

1-1 By: McClendon, et al. (Senate Sponsor - Hinojosa) H.B. No. 2139  
1-2 (In the Senate - Received from the House April 27, 2009;  
1-3 May 1, 2009, read first time and referred to Committee on Criminal  
1-4 Justice; May 23, 2009, reported adversely, with favorable  
1-5 Committee Substitute by the following vote: Yeas 6, Nays 0;  
1-6 May 23, 2009, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 2139 By: Patrick

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to the establishment, operation, and funding of  
1-11 victim-offender mediation programs.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Chapter 56, Code of Criminal Procedure, is  
1-14 amended by adding Subchapter A-1 to read as follows:

1-15 SUBCHAPTER A-1. PRETRIAL VICTIM-OFFENDER MEDIATION PROGRAM

1-16 Art. 56.21. AUTHORITY TO ESTABLISH PROGRAM. The  
1-17 commissioners court of a county or governing body of a municipality  
1-18 may establish a pretrial victim-offender mediation program for  
1-19 persons who:

1-20 (1) have been arrested for or charged with a  
1-21 misdemeanor or state jail felony under Title 7, Penal Code; and

1-22 (2) have not previously been convicted of a felony or a  
1-23 misdemeanor, other than a misdemeanor regulating traffic and  
1-24 punishable by fine only.

1-25 Art. 56.22. PROGRAM. (a) A pretrial victim-offender  
1-26 mediation program established under Article 56.21 must require:

1-27 (1) the identification of defendants who are eligible  
1-28 to participate in the program, including a consideration of whether  
1-29 the defendant meets any additional locally developed eligibility  
1-30 criteria;

1-31 (2) the consent of the victim, the defendant, and the  
1-32 attorney representing the state to be obtained before an eligible  
1-33 defendant may proceed with pretrial victim-offender mediation; and

1-34 (3) the defendant to enter into a binding mediation  
1-35 agreement in accordance with Article 56.23 that:

1-36 (A) includes an apology by the defendant; and

1-37 (B) requires the defendant to:

1-38 (i) pay restitution to the victim; or

1-39 (ii) perform community service.

1-40 (b) All communications made in a pretrial victim-offender  
1-41 mediation program are confidential and may not be introduced into  
1-42 evidence except in a proceeding involving a question concerning the  
1-43 meaning of a mediation agreement.

1-44 (c) A pretrial victim-offender mediation program may  
1-45 require the staff and other resources of pretrial services  
1-46 departments and community supervision correction departments to  
1-47 assist in monitoring the defendant's compliance with a mediation  
1-48 agreement reached through the program.

1-49 (d) Pretrial victim-offender mediations may be conducted by  
1-50 any person designated by the court, other than the attorney  
1-51 representing the state or an attorney representing the defendant in  
1-52 the criminal action, regardless of whether the designated person is  
1-53 a trained mediator.

1-54 (e) If a defendant enters a pretrial victim-offender  
1-55 mediation program, the court may defer the proceedings without  
1-56 accepting a plea of guilty or nolo contendere or entering an  
1-57 adjudication of guilt. The court may not require the defendant to  
1-58 admit guilt or enter a plea of guilty or nolo contendere to enter  
1-59 the program.

1-60 (f) The case must be returned to the docket and proceed  
1-61 through the regular criminal justice system if:

1-62 (1) a pretrial victim-offender mediation does not  
1-63 result in a mediation agreement; or

2-1 (2) the defendant fails to successfully fulfill the  
2-2 terms of the mediation agreement by the date specified in the  
2-3 mediation agreement.

2-4 (g) If a case is returned to the docket under Subsection  
2-5 (f), the defendant retains all of the rights that the defendant  
2-6 possessed before entering the pretrial victim-offender mediation  
2-7 program under this subchapter. Notwithstanding any other law, for  
2-8 purposes of determining the duration and expiration of an  
2-9 applicable statute of limitation under Chapter 12, the running of  
2-10 the period of limitation is tolled while the defendant is enrolled  
2-11 in a program under this subchapter.

2-12 (h) The court, on the motion of the attorney representing  
2-13 the state, shall dismiss the indictment or information charging the  
2-14 defendant with the commission of the offense, if the defendant:

2-15 (1) successfully completes the mediation agreement as  
2-16 determined by the attorney representing the state; and

2-17 (2) either:

2-18 (A) pays all court costs; or

2-19 (B) enters a payment plan approved by the court  
2-20 or the attorney representing the state for such payment.

2-21 (i) A determination by the court regarding whether the  
2-22 mediation agreement has been successfully completed is final and  
2-23 may not be appealed, although the attorney for the state or the  
2-24 court may extend the period for compliance.

2-25 (j) If the defendant is not arrested or convicted of a  
2-26 subsequent felony or misdemeanor other than a misdemeanor  
2-27 regulating traffic and punishable by fine only on or before the  
2-28 first anniversary of the date the defendant successfully completed  
2-29 a mediation agreement under this subchapter, on the motion of the  
2-30 defendant, the court shall enter an order of nondisclosure under  
2-31 Section 411.081, Government Code, as if the defendant had received  
2-32 a discharge and dismissal under Section 5(c), Article 42.12, with  
2-33 respect to all records and files related to the defendant's arrest  
2-34 for the offense for which the defendant entered the pretrial  
2-35 victim-offender mediation program.

2-36 Art. 56.23. MEDIATION AGREEMENT. (a) A mediation agreement  
2-37 under this subchapter must be:

2-38 (1) signed by the defendant and the victim; and

2-39 (2) ratified by the attorney representing the state in  
2-40 a request for a court order documenting and approving the mediation  
2-41 agreement.

2-42 (b) A mediation agreement may require testing, counseling,  
2-43 and treatment of the defendant to address alcohol abuse, abuse of  
2-44 controlled substances, mental health, or anger management or any  
2-45 other service that is reasonably related to the offense for which  
2-46 the defendant was arrested or charged.

2-47 (c) A mediation agreement is not valid for more than one  
2-48 year after the date on which the mediation agreement is ratified  
2-49 unless the court and the attorney representing the state approve  
2-50 the extension of the agreement.

2-51 (d) A mediation agreement under this subchapter does not  
2-52 constitute a plea or legal admission of responsibility.

2-53 Art. 56.24. OVERSIGHT. (a) The lieutenant governor and the  
2-54 speaker of the house of representatives may assign to appropriate  
2-55 legislative committees duties relating to the oversight of pretrial  
2-56 victim-offender mediation programs established under this  
2-57 subchapter.

2-58 (b) A legislative committee or the governor may request the  
2-59 state auditor to perform a management, operations, or financial or  
2-60 accounting audit of a pretrial victim-offender mediation program  
2-61 established under this subchapter.

2-62 (c) A county or municipality that establishes a pretrial  
2-63 victim-offender mediation program:

2-64 (1) shall notify the attorney general's office when  
2-65 the county or municipality begins implementation of the program;

2-66 (2) may provide information regarding the performance  
2-67 of the program to the attorney general's office on request; and

2-68 (3) may apply for funds for the program in accordance  
2-69 with Article 102.0179(g).

3-1 Art. 56.25. FEES. (a) A pretrial victim-offender  
3-2 mediation program established under this subchapter may collect  
3-3 from a defendant in the program:

- 3-4 (1) a reasonable program fee not to exceed \$500; and
- 3-5 (2) an alcohol or controlled substance testing,
- 3-6 counseling, and treatment fee in an amount necessary to cover the
- 3-7 costs of the testing, counseling, or treatment if such testing,
- 3-8 counseling, or treatment is required by the mediation agreement.

3-9 (b) Fees collected under this article may be paid on a  
3-10 periodic basis or on a deferred payment schedule at the discretion  
3-11 of the judge, magistrate, or program director administering the  
3-12 pretrial victim-offender mediation program. The fees must be:

- 3-13 (1) based on the defendant's ability to pay; and
- 3-14 (2) used only for purposes specific to the program.

3-15 SECTION 2. Subchapter A, Chapter 102, Code of Criminal  
3-16 Procedure, is amended by adding Article 102.0179 to read as  
3-17 follows:

3-18 Art. 102.0179. COSTS ATTENDANT TO CERTAIN NONVIOLENT  
3-19 CONVICTIONS INVOLVING PROPERTY. (a) In addition to other costs on  
3-20 conviction imposed by this chapter, a person shall pay \$15 as a  
3-21 court cost on conviction of a felony or misdemeanor under Title 7,  
3-22 Penal Code.

3-23 (b) For purposes of this article, a person is considered to  
3-24 have been convicted if:

- 3-25 (1) a sentence is imposed;
- 3-26 (2) the defendant receives community supervision or
- 3-27 deferred adjudication; or
- 3-28 (3) the court defers final disposition of the case.

3-29 (c) Court costs under this article are collected in the same  
3-30 manner as other fines or costs. An officer collecting the costs  
3-31 shall keep separate records of the funds collected as costs under  
3-32 this article and shall deposit the funds in the county or municipal  
3-33 treasury, as appropriate.

3-34 (d) The custodian of a county or municipal treasury shall:

- 3-35 (1) keep records of the amount of funds on deposit
- 3-36 collected under this article; and
- 3-37 (2) except as provided by Subsection (e), send to the
- 3-38 comptroller before the last day of the first month following each
- 3-39 calendar quarter the funds collected under this article during the
- 3-40 preceding quarter.

3-41 (e) A county or municipality is entitled to:

- 3-42 (1) if the county or municipality has established a
- 3-43 pretrial victim-offender mediation program, retain 40 percent of
- 3-44 the funds collected under this article by an officer of the county
- 3-45 or municipality, to be used exclusively for the maintenance of a
- 3-46 pretrial victim-offender mediation program operated in the county
- 3-47 or municipality; and

- 3-48 (2) if the custodian of the county or municipal
- 3-49 treasury complies with Subsection (d), retain as a collection fee
- 3-50 10 percent of an amount equal to the difference between:

- 3-51 (A) the amount of funds collected under this
- 3-52 article by an officer of the county or municipality; and
- 3-53 (B) any amount the county or municipality is
- 3-54 entitled to retain under Subdivision (1).

3-55 (f) If no funds due as costs under this article are  
3-56 deposited in a county or municipal treasury in a calendar quarter,  
3-57 the custodian of the treasury shall file the report required for the  
3-58 quarter in the regular manner and must state that no funds were  
3-59 collected.

3-60 (g) The comptroller shall deposit the funds received under  
3-61 this article to the credit of the pretrial victim-offender  
3-62 mediation program account in the general revenue fund to help fund  
3-63 pretrial victim-offender mediation programs established under  
3-64 Subchapter A-1, Chapter 56. The legislature shall appropriate  
3-65 money from the account solely to the attorney general's office for  
3-66 distribution to pretrial victim-offender mediation programs that  
3-67 apply for the money.

3-68 (h) Funds collected under this article are subject to audit  
3-69 by the comptroller.

4-1 SECTION 3. Subchapter B, Chapter 102, Government Code, is  
4-2 amended by adding Section 102.0216 to read as follows:

4-3 Sec. 102.0216. ADDITIONAL COURT COSTS ON CONVICTION: CODE  
4-4 OF CRIMINAL PROCEDURE. A person convicted of an offense under Title  
4-5 7, Penal Code, shall pay a cost on conviction, in addition to all  
4-6 other costs, to help fund pretrial victim-offender mediation  
4-7 programs established under Subchapter A-1, Chapter 56, Code of  
4-8 Criminal Procedure (Art. 102.0179, Code of Criminal  
4-9 Procedure) . . . \$15.

4-10 SECTION 4. Subchapter B, Chapter 103, Government Code, is  
4-11 amended by adding Section 103.0217 to read as follows:

4-12 Sec. 103.0217. ADDITIONAL FEES IN CRIMINAL CASES: CODE OF  
4-13 CRIMINAL PROCEDURE. A defendant who participates in a pretrial  
4-14 victim-offender mediation program under Subchapter A-1, Chapter  
4-15 56, Code of Criminal Procedure, may be required to pay a program fee  
4-16 in an amount not to exceed \$500 and the costs of certain testing,  
4-17 counseling, and treatment.

4-18 SECTION 5. Title 3, Family Code, is amended by adding  
4-19 Chapter 62 to read as follows:

4-20 CHAPTER 62. JUVENILE VICTIM-OFFENDER MEDIATION PILOT PROGRAM

4-21 Sec. 62.001. DEFINITIONS. In this chapter:

4-22 (1) "Commission" means the Texas Juvenile Probation  
4-23 Commission.

4-24 (2) "Department" means the Bexar County Juvenile  
4-25 Probation Department.

4-26 (3) "Program" means the juvenile victim-offender  
4-27 mediation pilot program created under this chapter.

4-28 Sec. 62.002. ESTABLISHMENT AND IMPLEMENTATION OF PILOT  
4-29 PROGRAM. (a) The commission shall establish a juvenile  
4-30 victim-offender mediation pilot program for children in Bexar  
4-31 County using funds appropriated for that purpose.

4-32 (b) In implementing the program, the commission shall  
4-33 require the department to:

4-34 (1) establish a resource network on the subject of  
4-35 victim-offender mediation that includes representatives from the  
4-36 department, the local dispute resolution center, the juvenile  
4-37 courts, the district attorney's office, and the local juvenile  
4-38 defense bar association;

4-39 (2) develop the program consistent with best practices  
4-40 identified by the commission; and

4-41 (3) identify outcome measures that may be used to  
4-42 measure the effectiveness of the program.

4-43 Sec. 62.003. REPORT. Not later than December 1, 2010, the  
4-44 department shall submit a report to the commission regarding the  
4-45 program. The report must include:

4-46 (1) a comprehensive analysis of the effectiveness of  
4-47 the program; and

4-48 (2) the department's findings and recommendations  
4-49 regarding continuation or expansion of the program.

4-50 Sec. 62.004. PROGRAM FUNDING. Subject to Section 62.005,  
4-51 the commission shall provide sufficient funds to the department for  
4-52 the program and report, if funds are appropriated for purposes of  
4-53 this chapter.

4-54 Sec. 62.005. IMPLEMENTATION CONTINGENT ON FEDERAL FUNDING.  
4-55 The commission is required to implement this chapter only if the  
4-56 commission receives, for the purpose of implementing this chapter,  
4-57 federal supplemental appropriations under the American Recovery  
4-58 and Reinvestment Act of 2009 (Pub. L. No. 111-5) or any other  
4-59 similar federal legislation that is enacted on or after January 1,  
4-60 2009.

4-61 Sec. 62.006. EXPIRATION. This chapter expires September 2,  
4-62 2011.

4-63 SECTION 6. (a) The change in law made by this Act in adding  
4-64 Subchapter A-1, Chapter 56, Code of Criminal Procedure, applies to  
4-65 a defendant who enters a pretrial victim-offender mediation program  
4-66 under that subchapter regardless of whether the defendant committed  
4-67 the offense for which the defendant enters the program before, on,  
4-68 or after the effective date of this Act.

4-69 (b) The change in law made by this Act in adding Article

5-1 102.0179, Code of Criminal Procedure, and Section 102.0216,  
5-2 Government Code, applies only to an offense committed on or after  
5-3 the effective date of this Act. An offense committed before the  
5-4 effective date of this Act is governed by the law in effect when the  
5-5 offense was committed, and the former law is continued in effect for  
5-6 that purpose. For purposes of this subsection, an offense was  
5-7 committed before the effective date of this Act if any element of  
5-8 the offense was committed before that date.

5-9 SECTION 7. This Act takes effect immediately if it receives  
5-10 a vote of two-thirds of all the members elected to each house, as  
5-11 provided by Section 39, Article III, Texas Constitution. If this  
5-12 Act does not receive the vote necessary for immediate effect, this  
5-13 Act takes effect September 1, 2009.

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