

By: Keough

H.B. No. 319

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. 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 offenses
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.

(2) the consent of both 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

1 agreement in accordance with Article 56.23 that:

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

3 (B) requires the defendant upon acceptance of a
4 mediation agreement to:

5 (i) pay restitution to the victim; and, or

6 (ii) perform community service.

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

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

16 (d) Pretrial victim-offender meditations may be conducted
17 by any person designated by the court, other than the attorney
18 representing the state or an attorney representing the defendant in
19 the criminal action.

20 (i) Mediators must have completed 40
21 classroom hours of basic mediation training in compliance with
22 Texas Civil Practices and Remedies Code Sec. 154.052.

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

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

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

17 (2) either:

18 (A) pays all court costs; or

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

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

25 (j) If the defendant is not arrested or convicted of a
26 subsequent felony or misdemeanor other than a misdemeanor
27 regulating traffic offenses and punishable by fine only on or

1 before the first anniversary of the date the defendant successfully
2 completed a mediation agreement under this subchapter, on the
3 motion of the defendant, the court shall enter an order of
4 nondisclosure under Section 411.081, Government Code, as if the
5 defendant had received a discharge and dismissal under Section
6 5(c), Article 42.12, with respect to all records and files related
7 to the defendant's arrest for the offense for which the defendant
8 entered the pretrial victim-offender mediation program.

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

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

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

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

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

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

26 Art. 56.24. OVERSIGHT. (a) The lieutenant governor and the
27 speaker of the House of Representatives may assign to appropriate

1 legislative committees duties relating to the oversight of pretrial
2 victim-offender mediation programs established under this
3 subchapter.

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

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

10 (1) shall notify the attorney general's office when
11 the county or municipality begins implementation of the program;

12 (2) may provide information regarding the performance
13 of the program to the attorney general's office on request; and

14 (3) may apply for funds for the program in accordance
15 with Article 102.0179(g).

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

19 (1) a reasonable program fee not to exceed \$2,000; and

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

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

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

(e) A county or municipality is entitled to:

(1) if the county or municipality has established a pretrial victim-offender mediation program, retain 75 percent of

1 the funds collected under this article by an officer of the county
2 or municipality, to be used exclusively for the maintenance of a
3 pretrial victim-offender mediation program operated in the county
4 or municipality; and

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

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

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

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

22 Sec. 102.0216. ADDITIONAL COURT COSTS ON CONVICTION: CODE
23 OF CRIMINAL PROCEDURE. A person convicted of an offense under Title
24 7, Penal Code, shall pay a cost on conviction, in addition to all
25 other costs, to help fund pretrial victim-offender mediation
26 programs established under Subchapter A-1, Chapter 56, Code of
27 Criminal Procedure (Art. 102.0179, Code of Criminal Procedure)

1 . . . \$15.

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

4 Sec. 103.0217. ADDITIONAL FEES IN CRIMINAL CASES: CODE OF
5 CRIMINAL PROCEDURE. A defendant who participates in a pretrial
6 victim-offender mediation program under Subchapter A-1, Chapter
7 56, Code of Criminal Procedure, may be required to pay a program fee
8 in an amount not to exceed \$2,000 and the costs of certain testing,
9 counseling, and treatment.

10 SECTION 5. This Act takes effect immediately if it receives
11 a vote of two-thirds of all the members elected to each house, as
12 provided by Section 39, Article III, Texas Constitution. If this
13 Act does not receive the vote necessary for immediate effect, this
14 Act takes effect September 1, 2015.