

House Bill 2139
Senate Amendments
Section-by-Section Analysis

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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 victim-offender mediation; and

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

(A) includes an apology by the defendant; and

(B) requires the defendant to:

(i) pay restitution to the victim; or

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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, the defendant, and **the attorney representing the state** to be obtained before an eligible defendant may proceed with pretrial victim-offender mediation; and

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

(A) includes an apology by the defendant; and

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(ii) perform community service.

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

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

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

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

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

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

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

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(ii) perform community service.

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

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

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

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

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

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

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mediation agreement.

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

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

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

(2) either:

(A) pays all court costs; or

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

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

(j) If the defendant is not arrested or convicted of a subsequent felony or misdemeanor other than a misdemeanor regulating traffic and punishable by fine only on or before the first anniversary of the date the defendant successfully completed a mediation agreement

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

Notwithstanding any other law, for purposes of determining the duration and expiration of an applicable statute of limitation under Chapter 12, the running of the period of limitation is tolled while the defendant is enrolled in a program under this subchapter.

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

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

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

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

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

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

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

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

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mediation programs established under this subchapter.
(b) A legislative committee or the governor may request the state auditor to perform a management, operations, or financial or accounting audit of a pretrial victim-offender mediation program established under this subchapter.
(c) A county or municipality that establishes a pretrial victim-offender mediation program:
(1) shall notify the attorney general's office when the county or municipality begins implementation of the program;
(2) may provide information regarding the performance of the program to the attorney general's office on request; and
(3) may apply for funds for the program in accordance with Article 102.0179(g).
Art. 56.25. FEES. (a) A pretrial victim-offender mediation program established under this subchapter may collect from a defendant in the program:
(1) a reasonable program fee not to exceed \$500; and
(2) an alcohol or controlled substance testing, counseling, and treatment fee in an amount necessary to cover the costs of the testing, counseling, or treatment if such testing, counseling, or treatment is required by the mediation agreement.
(b) Fees collected under this article may be paid on a periodic basis or on a deferred payment schedule at the discretion of the judge, magistrate, or program director administering the pretrial victim-offender mediation program. The fees must be:
(1) based on the defendant's ability to pay; and

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

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

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

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

(1) a sentence is imposed;

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

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

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

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

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

(2) except as provided by Subsection (e), send to the comptroller before the last day of the first month following each calendar quarter the funds collected under

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

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this article during the preceding quarter.

(e) A county or municipality is entitled to:

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

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

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

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

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

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

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

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

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

Same as House version.

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

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

Same as House version.

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

CHAPTER 62. JUVENILE VICTIM-OFFENDER MEDIATION PILOT PROGRAM

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Sec. 62.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Texas Juvenile Probation Commission.

(2) "Department" means the Bexar County Juvenile Probation Department.

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

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

(b) In implementing the program, the commission shall require the department to:

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

(2) develop the program consistent with best practices identified by the commission; and

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

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

(1) a comprehensive analysis of the effectiveness of the program; and

(2) the department's findings and recommendations

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regarding continuation or expansion of the program.

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

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

Sec. 62.006. EXPIRATION. This chapter expires September 2, 2011.

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

(b) The change in law made by this Act in adding Article 102.0179, Code of Criminal Procedure, and Section 102.0216, Government Code, applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect when the offense was committed, and the former law is continued

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in effect for that purpose. For purposes of this subsection, an offense was committed before the effective date of this Act if any element of the offense was committed before that date.

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

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