

By: McClendon

H.B. No. 2019

A BILL TO BE ENTITLED

AN ACT

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

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 1, Article 28.01, Code of Criminal  
Procedure, is amended to read as follows:

Sec. 1. The court may set any criminal case for a pre-trial  
hearing before it is set for trial upon its merits, and direct the  
defendant and his attorney, if any of record, and the State's  
attorney, to appear before the court at the time and place stated in  
the court's order for a conference and hearing. The defendant must  
be present at the arraignment, and his presence is required during  
any pre-trial proceeding. The pre-trial hearing shall be to  
determine any of the following matters:

(1) Arraignment of the defendant, if such be  
necessary; and appointment of counsel to represent the defendant,  
if such be necessary;

(2) Pleadings of the defendant;

(3) Special pleas, if any;

(4) Exceptions to the form or substance of the  
indictment or information;

(5) Motions for continuance either by the State or  
defendant; provided that grounds for continuance not existing or  
not known at the time may be presented and considered at any time

1 before the defendant announces ready for trial;

2 (6) Motions to suppress evidence--When a hearing on  
3 the motion to suppress evidence is granted, the court may determine  
4 the merits of said motion on the motions themselves, or upon  
5 opposing affidavits, or upon oral testimony, subject to the  
6 discretion of the court;

7 (7) Motions for change of venue by the State or the  
8 defendant; provided, however, that such motions for change of  
9 venue, if overruled at the pre-trial hearing, may be renewed by the  
10 State or the defendant during the voir dire examination of the jury;

11 (8) Discovery;

12 (9) Entrapment; [~~and~~]

13 (10) Motion for appointment of interpreter; and

14 (11) Motion to allow the defendant to enter a pretrial  
15 victim-offender mediation program established under Subchapter  
16 A-1, Chapter 56.

17 SECTION 2. Chapter 56, Code of Criminal Procedure, is  
18 amended by adding Subchapter A-1 to read as follows:

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

20 Art. 56.21. AUTHORITY TO ESTABLISH PROGRAM. (a) The  
21 commissioners court of a county or governing body of a municipality  
22 may establish a pretrial victim-offender mediation program for  
23 persons who:

24 (1) have been arrested for or charged with a  
25 misdemeanor under Title 7, Penal Code, in any court in this state  
26 other than a district court; and

27 (2) have not previously been convicted of a felony or a

1 misdemeanor, other than a misdemeanor regulating traffic and  
2 punishable by fine only.

3 (b) A county court, statutory county court, municipal  
4 court, or justice court that implements a program under this  
5 subchapter may adopt administrative rules as necessary or  
6 convenient to implement or operate the program, including  
7 additional criteria related to a defendant's eligibility to enter  
8 the program.

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

11 (1) the identification of defendants who are eligible  
12 to participate in the program, including a consideration of whether  
13 the defendant meets any additional locally developed eligibility  
14 criteria;

15 (2) the consent of the victim to be obtained before the  
16 case may proceed to pretrial victim-offender mediation; and

17 (3) the defendant to enter into a binding mediation  
18 agreement in accordance with Article 56.24 that:

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

20 (B) requires the defendant to:

21 (i) pay restitution to the victim; or

22 (ii) perform community service.

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

27 (c) A pretrial victim-offender mediation program may

1 require the staff and other resources of pretrial services  
2 departments and community supervision correction departments to  
3 assist in monitoring the defendant's compliance with a mediation  
4 agreement reached through the program.

5 (d) A pretrial victim-offender mediation may be conducted  
6 by a court-appointed mediator who meets the training requirements  
7 provided by Sections 154.052(a) and (b), Civil Practice and  
8 Remedies Code, or by any other appropriate person designated by the  
9 court. Neither the attorney representing the state nor the  
10 attorney representing the defendant in the criminal action may  
11 serve as a mediator under the pretrial victim-offender mediation  
12 program.

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

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

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

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

26 (g) If a case is returned to the docket under Subsection  
27 (f), the defendant retains all of the rights that the defendant

1 possessed before entering the pretrial victim-offender mediation  
2 program under this subchapter. Notwithstanding any other law, for  
3 purposes of determining the duration and expiration of an  
4 applicable statute of limitation under Chapter 12, the running of  
5 the period of limitation is tolled while the defendant is enrolled  
6 in a program under this subchapter.

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

11 (1) successfully completes the mediation agreement as  
12 determined by the attorney representing the state; 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 (i) The attorney representing the state or the court may  
18 extend the initial compliance period granted to the defendant. A  
19 determination by the court regarding whether the mediation  
20 agreement has been successfully completed is final and may not be  
21 appealed.

22 (j) If the defendant is not arrested or convicted of a  
23 subsequent felony or misdemeanor other than a misdemeanor  
24 regulating traffic and punishable by fine only on or before the  
25 first anniversary of the date the defendant successfully completed  
26 a mediation agreement under this subchapter, on the motion of the  
27 defendant, the court shall enter an order of nondisclosure under

1 Section 411.081, Government Code, as if the defendant had received  
2 a discharge and dismissal under Section 5(c), Article 42.12, with  
3 respect to all records and files related to the defendant's arrest  
4 for the offense for which the defendant entered the pretrial  
5 victim-offender mediation program.

6 Art. 56.23. MOTION AND HEARING. (a) The court on its own  
7 motion may, and on the motion of either party shall, hold a pretrial  
8 hearing to determine whether to allow an eligible defendant to  
9 enter a pretrial victim-offender mediation program under this  
10 subchapter.

11 (b) The court shall conduct a pretrial hearing under this  
12 article in accordance with Chapter 28 and the rules of evidence.

13 (c) At a pretrial hearing under this article, either party  
14 may present any evidence relevant to the defendant's eligibility  
15 under Article 56.22 and other additional locally developed  
16 eligibility criteria to enter a pretrial victim-offender mediation  
17 program.

18 Art. 56.24. MEDIATION AGREEMENT. (a) A mediation  
19 agreement under this subchapter must be:

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

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

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

1 the defendant was arrested or charged.

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

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

8 Art. 56.25. OVERSIGHT. (a) The lieutenant governor and the  
9 speaker of the house of representatives may assign to appropriate  
10 legislative committees duties relating to the oversight of pretrial  
11 victim-offender mediation programs established under this  
12 subchapter.

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

17 Art. 56.26. FEES. (a) A pretrial victim-offender  
18 mediation program established under this subchapter may collect  
19 from a defendant in the program:

20 (1) a reasonable program participation fee not to  
21 exceed \$500; and

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

26 (b) Fees collected under this article may be paid on a  
27 periodic basis or on a deferred payment schedule at the discretion

1 of the judge, magistrate, or program director administering the  
2 pretrial victim-offender mediation program. The fees must be:

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

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

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

8 Art. 102.0179. COSTS ATTENDANT TO PRETRIAL VICTIM-OFFENDER  
9 MEDIATION. (a) A defendant who participates in a pretrial  
10 victim-offender mediation program established under Subchapter  
11 A-1, Chapter 56, on successful completion of the terms of the  
12 defendant's mediation agreement or on conviction, shall pay as  
13 court costs \$15 plus an additional program participation fee as  
14 described by Article 56.26 in the amount prescribed by that  
15 article.

16 (b) The court clerk shall collect the costs imposed under  
17 this article. The clerk shall keep a separate record of any money  
18 collected under this article and shall pay any money collected to  
19 the county or municipal treasurer, as appropriate, or to any other  
20 official who discharges the duties commonly delegated to a  
21 treasurer, for deposit in a fund to be known as the county pretrial  
22 victim-offender mediation program fund or in a fund to be known as  
23 the municipal pretrial victim-offender mediation program fund, as  
24 appropriate.

25 (c) A county or municipality that collects court costs under  
26 this article shall use the money in a fund described by Subsection  
27 (b) exclusively for the maintenance of the pretrial victim-offender



1 mediation program operated in the county or municipality.

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

4 Sec. 102.0216. ADDITIONAL COURT COSTS: CODE OF CRIMINAL  
5 PROCEDURE. A defendant who participates in a pretrial  
6 victim-offender mediation program established under Subchapter  
7 A-1, Chapter 56, Code of Criminal Procedure, shall pay on  
8 successful completion of the terms of the defendant's mediation  
9 agreement or on conviction, in addition to all other costs, to help  
10 fund pretrial victim-offender mediation programs established under  
11 that subchapter (Art. 102.0179, Code of Criminal Procedure) . . .  
12 \$15 plus an additional program participation fee in an amount not to  
13 exceed \$500.

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

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

1 the offense was committed before that date.

2 SECTION 6. This Act takes effect immediately if it receives  
3 a vote of two-thirds of all the members elected to each house, as  
4 provided by Section 39, Article III, Texas Constitution. If this  
5 Act does not receive the vote necessary for immediate effect, this  
6 Act takes effect September 1, 2011.