

1-1 By: McClendon, et al. (Senate Sponsor - Zaffirini) H.B. No. 167
 1-2 (In the Senate - Received from the House May 8, 2013;
 1-3 May 9, 2013, read first time and referred to Committee on Criminal
 1-4 Justice; May 17, 2013, reported favorably by the following vote:
 1-5 Yeas 5, Nays 2; May 17, 2013, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7 Whitmire	X			
1-8 Huffman		X		
1-9 Carona	X			
1-10 Hinojosa	X			
1-11 Patrick		X		
1-12 Rodriguez	X			
1-13 Schwertner	X			

1-15 A BILL TO BE ENTITLED
 1-16 AN ACT

1-17 relating to the establishment, operation, and funding of
 1-18 victim-offender mediation programs; authorizing a fee.

1-19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-20 SECTION 1. Section 1, Article 28.01, Code of Criminal
 1-21 Procedure, is amended to read as follows:

1-22 Sec. 1. The court may set any criminal case for a pre-trial
 1-23 hearing before it is set for trial upon its merits, and direct the
 1-24 defendant and his attorney, if any of record, and the State's
 1-25 attorney, to appear before the court at the time and place stated in
 1-26 the court's order for a conference and hearing regardless of
 1-27 whether the defendant has been formally charged. The defendant
 1-28 must be present at the arraignment, and his presence is required
 1-29 during any pre-trial proceeding. The pre-trial hearing shall be to
 1-30 determine any of the following matters:

1-31 (1) Arraignment of the defendant, if such be
 1-32 necessary; and appointment of counsel to represent the defendant,
 1-33 if such be necessary;

1-34 (2) Pleadings of the defendant;

1-35 (3) Special pleas, if any;

1-36 (4) Exceptions to the form or substance of the
 1-37 indictment or information;

1-38 (5) Motions for continuance either by the State or
 1-39 defendant; provided that grounds for continuance not existing or
 1-40 not known at the time may be presented and considered at any time
 1-41 before the defendant announces ready for trial;

1-42 (6) Motions to suppress evidence--When a hearing on
 1-43 the motion to suppress evidence is granted, the court may determine
 1-44 the merits of said motion on the motions themselves, or upon
 1-45 opposing affidavits, or upon oral testimony, subject to the
 1-46 discretion of the court;

1-47 (7) Motions for change of venue by the State or the
 1-48 defendant; provided, however, that such motions for change of
 1-49 venue, if overruled at the pre-trial hearing, may be renewed by the
 1-50 State or the defendant during the voir dire examination of the jury;

1-51 (8) Discovery;

1-52 (9) Entrapment; ~~and~~

1-53 (10) Motion for appointment of interpreter; and

1-54 (11) Motion to allow the defendant to enter a pretrial
 1-55 victim-offender mediation program established under Subchapter
 1-56 A-1, Chapter 56.

1-57 SECTION 2. Chapter 56, Code of Criminal Procedure, is
 1-58 amended by adding Subchapter A-1 to read as follows:

1-59 SUBCHAPTER A-1. PRETRIAL VICTIM-OFFENDER MEDIATION PROGRAM

1-60 Art. 56.21. AUTHORITY TO ESTABLISH PROGRAM. (a) The
 1-61 commissioners court of a county or governing body of a municipality

2-1 may, in coordination with the office of the attorney representing
 2-2 the state in the county or municipality, establish a pretrial
 2-3 victim-offender mediation program for persons who:

2-4 (1) have been arrested for or charged with a
 2-5 misdemeanor under Title 7, Penal Code, in any court in this state
 2-6 other than a district court; and

2-7 (2) have not previously been convicted of a felony or a
 2-8 misdemeanor, other than a misdemeanor regulating traffic and
 2-9 punishable by fine only.

2-10 (b) A county court, statutory county court, municipal
 2-11 court, or justice court that implements a program under this
 2-12 subchapter may adopt administrative rules and local rules of
 2-13 procedure as necessary or appropriate to implement or operate the
 2-14 program.

2-15 (c) The commissioners court of a county or governing body of
 2-16 a municipality that establishes a program under this subchapter
 2-17 may:

2-18 (1) allow for referral to the program of arrested
 2-19 persons described by Subsection (a) who have not yet been formally
 2-20 charged with an offense;

2-21 (2) adopt administrative rules and local rules of
 2-22 procedure as necessary or appropriate to implement or operate the
 2-23 program; and

2-24 (3) approve additional program requirements as
 2-25 recommended by the attorney representing the state.

2-26 Art. 56.22. PROGRAM. (a) A pretrial victim-offender
 2-27 mediation program established under Article 56.21 must require:

2-28 (1) the designation of individual defendants who are
 2-29 eligible to participate in the program, based on standards
 2-30 established by Article 56.21 and any local standards approved by
 2-31 the commissioners court of the county or the governing body of the
 2-32 municipality, as applicable;

2-33 (2) the attorney representing the state to consent to
 2-34 a defendant's participation in the program;

2-35 (3) the consent of the victim to be obtained and
 2-36 documented in the record of the court by the attorney representing
 2-37 the state before the case may proceed to pretrial victim-offender
 2-38 mediation; and

2-39 (4) the defendant to enter into a binding mediation
 2-40 agreement in accordance with Article 56.23 that:

2-41 (A) includes an apology by the defendant; and

2-42 (B) requires the defendant to:

2-43 (i) pay restitution to the victim;

2-44 (ii) perform community service; or

2-45 (iii) both pay restitution and perform
 2-46 community service.

2-47 (b) All communications made in a pretrial victim-offender
 2-48 mediation program are confidential and may not be introduced into
 2-49 evidence except in an open court proceeding instituted to determine
 2-50 the meaning of a mediation agreement.

2-51 (c) A pretrial victim-offender mediation program may
 2-52 require the staff and other resources of pretrial services
 2-53 departments and community supervision and corrections departments
 2-54 to assist the court or the attorney representing the state in
 2-55 monitoring the defendant's compliance with a mediation agreement
 2-56 reached through the program.

2-57 (d) A pretrial victim-offender mediation may be conducted
 2-58 by a court-appointed mediator who meets the training requirements
 2-59 provided by Sections 154.052(a) and (b), Civil Practice and
 2-60 Remedies Code, or by any other appropriate person designated by the
 2-61 court. Neither the attorney representing the state nor the
 2-62 attorney representing the defendant in the criminal action may
 2-63 serve as a mediator under the pretrial victim-offender mediation
 2-64 program.

2-65 (e) If a defendant enters a pretrial victim-offender
 2-66 mediation program, the court may defer the proceedings without
 2-67 accepting a plea of guilty or nolo contendere or entering an
 2-68 adjudication of guilt. The court may not require the defendant to
 2-69 admit guilt or enter a plea of guilty or nolo contendere to enter

3-1 the program.

3-2 (f) The case must be returned to the docket and proceed
 3-3 through the regular criminal justice system if:

3-4 (1) a pretrial victim-offender mediation does not
 3-5 result in a mediation agreement; or

3-6 (2) the defendant fails to fulfill the terms of the
 3-7 mediation agreement successfully by the date specified in the
 3-8 mediation agreement.

3-9 (g) If a case is returned to the docket under Subsection
 3-10 (f), the defendant retains all of the rights that the defendant
 3-11 possessed before entering the pretrial victim-offender mediation
 3-12 program under this subchapter. Notwithstanding any other law, for
 3-13 purposes of determining the duration and expiration of an
 3-14 applicable statute of limitation under Chapter 12, the running of
 3-15 the period of limitation is tolled while the defendant is enrolled
 3-16 in a program under this subchapter.

3-17 (h) The attorney representing the state or the court may
 3-18 extend the initial compliance period granted to the defendant.

3-19 (i) A determination by the court regarding whether the
 3-20 mediation agreement has been successfully completed is final and
 3-21 may not be appealed.

3-22 (j) If the defendant is not arrested or convicted of a
 3-23 subsequent felony or misdemeanor other than a misdemeanor
 3-24 regulating traffic and punishable by fine only on or before the
 3-25 first anniversary of the date the defendant successfully completed
 3-26 a mediation agreement under this subchapter, on the motion of the
 3-27 defendant, the court shall enter an order of nondisclosure under
 3-28 Section 411.081, Government Code, as if the defendant had received
 3-29 a discharge and dismissal under Section 5(c), Article 42.12, with
 3-30 respect to all records and files related to the defendant's arrest
 3-31 for the offense for which the defendant entered the pretrial
 3-32 victim-offender mediation program.

3-33 Art. 56.23. MEDIATION AGREEMENT. (a) A mediation
 3-34 agreement under this subchapter must be written and:

3-35 (1) signed by the defendant and the victim; and

3-36 (2) ratified by the attorney representing the state in
 3-37 the attorney's request for a court order to document and approve the
 3-38 mediation agreement for the record.

3-39 (b) A mediation agreement may require testing, counseling,
 3-40 and treatment of the defendant to address alcohol abuse, abuse of
 3-41 controlled substances, mental health, or anger management or any
 3-42 other service that is reasonably related to the offense for which
 3-43 the defendant was arrested or charged.

3-44 (c) A mediation agreement is not valid for more than one
 3-45 year after the date on which the mediation agreement is ratified
 3-46 unless the court and the attorney representing the state approve
 3-47 the extension of the agreement.

3-48 (d) A mediation agreement under this subchapter does not
 3-49 constitute a plea or legal admission of responsibility.

3-50 Art. 56.24. LEGISLATIVE REVIEW. The lieutenant governor
 3-51 and the speaker of the house of representatives may assign to
 3-52 appropriate legislative committees duties relating to the study,
 3-53 review, and evaluation of pretrial victim-offender mediation
 3-54 programs established under this subchapter, and those committees
 3-55 may make recommendations to the legislature for appropriate
 3-56 policies to monitor, improve, or provide state resources for those
 3-57 programs.

3-58 Art. 56.25. LOCAL REVIEW. The commissioners court of a
 3-59 county or governing body of a municipality may request a
 3-60 management, operations, or financial or accounting audit of a
 3-61 pretrial victim-offender mediation program established under this
 3-62 subchapter.

3-63 Art. 56.26. FEES. (a) A pretrial victim-offender
 3-64 mediation program established under this subchapter shall collect
 3-65 from a defendant in the program a reasonable program participation
 3-66 fee not to exceed \$500 and may collect from the defendant an alcohol
 3-67 or controlled substance testing, counseling, and treatment fee in
 3-68 an amount necessary to cover the costs of the testing, counseling,
 3-69 or treatment, if such testing, counseling, or treatment is required

4-1 by the mediation agreement.

4-2 (b) Fees collected under this article may be paid on a
4-3 periodic basis or on a deferred payment schedule at the discretion
4-4 of the judge, magistrate, or program director administering the
4-5 pretrial victim-offender mediation program. The fees must be:

4-6 (1) based on the defendant's ability to pay; and

4-7 (2) used only for purposes specific to the program.

4-8 Art. 56.27. NOTICE. The office of an attorney representing
4-9 the state that participates in a pretrial victim-offender mediation
4-10 program established under this subchapter shall notify the public
4-11 by posting information about the program on the office's website.

4-12 SECTION 3. Subchapter A, Chapter 102, Code of Criminal
4-13 Procedure, is amended by adding Article 102.0179 to read as
4-14 follows:

4-15 Art. 102.0179. COSTS ATTENDANT TO PRETRIAL VICTIM-OFFENDER
4-16 MEDIATION. (a) A defendant who participates in a pretrial
4-17 victim-offender mediation program established under Subchapter
4-18 A-1, Chapter 56, on successful completion of the terms of the
4-19 defendant's mediation agreement or on conviction, shall pay as
4-20 court costs \$15 plus an additional program participation fee as
4-21 described by Article 56.26 in the amount prescribed by that
4-22 article.

4-23 (b) The court clerk shall collect the costs imposed under
4-24 this article. The clerk shall keep a separate record of any money
4-25 collected under this article and shall pay any money collected to
4-26 the county or municipal treasurer, as appropriate, or to any other
4-27 official who discharges the duties commonly delegated to a
4-28 treasurer, for deposit in a fund to be known as the county pretrial
4-29 victim-offender mediation program fund or in a fund to be known as
4-30 the municipal pretrial victim-offender mediation program fund, as
4-31 appropriate.

4-32 (c) A county or municipality that collects court costs under
4-33 this article shall use the money in a fund described by Subsection
4-34 (b) exclusively for the maintenance of the pretrial victim-offender
4-35 mediation program operated in the county or municipality.

4-36 SECTION 4. Subchapter B, Chapter 102, Government Code, is
4-37 amended by adding Section 102.0216 to read as follows:

4-38 Sec. 102.0216. ADDITIONAL COURT COSTS: CODE OF CRIMINAL
4-39 PROCEDURE. A defendant who participates in a pretrial
4-40 victim-offender mediation program established under Subchapter
4-41 A-1, Chapter 56, Code of Criminal Procedure, shall pay on
4-42 successful completion of the terms of the defendant's mediation
4-43 agreement or on conviction, in addition to all other costs, to help
4-44 fund pretrial victim-offender mediation programs established under
4-45 that subchapter (Art. 102.0179, Code of Criminal Procedure) . . .
4-46 \$15 plus an additional program participation fee in an amount not to
4-47 exceed \$500.

4-48 SECTION 5. (a) The change in law made by this Act in adding
4-49 Subchapter A-1, Chapter 56, Code of Criminal Procedure, applies to
4-50 a defendant who enters a pretrial victim-offender mediation program
4-51 under that subchapter regardless of whether the defendant committed
4-52 the offense for which the defendant enters the program before, on,
4-53 or after the effective date of this Act.

4-54 (b) The change in law made by this Act in adding Article
4-55 102.0179, Code of Criminal Procedure, and Section 102.0216,
4-56 Government Code, applies only to an offense committed on or after
4-57 the effective date of this Act. An offense committed before the
4-58 effective date of this Act is governed by the law in effect when the
4-59 offense was committed, and the former law is continued in effect for
4-60 that purpose. For purposes of this subsection, an offense was
4-61 committed before the effective date of this Act if any element of
4-62 the offense was committed before that date.

4-63 SECTION 6. This Act takes effect immediately if it receives
4-64 a vote of two-thirds of all the members elected to each house, as
4-65 provided by Section 39, Article III, Texas Constitution. If this
4-66 Act does not receive the vote necessary for immediate effect, this
4-67 Act takes effect September 1, 2013.

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