

AN ACT

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

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 the defendant's ~~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 regardless of whether the defendant has been formally charged. The defendant must be present at the arraignment, and the defendant's ~~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

1 defendant; provided that grounds for continuance not existing or  
2 not known at the time may be presented and considered at any time  
3 before the defendant announces ready for trial;

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

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

13 (8) Discovery;

14 (9) Entrapment; ~~and~~

15 (10) Motion for appointment of interpreter; and

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

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

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

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

27 (1) have been arrested for or charged with a

1 misdemeanor or state jail felony under Title 7, Penal Code; 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 court that implements a program under this subchapter  
6 may adopt administrative rules and local rules of procedure as  
7 necessary or appropriate to implement or operate the program.

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

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

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

17 (3) approve additional program requirements as  
18 recommended by the attorney representing the state.

19 Art. 56.22. PROGRAM. (a) A pretrial victim-offender  
20 mediation program established under Article 56.21 on or after  
21 September 1, 2015, must require:

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

27 (2) the attorney representing the state to consent to

1 the referral of a defendant's matter to mediation under the  
2 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 requires the  
9 defendant to take responsibility for the defendant's actions and  
10 addresses the specific circumstances of the defendant's actions,  
11 which may:

12 (A) include an apology by the defendant; or

13 (B) require the defendant to:

14 (i) pay restitution to the victim;

15 (ii) perform community service; or

16 (iii) both pay restitution and perform  
17 community service.

18 (b) A court that implements a pretrial victim-offender  
19 mediation program established before September 1, 2015, may elect  
20 to apply the provisions under Subsection (a) in implementing the  
21 program.

22 (c) All communications made in a pretrial victim-offender  
23 mediation program are confidential and may not be introduced into  
24 evidence except in an open court proceeding instituted to determine  
25 the meaning of a mediation agreement.

26 (d) A pretrial victim-offender mediation program may  
27 require the staff and other resources of pretrial services

1 departments and community supervision and corrections departments  
2 to assist the court or the attorney representing the state in  
3 monitoring the defendant's compliance with a mediation agreement  
4 reached through the program.

5 (e) 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, and has completed training in criminal justice  
9 mediation, or by any other appropriate person designated by the  
10 court. Neither the attorney representing the state nor the  
11 attorney representing the defendant in the criminal action may  
12 serve as a mediator in the defendant's pretrial victim-offender  
13 mediation program.

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

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

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

24 (2) the defendant fails to fulfill the terms of the  
25 mediation agreement successfully by the date specified in the  
26 mediation agreement; or

27 (3) the mediator determines, based on the mediator's

1 training and experience, that:

2 (A) the victim or defendant no longer wants to  
3 participate or cooperate; or

4 (B) the mediation will be ineffective.

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

13 (i) If the defendant successfully completes the mediation  
14 agreement as represented to the court by the attorney representing  
15 the state, after notice to the attorney representing the state and a  
16 hearing at which the court determines that a dismissal of any  
17 indictment or information charging the defendant with the  
18 commission of the offense is in the best interest of justice, the  
19 court shall dismiss the criminal action against the defendant.

20 (j) The court or the attorney representing the state may  
21 extend the initial compliance period granted to the defendant.

22 (k) A determination by the court regarding whether the  
23 mediation agreement has been successfully completed is final and  
24 may not be appealed.

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

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

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

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

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

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. LEGISLATIVE REVIEW. The lieutenant governor  
27 and the speaker of the house of representatives may assign to

1 appropriate legislative committees interim duties relating to the  
2 study, review, and evaluation of pretrial victim-offender  
3 mediation programs established under this subchapter, and those  
4 committees may make recommendations to the legislature for  
5 appropriate policies to monitor, improve, or provide state  
6 resources for those programs.

7 Art. 56.25. LOCAL REVIEW. The commissioners court of a  
8 county or governing body of a municipality may request a  
9 management, operations, or financial or accounting audit of a  
10 pretrial victim-offender mediation program established under this  
11 subchapter.

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

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

- 24 (1) based on the defendant's ability to pay; and
- 25 (2) used only for purposes specific to the program.

26 Art. 56.27. NOTICE. The office of an attorney representing  
27 the state that participates in a pretrial victim-offender mediation



1 program established under this subchapter shall notify the public  
2 by posting information about the program on the office's website.

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

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

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

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

27 SECTION 4. Chapter 54, Family Code, is amended by adding

1 Section 54.035 to read as follows:

2 Sec. 54.035. VICTIM-OFFENDER MEDIATION. (a) The Texas  
3 Juvenile Justice Board by rule shall establish guidelines  
4 permitting victim-offender mediation programs to be implemented  
5 and administered by juvenile boards.

6 (b) In a mediation program authorized under this section,  
7 each victim to whom this section applies must be informed of the  
8 victim's right to request victim-offender mediation.

9 (c) Participation in a victim-offender mediation program  
10 under this section by a child and by a victim must be voluntary. If a  
11 child's case is forwarded to the office of the prosecuting attorney  
12 under Section 53.01, the prosecuting attorney must consent to the  
13 mediation in which the child may participate under the program.

14 (d) If an agreement is not reached between the victim and  
15 the child or if the child does not successfully complete the terms  
16 of the agreement, as determined by the juvenile court, the child's  
17 case shall proceed in accordance with the applicable provisions of  
18 this title.

19 SECTION 5. Section 57.002(a), Family Code, is amended to  
20 read as follows:

21 (a) A victim, guardian of a victim, or close relative of a  
22 deceased victim is entitled to the following rights within the  
23 juvenile justice system:

24 (1) the right to receive from law enforcement agencies  
25 adequate protection from harm and threats of harm arising from  
26 cooperation with prosecution efforts;

27 (2) the right to have the court or person appointed by

1 the court take the safety of the victim or the victim's family into  
2 consideration as an element in determining whether the child should  
3 be detained before the child's conduct is adjudicated;

4 (3) the right, if requested, to be informed of  
5 relevant court proceedings, including appellate proceedings, and  
6 to be informed in a timely manner if those court proceedings have  
7 been canceled or rescheduled;

8 (4) the right to be informed, when requested, by the  
9 court or a person appointed by the court concerning the procedures  
10 in the juvenile justice system, including general procedures  
11 relating to:

12 (A) the preliminary investigation and deferred  
13 prosecution of a case; and

14 (B) the appeal of the case;

15 (5) the right to provide pertinent information to a  
16 juvenile court conducting a disposition hearing concerning the  
17 impact of the offense on the victim and the victim's family by  
18 testimony, written statement, or any other manner before the court  
19 renders its disposition;

20 (6) the right to receive information regarding  
21 compensation to victims as provided by Subchapter B, Chapter 56,  
22 Code of Criminal Procedure, including information related to the  
23 costs that may be compensated under that subchapter and the amount  
24 of compensation, eligibility for compensation, and procedures for  
25 application for compensation under that subchapter, the payment of  
26 medical expenses under Article [~~Section~~] 56.06, Code of Criminal  
27 Procedure, for a victim of a sexual assault, and when requested, to

1 referral to available social service agencies that may offer  
2 additional assistance;

3           (7) the right to be informed, upon request, of  
4 procedures for release under supervision or transfer of the person  
5 to the custody of the Texas Department of Criminal Justice for  
6 parole, to participate in the release or transfer for parole  
7 process, to be notified, if requested, of the person's release,  
8 escape, or transfer for parole proceedings concerning the person,  
9 to provide to the Texas Juvenile Justice Department for inclusion  
10 in the person's file information to be considered by the commission  
11 before the release under supervision or transfer for parole of the  
12 person, and to be notified, if requested, of the person's release or  
13 transfer for parole;

14           (8) the right to be provided with a waiting area,  
15 separate or secure from other witnesses, including the child  
16 alleged to have committed the conduct and relatives of the child,  
17 before testifying in any proceeding concerning the child, or, if a  
18 separate waiting area is not available, other safeguards should be  
19 taken to minimize the victim's contact with the child and the  
20 child's relatives and witnesses, before and during court  
21 proceedings;

22           (9) the right to prompt return of any property of the  
23 victim that is held by a law enforcement agency or the attorney for  
24 the state as evidence when the property is no longer required for  
25 that purpose;

26           (10) the right to have the attorney for the state  
27 notify the employer of the victim, if requested, of the necessity of

1 the victim's cooperation and testimony in a proceeding that may  
2 necessitate the absence of the victim from work for good cause;

3 (11) the right to be present at all public court  
4 proceedings related to the conduct of the child as provided by  
5 Section 54.08, subject to that section; ~~and~~

6 (12) for a victim to whom Section 54.035 applies, the  
7 right to request victim-offender mediation under that section; and

8 (13) any other right appropriate to the victim that a  
9 victim of criminal conduct has under Article 56.02 or 56.021, Code  
10 of Criminal Procedure.

11 SECTION 6. Section 58.003, Family Code, is amended by  
12 adding Subsections (c-9) and (c-10) to read as follows:

13 (c-9) Notwithstanding Subsections (a) and (c) and subject  
14 to Subsection (b), a juvenile court may order the sealing of records  
15 concerning a child alleged to have engaged in delinquent conduct or  
16 conduct indicating a need for supervision if the child successfully  
17 completed a victim-offender mediation program under Section  
18 54.035. The court may:

19 (1) immediately order the sealing of the records  
20 without a hearing; or

21 (2) hold a hearing to determine whether to seal the  
22 records.

23 (c-10) If the court orders the sealing of a child's records  
24 under Subsection (c-9), a prosecuting attorney or juvenile  
25 probation department may maintain until the child's 17th birthday a  
26 separate record of the child's name and date of birth, the  
27 allegation against the child, and the date the child successfully

1 completed the victim-offender mediation program. The prosecuting  
2 attorney or juvenile probation department, as applicable, shall  
3 send the record to the court as soon as practicable after the  
4 child's 17th birthday to be added to the child's other sealed  
5 records.

6 SECTION 7. Subchapter B, Chapter 102, Government Code, is  
7 amended by adding Section 102.0215 to read as follows:

8 Sec. 102.0215. ADDITIONAL COURT COSTS: CODE OF CRIMINAL  
9 PROCEDURE. A defendant who participates in a pretrial  
10 victim-offender mediation program established under Subchapter  
11 A-1, Chapter 56, Code of Criminal Procedure, shall pay on  
12 successful completion of the terms of the defendant's mediation  
13 agreement or on conviction, in addition to all other costs, to help  
14 fund pretrial victim-offender mediation programs established under  
15 that subchapter (Art. 102.0179, Code of Criminal Procedure) . . .  
16 \$15 plus an additional program participation fee in an amount not to  
17 exceed \$500.

18 SECTION 8. Subchapter A, Chapter 221, Human Resources Code,  
19 is amended by adding Section 221.013 to read as follows:

20 Sec. 221.013. MEDIATION MONITORING. The department shall  
21 monitor the success of victim-offender mediation programs  
22 established under Section 54.035, Family Code.

23 SECTION 9. (a) Subchapter A-1, Chapter 56, Code of Criminal  
24 Procedure, as added by this Act, applies to a defendant who enters a  
25 pretrial victim-offender mediation program under that subchapter  
26 regardless of whether the defendant committed the offense for which  
27 the defendant enters the program before, on, or after the effective

1 date of this Act.

2 (b) Article 102.0179, Code of Criminal Procedure, and  
3 Section 102.0215, Government Code, as added by this Act, apply only  
4 to an offense committed on or after the effective date of this Act.  
5 An offense committed before the effective date of this Act is  
6 governed by the law in effect when the offense was committed, and  
7 the former law is continued in effect for that purpose. For  
8 purposes of this subsection, an offense was committed before the  
9 effective date of this Act if any element of the offense was  
10 committed before that date.

11 SECTION 10. (a) Not later than December 1, 2015, the Texas  
12 Juvenile Justice Board shall establish guidelines for  
13 victim-offender mediation programs as required by Section 54.035,  
14 Family Code, as added by this Act.

15 (b) Section 54.035, Family Code, as added by this Act,  
16 applies only to a victim-offender mediation under that section that  
17 occurs on or after January 1, 2016, regardless of whether the  
18 conduct that is the basis of the mediation occurs before, on, or  
19 after that date.

20 SECTION 11. This Act takes effect September 1, 2015.

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President of the Senate

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Speaker of the House

I certify that H.B. No. 3184 was passed by the House on May 12, 2015, by the following vote: Yeas 87, Nays 52, 2 present, not voting; and that the House concurred in Senate amendments to H.B. No. 3184 on May 29, 2015, by the following vote: Yeas 99, Nays 44, 2 present, not voting, and that the House adopted H.C.R. No. 147 authorizing certain corrections in H.B. No. 3184 on May 31, 2015, by the following vote: Yeas 144, Nays 0, 2 present, not voting.

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Chief Clerk of the House

I certify that H.B. No. 3184 was passed by the Senate, with amendments, on May 27, 2015, by the following vote: Yeas 23, Nays 8, and that the Senate adopted H.C.R. No. 147 authorizing certain corrections in H.B. No. 3184 on May 31, 2015, by the following vote: Yeas 31, Nays 0.

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Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

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Governor