

By: McClendon, Alonzo, Gutierrez, Farias,
et al.

H.B. No. 2139

Substitute the following for H.B. No. 2139:

By: McReynolds

C.S.H.B. No. 2139

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 A-1 to read as follows:

SUBCHAPTER A-1. PRETRIAL VICTIM-OFFENDER MEDIATION PROGRAM

Art. 56.21. AUTHORITY TO ESTABLISH PROGRAM. 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.

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

(1) 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;

(2) the consent of the victim and the defendant to be
obtained before an eligible defendant may proceed with pretrial

1 victim-offender mediation; and

2 (3) the defendant to enter into a binding mediation
3 agreement in accordance with Article 56.23 that:

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

5 (B) requires the defendant to:

6 (i) pay restitution to the victim; or

7 (ii) perform community service.

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

12 (c) A pretrial victim-offender mediation program may
13 require the staff and other resources of pretrial services
14 departments and community supervision correction departments to
15 assist in monitoring the defendant's compliance with a mediation
16 agreement reached through the program.

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

22 (e) If a defendant enters a pretrial victim-offender
23 mediation program, the court, with the consent of the attorney
24 representing the state, may defer the proceedings without accepting
25 a plea of guilty or nolo contendere or entering an adjudication of
26 guilt.

27 (f) The case must be returned to the docket and proceed

1 through the regular criminal justice system if:

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

4 (2) the defendant fails to successfully fulfill the
5 terms of the mediation agreement by the date specified in the
6 mediation agreement.

7 (g) If a case is returned to the docket under Subsection
8 (f), the defendant retains all of the rights that the defendant
9 possessed before entering the pretrial victim-offender mediation
10 program under this subchapter.

11 (h) The court, on the motion of the attorney representing
12 the state, shall dismiss the indictment or information charging the
13 defendant with the commission of the offense, if the defendant:

14 (1) successfully completes the mediation agreement as
15 determined by the attorney representing the state; 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 (i) 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 period for compliance.

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

8 Art. 56.23. MEDIATION AGREEMENT. (a) A mediation agreement
9 under this subchapter must be:

- 10 (1) signed by the defendant and the victim; and
11 (2) ratified by the attorney representing the state in
12 a request for a court order documenting and approving the mediation
13 agreement.

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

19 (c) A mediation agreement is not valid for more than one
20 year after the date on which the mediation agreement is ratified
21 unless the court and the attorney representing the state approve
22 the extension of the agreement.

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

25 Art. 56.24. OVERSIGHT. (a) The lieutenant governor and the
26 speaker of the house of representatives may assign to appropriate
27 legislative committees duties relating to the oversight of pretrial

1 victim-offender mediation programs established under this
2 subchapter.

3 (b) A legislative committee or the governor may request the
4 state auditor to perform a management, operations, or financial or
5 accounting audit of a pretrial victim-offender mediation program
6 established under this subchapter.

7 (c) A county or municipality that establishes a pretrial
8 victim-offender mediation program:

9 (1) shall notify the attorney general's office when
10 the county or municipality begins implementation of the program;

11 (2) may provide information regarding the performance
12 of the program to the attorney general's office on request; and

13 (3) may apply for funds for the program in accordance
14 with Article 102.0179(g).

15 Art. 56.25. FEES. (a) A pretrial victim-offender
16 mediation program established under this subchapter may collect
17 from a defendant in the program:

18 (1) a reasonable program fee not to exceed \$500; and

19 (2) an alcohol or controlled substance testing,
20 counseling, and treatment fee in an amount necessary to cover the
21 costs of the testing, counseling, or treatment if such testing,
22 counseling, or treatment is required by the mediation agreement.

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

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

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

2 SECTION 2. Subchapter A, Chapter 102, Code of Criminal
3 Procedure, is amended by adding Article 102.0179 to read as
4 follows:

5 Art. 102.0179. COSTS ATTENDANT TO CERTAIN NONVIOLENT
6 CONVICTIONS INVOLVING PROPERTY. (a) In addition to other costs on
7 conviction imposed by this chapter, a person shall pay \$15 as a
8 court cost on conviction of a felony or misdemeanor under Title 7,
9 Penal Code.

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

12 (1) a sentence is imposed;

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

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

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

21 (d) The custodian of a county or municipal treasury shall:

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

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

1 (e) A county or municipality is entitled to:

2 (1) if the county or municipality has established a
3 pretrial victim-offender mediation program, retain 40 percent of
4 the funds collected under this article by an officer of the county
5 or municipality, to be used exclusively for the maintenance of a
6 pretrial victim-offender mediation program operated in the county
7 or municipality; and

8 (2) if the custodian of the county or municipal
9 treasury complies with Subsection (d), retain as a collection fee
10 10 percent of an amount equal to the difference between:

11 (A) the amount of funds collected under this
12 article by an officer of the county or municipality; and

13 (B) any amount the county or municipality is
14 entitled to retain under Subdivision (1).

15 (f) If no funds due as costs under this article are
16 deposited in a county or municipal treasury in a calendar quarter,
17 the custodian of the treasury shall file the report required for the
18 quarter in the regular manner and must state that no funds were
19 collected.

20 (g) The comptroller shall deposit the funds received under
21 this article to the credit of the pretrial victim-offender
22 mediation program account in the general revenue fund to help fund
23 pretrial victim-offender mediation programs established under
24 Subchapter A-1, Chapter 56. The legislature shall appropriate
25 money from the account solely to the attorney general's office for
26 distribution to pretrial victim-offender mediation programs that
27 apply for the money.

1 (h) Funds collected under this article are subject to audit
2 by the comptroller.

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

5 Sec. 102.0216. ADDITIONAL COURT COSTS ON CONVICTION: CODE
6 OF CRIMINAL PROCEDURE. A person convicted of an offense under Title
7 7, Penal Code, shall pay a cost on conviction, in addition to all
8 other costs, to help fund pretrial victim-offender mediation
9 programs established under Subchapter A-1, Chapter 56, Code of
10 Criminal Procedure (Art. 102.0179, Code of Criminal
11 Procedure) . . . \$15.

12 SECTION 4. Subchapter B, Chapter 103, Government Code, is
13 amended by adding Section 103.0217 to read as follows:

14 Sec. 103.0217. ADDITIONAL FEES IN CRIMINAL CASES: CODE OF
15 CRIMINAL PROCEDURE. A defendant who participates in a pretrial
16 victim-offender mediation program under Subchapter A-1, Chapter
17 56, Code of Criminal Procedure, may be required to pay a program fee
18 in an amount not to exceed \$500 and the costs of certain testing,
19 counseling, and treatment.

20 SECTION 5. (a) The change in law made by this Act in adding
21 Subchapter A-1, Chapter 56, Code of Criminal Procedure, applies to
22 a defendant who enters a pretrial victim-offender mediation program
23 under that subchapter regardless of whether the defendant committed
24 the offense for which the defendant enters the program before, on,
25 or after the effective date of this Act.

26 (b) The change in law made by this Act in adding Article
27 102.0179, Code of Criminal Procedure, and Section 102.0216,

1 Government Code, applies only to an offense committed on or after
2 the effective date of this Act. An offense committed before the
3 effective date of this Act is governed by the law in effect when the
4 offense was committed, and the former law is continued in effect for
5 that purpose. For purposes of this subsection, an offense was
6 committed before the effective date of this Act if any element of
7 the offense was committed before that date.

8 SECTION 6. This Act takes effect immediately if it receives
9 a vote of two-thirds of all the members elected to each house, as
10 provided by Section 39, Article III, Texas Constitution. If this
11 Act does not receive the vote necessary for immediate effect, this
12 Act takes effect September 1, 2009.