

By: Gutierrez

H.B. No. 2622

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

19 Art. 56.24. OVERSIGHT. (a) The lieutenant governor and the
20 speaker of the house of representatives may assign to appropriate
21 legislative committees duties relating to the oversight of pretrial
22 victim-offender mediation programs established under this
23 subchapter.

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

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

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

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

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

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

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

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

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

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

22 SECTION 2. Subchapter B, Chapter 103, Government Code, is
23 amended by adding Section 103.0217 to read as follows:

24 Sec. 103.0217. ADDITIONAL FEES IN CRIMINAL CASES: CODE OF
25 CRIMINAL PROCEDURE. A defendant who participates in a pretrial
26 victim-offender mediation program under Subchapter A-1, Chapter
27 56, Code of Criminal Procedure, may be required to pay a program fee

1 in an amount not to exceed \$500 and the costs of certain testing,
2 counseling, and treatment.

3 SECTION 3. The change in law made by this Act in adding
4 Subchapter A-1, Chapter 56, Code of Criminal Procedure, applies to
5 a defendant who enters a pretrial victim-offender mediation program
6 under that subchapter regardless of whether the defendant committed
7 the offense for which the defendant enters the program before, on,
8 or after the effective date of this Act.

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