

By: Escobar

H.B. No. 2437

A BILL TO BE ENTITLED

AN ACT

relating to the establishment, operation, and funding of pretrial victim-offender mediation programs.

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

SECTION 1. Chapter 56, Code of Criminal Procedure, is amended by adding Subchapter C to read as follows:

SUBCHAPTER C. PRETRIAL VICTIM-OFFENDER MEDIATION PROGRAM

Art. 56.81. AUTHORITY TO ESTABLISH PROGRAM. (a) The commissioners court of a county or governing body of a municipality may establish a pretrial victim-offender mediation program for persons who:

(1) have been arrested for or charged with a misdemeanor or state jail felony under Title 7, Penal Code; and

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

(b) A commissioners court in a county with a population of more than 100,000 shall establish a pretrial victim-offender mediation program under this subchapter.

Art. 56.82. PROGRAM. (a) A pretrial victim-offender mediation program established under Article 56.81 must require:

(1) the attorney representing the state to identify defendants who are eligible to participate in the program, including whether the defendant meets any additional locally

1 developed eligibility criteria;

2 (2) the attorney representing the state to obtain the
3 consent of the victim and the defendant before an eligible
4 defendant may proceed with pretrial victim-offender mediation; and

5 (3) the defendant to enter into a binding mediation
6 agreement in accordance with Article 56.83 that:

7 (A) includes an apology by the defendant; and

8 (B) requires the defendant to:

9 (i) pay restitution to the victim; or

10 (ii) perform community service.

11 (b) All communications made in a pretrial victim-offender
12 mediation program are confidential and may not be introduced into
13 evidence except in a proceeding involving a question concerning the
14 meaning of a mediation agreement.

15 (c) A pretrial victim-offender mediation program may
16 require the staff and other resources of pretrial services
17 departments, community supervision correction districts, juvenile
18 probation departments, and juvenile boards to assist in monitoring
19 the defendant's compliance with a mediation agreement reached
20 through the program.

21 (d) Pretrial victim-offender mediations may be conducted by
22 any person designated by the court, other than the attorney
23 representing the state or an attorney representing the defendant in
24 the criminal action, regardless of whether the designated person is
25 a trained mediator.

26 (e) If a defendant enters a pretrial victim-offender
27 mediation program, the court, with the consent of the attorney

1 representing the state, may defer the proceedings without accepting
2 a plea of guilty or nolo contendere or entering an adjudication of
3 guilt.

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

6 (1) a pretrial victim-offender mediation does not
7 result in a mediation agreement; or

8 (2) the defendant fails to successfully fulfill the
9 terms of the mediation agreement by the date specified in the
10 mediation agreement.

11 (g) The court shall dismiss the indictment or information
12 charging the defendant with the commission of the offense, if the
13 defendant:

14 (1) successfully completes the mediation agreement as
15 determined by the court; and

16 (2) either:

17 (A) pays all court costs; or

18 (B) enters a payment plan approved by the court
19 or the attorney representing the state for such payment.

20 (h) A determination by the court regarding whether the
21 mediation agreement has been successfully completed is final and
22 may not be appealed, although the attorney for the state or the
23 court may extend the time for compliance.

24 (i) If the defendant is not arrested or convicted of a
25 subsequent felony or misdemeanor other than a misdemeanor
26 regulating traffic and punishable by fine only on or before the
27 first anniversary of the date the defendant successfully completed

1 a mediation agreement under the pretrial victim-offender mediation
2 program, on the motion of the defendant, the court shall enter an
3 order of nondisclosure under Section 411.081, Government Code, as
4 if the defendant had received a discharge and dismissal under
5 Section 5(c), Article 42.12, with respect to all records and files
6 related to the defendant's arrest for the offense for which the
7 defendant entered the pretrial victim-offender mediation program.

8 Art. 56.83. MEDIATION AGREEMENT. (a) A mediation agreement
9 under this chapter must:

10 (1) be signed by the defendant and the victim; and

11 (2) be ratified by the attorney representing the state
12 or the court.

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

18 (c) A mediation agreement may not last for more than one
19 year after the date on which the mediation agreement is ratified.

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

22 Art. 56.84. OVERSIGHT. (a) The lieutenant governor and the
23 speaker of the house of representatives may assign to appropriate
24 legislative committees duties relating to the oversight of pretrial
25 victim-offender mediation programs established under this
26 subchapter.

27 (b) A legislative committee or the governor may request the

1 state auditor to perform a management, operations, or financial or
2 accounting audit of a pretrial victim-offender mediation program
3 established under this subchapter.

4 (c) A county that establishes a pretrial victim-offender
5 mediation program may:

6 (1) notify the criminal justice division of the
7 governor's office when the county begins implementation of the
8 program; and

9 (2) provide information regarding the performance of
10 the program to the division on request.

11 Art. 56.85. FEES. (a) A pretrial victim-offender
12 mediation program established under this subchapter may collect
13 from a defendant in the program:

14 (1) a reasonable program fee not to exceed \$750; and

15 (2) an alcohol or controlled substance testing,
16 counseling, and treatment fee in an amount necessary to cover the
17 costs of the testing, counseling, or treatment if such testing,
18 counseling, or treatment is required by the mediation agreement.

19 (b) Fees collected under this section may be paid on a
20 periodic basis or on a deferred payment schedule at the discretion
21 of the judge, magistrate, or program director administering the
22 pretrial victim-offender mediation program. The fees must be:

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

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

25 SECTION 2. 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 CERTAIN NONVIOLENT
2 CONVICTIONS INVOLVING PROPERTY. (a) In addition to other costs on
3 conviction imposed by this chapter, a person shall pay \$15 as a
4 court cost on conviction of a felony or misdemeanor under Title 7,
5 Penal Code.

6 (b) The court shall assess and make a reasonable effort to
7 collect the cost due under this article whether or not any other
8 court cost is assessed or collected.

9 (c) For purposes of this article, a person is considered to
10 have been convicted if:

11 (1) a sentence is imposed;

12 (2) the defendant receives community supervision or
13 deferred adjudication; or

14 (3) the court defers final disposition of the case.

15 (d) Court costs under this article are collected in the same
16 manner as other fines or costs. An officer collecting the costs
17 shall keep separate records of the funds collected as costs under
18 this article and shall deposit the funds in the county or municipal
19 treasury, as appropriate.

20 (e) The custodian of a county or municipal treasury shall:

21 (1) keep records of the amount of funds on deposit
22 collected under this article; and

23 (2) except as provided by Subsection (f), send to the
24 comptroller before the last day of the first month following each
25 calendar quarter the funds collected under this article during the
26 preceding quarter.

27 (f) A county or municipality is entitled to:

1 (1) retain 40 percent of the funds collected under
2 this article by an officer of the county or municipality to be used
3 exclusively for the development and maintenance of pretrial
4 victim-offender mediation programs operated within the county or
5 municipality; and

6 (2) if the custodian of the county or municipal
7 treasury complies with Subsection (e), retain an additional 10
8 percent of the funds collected under this article by an officer of
9 the county or municipality as a collection fee.

10 (g) If no funds due as costs under this article are
11 deposited in a county or municipal treasury in a calendar quarter,
12 the custodian of the treasury shall file the report required for the
13 quarter in the regular manner and must state that no funds were
14 collected.

15 (h) The comptroller shall deposit the funds received under
16 this article to the credit of the pretrial victim-offender
17 mediation program account in the general revenue fund to help fund
18 pretrial victim-offender mediation programs established under
19 Subchapter C, Chapter 56, Code of Criminal Procedure. The
20 legislature shall appropriate money from the account solely to the
21 criminal justice division of the governor's office for distribution
22 to pretrial victim-offender mediation programs that apply for the
23 money.

24 (i) Funds collected under this article are subject to audit
25 by the comptroller.

26 SECTION 3. Subchapter B, Chapter 102, Government Code, is
27 amended by adding Section 102.0216 to read as follows:

1 Sec. 102.0216. ADDITIONAL COURT COSTS ON CONVICTION: CODE
2 OF CRIMINAL PROCEDURE. A person convicted of an offense shall pay
3 under the Code of Criminal Procedure, in addition to all other
4 costs, costs attendant to convictions for felonies and
5 misdemeanors, other than misdemeanors regulating traffic and
6 punishable by fine only, to help fund pretrial victim-offender
7 mediation programs established under Subchapter C, Chapter 56, Code
8 of Criminal Procedure (Art. 102.0179, Code of Criminal
9 Procedure) . . . \$15.

10 SECTION 4. (a) The change in law made by this Act in adding
11 Subchapter C, Chapter 56, Code of Criminal Procedure, applies to a
12 defendant who enters a pretrial victim-offender mediation program
13 under that chapter regardless of whether the defendant committed
14 the offense for which the defendant enters the program before, on,
15 or after the effective date of this Act.

16 (b) The commissioners court of a county required under
17 Article 56.81(b), Code of Criminal Procedure, as added by this Act,
18 to establish a pretrial victim-offender mediation program shall
19 establish the program not later than the later of:

20 (1) March 1, 2008; or

21 (2) the first anniversary of the initial date on which
22 the federal census indicates that the county's population exceeds
23 100,000.

24 (c) The change in law made by this Act in adding Article
25 102.0179, Code of Criminal Procedure, and Section 102.0216,
26 Government Code, applies only to an offense committed on or after
27 the effective date of this Act. An offense committed before the

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

6 SECTION 5. This Act takes effect immediately if it receives
7 a vote of two-thirds of all the members elected to each house, as
8 provided by Section 39, Article III, Texas Constitution. If this
9 Act does not receive the vote necessary for immediate effect, this
10 Act takes effect September 1, 2007.