

By: McClendon

H.B. No. 2750

A BILL TO BE ENTITLED

AN ACT

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

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. ESTABLISHMENT OF PROGRAM. The commissioners court of a county with a population of one million or more but less than 1.4 million shall establish a pretrial victim-offender mediation program for persons who:

(1) have been arrested for or charged with an offense under Section 28.03 or 31.03, Penal Code; and

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

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;

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

(3) the defendant to enter into a binding mediation

1 agreement in accordance with Article 56.83 that:

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

3 (B) requires the defendant to:

4 (i) pay restitution to the victim; or

5 (ii) perform community service.

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

10 (c) Pretrial victim-offender mediations may be conducted by  
11 any person designated by the court, other than the attorney  
12 representing the state or an attorney representing the defendant in  
13 the criminal action, regardless of whether the designated person is  
14 a trained mediator.

15 (d) If a defendant enters a pretrial victim-offender  
16 mediation program, the court, with the consent of the attorney  
17 representing the state, may defer the proceedings without accepting  
18 a plea of guilty or nolo contendere or entering an adjudication of  
19 guilt.

20 (e) The case must be returned to the docket and proceed  
21 through the regular criminal justice system if:

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

24 (2) the defendant fails to successfully fulfill the  
25 terms of the mediation agreement by the date specified in the  
26 mediation agreement.

27 (f) The court shall dismiss the indictment or information

1 charging the defendant with the commission of the offense, if the  
2 defendant:

3 (1) successfully completes the mediation agreement as  
4 determined by the court; and

5 (2) either:

6 (A) pays all court costs; or

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

9 (g) A determination by the court regarding whether the  
10 mediation agreement has been successfully completed is final and  
11 may not be appealed, except that the attorney for the state or the  
12 court may extend the time for compliance.

13 Art. 56.83. MEDIATION AGREEMENT. (a) A mediation agreement  
14 under this subchapter must:

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

16 (2) be approved by the attorney representing the state  
17 or the court.

18 (b) The period of a mediation agreement may not exceed one  
19 year after the date on which the mediation agreement is approved.

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

22 Art. 56.84. FEES. (a) A pretrial victim-offender  
23 mediation program established under this subchapter may collect a  
24 reasonable program fee not to exceed \$750 from a defendant in the  
25 program.

26 (b) Fees collected under this article may be paid on a  
27 periodic basis or on a deferred payment schedule at the discretion

1 of the judge, magistrate, or program director administering the  
2 pretrial victim-offender mediation program. The fees must be:

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

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

5 SECTION 2. (a) The change in law made by this Act in adding  
6 Subchapter C, Chapter 56, Code of Criminal Procedure, applies to a  
7 defendant who enters a pretrial victim-offender mediation program  
8 under that chapter regardless of whether the defendant committed  
9 the offense for which the defendant enters the program before, on,  
10 or after the effective date of this Act.

11 (b) The commissioners court of a county described by Article  
12 56.81, Code of Criminal Procedure, as added by this Act, shall  
13 establish a pretrial victim-offender mediation program not later  
14 than March 1, 2008.

15 SECTION 3. This Act takes effect immediately if it receives  
16 a vote of two-thirds of all the members elected to each house, as  
17 provided by Section 39, Article III, Texas Constitution. If this  
18 Act does not receive the vote necessary for immediate effect, this  
19 Act takes effect September 1, 2007.