

By: McClendon, Craddick, Perry

H.B. No. 167

Substitute the following for H.B. No. 167:

By: Herrero

C.S.H.B. No. 167

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the establishment, operation, and funding of
3 victim-offender mediation programs; authorizing a fee.

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

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

7 Sec. 1. The court may set any criminal case for a pre-trial
8 hearing before it is set for trial upon its merits, and direct the
9 defendant and his attorney, if any of record, and the State's
10 attorney, to appear before the court at the time and place stated in
11 the court's order for a conference and hearing regardless of
12 whether the defendant has been formally charged. The defendant
13 must be present at the arraignment, and his presence is required
14 during any pre-trial proceeding. The pre-trial hearing shall be to
15 determine any of the following matters:

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

19 (2) Pleadings of the defendant;

20 (3) Special pleas, if any;

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

23 (5) Motions for continuance either by the State or
24 defendant; provided that grounds for continuance not existing or

1 not known at the time may be presented and considered at any time
2 before the defendant announces ready for trial;

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

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

12 (8) Discovery;

13 (9) Entrapment; ~~and~~

14 (10) Motion for appointment of interpreter; and

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

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

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

21 Art. 56.21. AUTHORITY TO ESTABLISH PROGRAM. (a) The
22 commissioners court of a county or governing body of a municipality
23 may, in coordination with the office of the attorney representing
24 the state in the county or municipality, establish a pretrial
25 victim-offender mediation program for persons who:

26 (1) have been arrested for or charged with a
27 misdemeanor under Title 7, Penal Code, in any court in this state

1 other than a district court; and

2 (2) have not previously been convicted of a felony or a
3 misdemeanor, other than a misdemeanor regulating traffic and
4 punishable by fine only.

5 (b) A county court, statutory county court, municipal
6 court, or justice court that implements a program under this
7 subchapter may adopt administrative rules and local rules of
8 procedure as necessary or appropriate to implement or operate the
9 program.

10 (c) The commissioners court of a county or governing body of
11 a municipality that establishes a program under this subchapter
12 may:

13 (1) allow for referral to the program of arrested
14 persons described by Subsection (a) who have not yet been formally
15 charged with an offense;

16 (2) adopt administrative rules and local rules of
17 procedure as necessary or appropriate to implement or operate the
18 program; and

19 (3) approve additional program requirements as
20 recommended by the attorney representing the state.

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

23 (1) the designation of individual defendants who are
24 eligible to participate in the program, based on standards
25 established by Article 56.21 and any local standards approved by
26 the commissioners court of the county or the governing body of the
27 municipality, as applicable;

1 (2) the attorney representing the state to consent to
2 a defendant's participation in the program;

3 (3) the consent of the victim to be obtained and
4 documented in the record of the court by the attorney representing
5 the state before the case may proceed to pretrial victim-offender
6 mediation; and

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

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

10 (B) requires the defendant to:

11 (i) pay restitution to the victim;

12 (ii) perform community service; or

13 (iii) both pay restitution and perform
14 community service.

15 (b) All communications made in a pretrial victim-offender
16 mediation program are confidential and may not be introduced into
17 evidence except in an open court proceeding instituted to determine
18 the meaning of a mediation agreement.

19 (c) A pretrial victim-offender mediation program may
20 require the staff and other resources of pretrial services
21 departments and community supervision and corrections departments
22 to assist the court or the attorney representing the state in
23 monitoring the defendant's compliance with a mediation agreement
24 reached through the program.

25 (d) A pretrial victim-offender mediation may be conducted
26 by a court-appointed mediator who meets the training requirements
27 provided by Sections 154.052(a) and (b), Civil Practice and

1 Remedies Code, or by any other appropriate person designated by the
2 court. Neither the attorney representing the state nor the
3 attorney representing the defendant in the criminal action may
4 serve as a mediator under the pretrial victim-offender mediation
5 program.

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

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

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

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

19 (g) If a case is returned to the docket under Subsection
20 (f), the defendant retains all of the rights that the defendant
21 possessed before entering the pretrial victim-offender mediation
22 program under this subchapter. Notwithstanding any other law, for
23 purposes of determining the duration and expiration of an
24 applicable statute of limitation under Chapter 12, the running of
25 the period of limitation is tolled while the defendant is enrolled
26 in a program under this subchapter.

27 (h) The attorney representing the state or the court may

1 extend the initial compliance period granted to the defendant.

2 (i) A determination by the court regarding whether the
3 mediation agreement has been successfully completed is final and
4 may not be appealed.

5 (j) If the defendant is not arrested or convicted of a
6 subsequent felony or misdemeanor other than a misdemeanor
7 regulating traffic and punishable by fine only on or before the
8 first anniversary of the date the defendant successfully completed
9 a mediation agreement under this subchapter, on the motion of the
10 defendant, the court shall enter an order of nondisclosure under
11 Section 411.081, Government Code, as if the defendant had received
12 a discharge and dismissal under Section 5(c), Article 42.12, with
13 respect to all records and files related to the defendant's arrest
14 for the offense for which the defendant entered the pretrial
15 victim-offender mediation program.

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

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

19 (2) ratified by the attorney representing the state in
20 the attorney's request for a court order to document and approve the
21 mediation agreement for the record.

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

27 (c) A mediation agreement is not valid for more than one

1 year after the date on which the mediation agreement is ratified
2 unless the court and the attorney representing the state approve
3 the extension of the agreement.

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

6 Art. 56.24. LEGISLATIVE REVIEW. The lieutenant governor
7 and the speaker of the house of representatives may assign to
8 appropriate legislative committees duties relating to the study,
9 review, and evaluation of pretrial victim-offender mediation
10 programs established under this subchapter, and those committees
11 may make recommendations to the legislature for appropriate
12 policies to monitor, improve, or provide state resources for those
13 programs.

14 Art. 56.25. LOCAL REVIEW. The commissioners court of a
15 county or governing body of a municipality may request a
16 management, operations, or financial or accounting audit of a
17 pretrial victim-offender mediation program established under this
18 subchapter.

19 Art. 56.26. FEES. (a) A pretrial victim-offender
20 mediation program established under this subchapter shall collect
21 from a defendant in the program a reasonable program participation
22 fee not to exceed \$500 and may collect from the defendant an alcohol
23 or controlled substance testing, counseling, and treatment fee in
24 an amount necessary to cover the costs of the testing, counseling,
25 or treatment, if such testing, counseling, or treatment is required
26 by the mediation agreement.

27 (b) Fees collected under this article may be paid on a

1 periodic basis or on a deferred payment schedule at the discretion
2 of the judge, magistrate, or program director administering the
3 pretrial victim-offender mediation program. The fees must be:

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

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

6 Art. 56.27. NOTICE. The office of an attorney representing
7 the state that participates in a pretrial victim-offender mediation
8 program established under this subchapter shall notify the public
9 by posting information about the program on the office's website.

10 SECTION 3. Subchapter A, Chapter 102, Code of Criminal
11 Procedure, is amended by adding Article 102.0179 to read as
12 follows:

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

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

1 the municipal pretrial victim-offender mediation program fund, as
2 appropriate.

3 (c) A county or municipality that collects court costs under
4 this article shall use the money in a fund described by Subsection
5 (b) exclusively for the maintenance of the pretrial victim-offender
6 mediation program operated in the county or municipality.

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

9 Sec. 102.0216. ADDITIONAL COURT COSTS: CODE OF CRIMINAL
10 PROCEDURE. A defendant who participates in a pretrial
11 victim-offender mediation program established under Subchapter
12 A-1, Chapter 56, Code of Criminal Procedure, shall pay on
13 successful completion of the terms of the defendant's mediation
14 agreement or on conviction, in addition to all other costs, to help
15 fund pretrial victim-offender mediation programs established under
16 that subchapter (Art. 102.0179, Code of Criminal Procedure) . . .
17 \$15 plus an additional program participation fee in an amount not to
18 exceed \$500.

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

25 (b) The change in law made by this Act in adding Article
26 102.0179, Code of Criminal Procedure, and Section 102.0216,
27 Government Code, applies only to an offense committed on or after

1 the effective date of this Act. An offense committed before the
2 effective date of this Act is governed by the law in effect when the
3 offense was committed, and the former law is continued in effect for
4 that purpose. For purposes of this subsection, an offense was
5 committed before the effective date of this Act if any element of
6 the offense was committed before that date.

7 SECTION 6. This Act takes effect immediately if it receives
8 a vote of two-thirds of all the members elected to each house, as
9 provided by Section 39, Article III, Texas Constitution. If this
10 Act does not receive the vote necessary for immediate effect, this
11 Act takes effect September 1, 2013.