

By: McClendon

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 attorney representing the state to identify defendants who are eligible to participate in the program, including whether the defendant meets any additional locally developed eligibility criteria;

(2) the attorney representing the state to obtain the consent of the victim and the defendant before an eligible

1 defendant may proceed with pretrial 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, community supervision correction districts, juvenile
15 probation departments, and juvenile boards to assist in monitoring
16 the defendant's compliance with a mediation agreement reached
17 through the program.

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

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

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

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

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

8 (g) The court shall dismiss the indictment or information
9 charging the defendant with the commission of the offense, if the
10 defendant:

11 (1) successfully completes the mediation agreement as
12 determined by the court; and

13 (2) either:

14 (A) pays all court costs; or

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

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

21 (i) If the defendant is not arrested or convicted of a
22 subsequent felony or misdemeanor other than a misdemeanor
23 regulating traffic and punishable by fine only on or before the
24 first anniversary of the date the defendant successfully completed
25 a mediation agreement under the pretrial victim-offender mediation
26 program, on the motion of the defendant, the court shall enter an
27 order of nondisclosure under Section 411.081, Government Code, as

1 if the defendant had received a discharge and dismissal under
2 Section 5(c), Article 42.12, with respect to all records and files
3 related to the defendant's arrest for the offense for which the
4 defendant entered the pretrial victim-offender mediation program.

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

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

8 (2) ratified by the attorney representing the state or
9 the court.

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

26 (b) A legislative committee or the governor may request the
27 state auditor to perform a management, operations, or financial or

1 accounting audit of a pretrial victim-offender mediation program
2 established under this subchapter.

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

5 (1) shall notify the attorney general's office when
6 the county or municipality begins implementation of the program;
7 and

8 (2) may provide information regarding the performance
9 of the program to the attorney general's office on request.

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

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

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

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

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

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

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

27 Art. 102.0179. COSTS ATTENDANT TO CERTAIN NONVIOLENT

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

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

7 (1) a sentence is imposed;

8 (2) the defendant receives community supervision or
9 deferred adjudication; or

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

11 (c) Court costs under this article are collected in the same
12 manner as other fines or costs. An officer collecting the costs
13 shall keep separate records of the funds collected as costs under
14 this article and shall deposit the funds in the county or municipal
15 treasury, as appropriate.

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

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

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

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

24 (1) if the county or municipality has established a
25 pretrial victim-offender mediation program, retain 40 percent of
26 the funds collected under this article by an officer of the county
27 or municipality, to be used exclusively for the maintenance of a

1 pretrial victim-offender mediation program operated in the county
2 or municipality; and

3 (2) if the custodian of the county or municipal
4 treasury complies with Subsection (d), retain as a collection fee
5 10 percent of an amount equal to the difference between:

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

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

10 (f) 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 (g) 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 A-1, Chapter 56. The legislature shall appropriate
20 money from the account solely to the attorney general's office for
21 distribution to pretrial victim-offender mediation programs that
22 apply for the money.

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

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

27 Sec. 102.0216. ADDITIONAL COURT COSTS ON CONVICTION: CODE

1 OF CRIMINAL PROCEDURE. A person convicted of an offense under Title
2 7, Penal Code, shall pay a cost on conviction, in addition to all
3 other costs, to help fund pretrial victim-offender mediation
4 programs established under Subchapter A-1, Chapter 56, Code of
5 Criminal Procedure (Art. 102.0179, Code of Criminal
6 Procedure) . . . \$15.

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

9 Sec. 103.0217. ADDITIONAL FEES IN CRIMINAL CASES: CODE OF
10 CRIMINAL PROCEDURE. A defendant who participates in a pretrial
11 victim-offender mediation program under Subchapter A-1, Chapter
12 56, Code of Criminal Procedure, may be required to pay a program fee
13 in an amount not to exceed \$500 and the costs of certain testing,
14 counseling, and treatment.

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

21 (b) The change in law made by this Act in adding Article
22 102.0179, Code of Criminal Procedure, and Section 102.0216,
23 Government Code, applies only to an offense committed on or after
24 the effective date of this Act. An offense committed before the
25 effective date of this Act is governed by the law in effect when the
26 offense was committed, and the former law is continued in effect for
27 that purpose. For purposes of this subsection, an offense was

1 committed before the effective date of this Act if any element of
2 the offense was committed before that date.

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