation fee in an amount not to exceed \$500.

SECTION 8. 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.

SECTION 9. (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

1 governed by the law in effect when the offense was committed, and
2 the former law is continued in effect for that purpose. For
3 purposes of this subsection, an offense was committed before the
4 effective date of this Act if any element of the offense was
5 committed before that date.

6 SECTION 10. (a) Not later than December 1, 2015, the Texas
7 Juvenile Justice Board shall establish guidelines for
8 victim-offender mediation programs as required by Section 54.035,
9 Family Code, as added by this Act.

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

15 SECTION 11. This Act takes effect immediately if it
16 receives a vote of two-thirds of all the members elected to each
17 house, as provided by Section 39, Article III, Texas Constitution.
18 If this Act does not receive the vote necessary for immediate
19 effect, this Act takes effect September 1, 2015.