

By: McClendon

H.B. No. 3184

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the establishment, operation, and funding of
3 victim-offender mediation programs; authorizing fees.

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 or state jail felony under Title 7, Penal Code; and

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

4 (b) A court that implements a program under this subchapter
5 may adopt administrative rules and local rules of procedure as
6 necessary or appropriate to implement or operate the program.

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

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

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

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

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

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

25 (2) the consent of the victim to be obtained and
26 documented in the record of the court by the attorney representing
27 the state before the case may proceed to pretrial victim-offender

1 mediation; and

2 (3) the defendant to enter into a binding mediation
3 agreement in accordance with Article 56.23 that requires the
4 defendant to take responsibility for the defendant's actions and
5 addresses the specific circumstances of the defendant's actions,
6 which may:

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

8 (B) require the defendant to:

9 (i) pay restitution to the victim;

10 (ii) perform community service; or

11 (iii) both pay restitution and perform
12 community service.

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

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

23 (d) A pretrial victim-offender mediation may be conducted
24 by a court-appointed mediator who meets the training requirements
25 provided by Sections 154.052(a) and (b), Civil Practice and
26 Remedies Code, and has completed training in criminal justice
27 mediation, or by any other appropriate person designated by the

1 court. Neither the attorney representing the state nor the
2 attorney representing the defendant in the criminal action may
3 serve as a mediator in the defendant's pretrial victim-offender
4 mediation program.

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

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

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

15 (2) the defendant fails to fulfill the terms of the
16 mediation agreement successfully by the date specified in the
17 mediation agreement; or

18 (3) the mediator determines, based on the mediator's
19 training and experience, that:

20 (A) the victim or defendant no longer wants to
21 participate or cooperate; or

22 (B) the mediation will be ineffective.

23 (g) If a case is returned to the docket under Subsection
24 (f), the defendant retains all of the rights that the defendant
25 possessed before entering the pretrial victim-offender mediation
26 program under this subchapter. Notwithstanding any other law, for
27 purposes of determining the duration and expiration of an

1 applicable statute of limitation under Chapter 12, the running of
2 the period of limitation is tolled while the defendant is enrolled
3 in a program under this subchapter.

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

8 (1) successfully completes the mediation agreement as
9 represented to the court by the attorney representing the state;
10 and

11 (2) either:

12 (A) pays all court costs; or

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

15 (i) The court or the attorney representing the state may
16 extend the initial compliance period granted to the defendant.

17 (j) A determination by the court regarding whether the
18 mediation agreement has been successfully completed is final and
19 may not be appealed.

20 (k) If the defendant is not arrested or convicted of a
21 subsequent felony or misdemeanor other than a misdemeanor
22 regulating traffic and punishable by fine only on or before the
23 first anniversary of the date the defendant successfully completed
24 a mediation agreement under this subchapter, on the motion of the
25 defendant, the court shall enter an order of nondisclosure under
26 Section 411.081, Government Code, as if the defendant had received
27 a discharge and dismissal under Section 5(c), Article 42.12, with

1 respect to all records and files related to the defendant's arrest
2 for the offense for which the defendant entered the pretrial
3 victim-offender mediation program.

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

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

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

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

15 (c) A mediation agreement is not valid for more than one
16 year after the date on which the mediation agreement is ratified
17 unless the court and the attorney representing the state approve
18 the extension of the agreement.

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

21 Art. 56.24. LEGISLATIVE REVIEW. The lieutenant governor
22 and the speaker of the house of representatives may assign to
23 appropriate legislative committees interim duties relating to the
24 study, review, and evaluation of pretrial victim-offender
25 mediation programs established under this subchapter, and those
26 committees may make recommendations to the legislature for
27 appropriate policies to monitor, improve, or provide state

1 resources for those programs.

2 Art. 56.25. LOCAL REVIEW. The commissioners court of a
3 county or governing body of a municipality may request a
4 management, operations, or financial or accounting audit of a
5 pretrial victim-offender mediation program established under this
6 subchapter.

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

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

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

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

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

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

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

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

22 SECTION 4. Chapter 54, Family Code, is amended by adding
23 Section 54.035 to read as follows:

24 Sec. 54.035. VICTIM-OFFENDER MEDIATION. (a) This section
25 applies only to a child whose delinquent conduct or conduct
26 indicating a need for supervision:

27 (1) causes a victim to suffer a pecuniary loss; and

1 (2) does not cause the victim or another to suffer
2 physical injury or harm.

3 (b) The Texas Juvenile Justice Board by rule shall establish
4 guidelines for victim-offender mediation programs to be
5 administered by juvenile boards. Each juvenile board shall
6 implement and administer a victim-offender mediation program in
7 accordance with the guidelines adopted by the Texas Juvenile
8 Justice Board. A juvenile court is required to inform a victim to
9 whom this section applies of the victim's right to request
10 victim-offender mediation.

11 (c) Under a victim-offender mediation program, a victim to
12 whom this section applies may request mediation with the child who
13 is alleged to have engaged in the delinquent conduct or conduct
14 indicating a need for supervision. If the child agrees to
15 participate in the victim-offender mediation and successfully
16 completes the terms of any agreement reached during the mediation,
17 the child is not subject to a disposition hearing under Section
18 54.04.

19 (d) Any agreement reached between the victim and the child
20 during victim-offender mediation is binding and enforceable by the
21 juvenile court. If an agreement is not reached between the victim
22 and the child or if the child does not successfully complete the
23 terms of the agreement, as determined by the juvenile court, the
24 child is subject to a disposition hearing under Section 54.04.

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

27 (a) A victim, guardian of a victim, or close relative of a

1 deceased victim is entitled to the following rights within the
2 juvenile justice system:

3 (1) the right to receive from law enforcement agencies
4 adequate protection from harm and threats of harm arising from
5 cooperation with prosecution efforts;

6 (2) the right to have the court or person appointed by
7 the court take the safety of the victim or the victim's family into
8 consideration as an element in determining whether the child should
9 be detained before the child's conduct is adjudicated;

10 (3) the right, if requested, to be informed of
11 relevant court proceedings, including appellate proceedings, and
12 to be informed in a timely manner if those court proceedings have
13 been canceled or rescheduled;

14 (4) the right to be informed, when requested, by the
15 court or a person appointed by the court concerning the procedures
16 in the juvenile justice system, including general procedures
17 relating to:

18 (A) the preliminary investigation and deferred
19 prosecution of a case; and

20 (B) the appeal of the case;

21 (5) the right to provide pertinent information to a
22 juvenile court conducting a disposition hearing concerning the
23 impact of the offense on the victim and the victim's family by
24 testimony, written statement, or any other manner before the court
25 renders its disposition;

26 (6) the right to receive information regarding
27 compensation to victims as provided by Subchapter B, Chapter 56,

1 Code of Criminal Procedure, including information related to the
2 costs that may be compensated under that subchapter and the amount
3 of compensation, eligibility for compensation, and procedures for
4 application for compensation under that subchapter, the payment of
5 medical expenses under Section 56.06, Code of Criminal Procedure,
6 for a victim of a sexual assault, and when requested, to referral to
7 available social service agencies that may offer additional
8 assistance;

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

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

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

5 (10) the right to have the attorney for the state
6 notify the employer of the victim, if requested, of the necessity of
7 the victim's cooperation and testimony in a proceeding that may
8 necessitate the absence of the victim from work for good cause;

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

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

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

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

19 Sec. 102.0215. ADDITIONAL COURT COSTS: CODE OF CRIMINAL
20 PROCEDURE. A defendant who participates in a pretrial
21 victim-offender mediation program established under Subchapter
22 A-1, Chapter 56, Code of Criminal Procedure, shall pay on
23 successful completion of the terms of the defendant's mediation
24 agreement or on conviction, in addition to all other costs, to help
25 fund pretrial victim-offender mediation programs established under
26 that subchapter (Art. 102.0179, Code of Criminal Procedure) . . .
27 \$15 plus an additional program participation fee in an amount not to

1 exceed \$500.

2 SECTION 7. Subchapter A, Chapter 221, Human Resources Code,
3 is amended by adding Section 221.013 to read as follows:

4 Sec. 221.013. RESTITUTION MONITORING. The department shall
5 monitor the success of juvenile probation departments in collecting
6 restitution from a child who:

7 (1) has been adjudicated as having engaged in
8 delinquent conduct or conduct indicating a need for supervision;
9 and

10 (2) is required by a juvenile court to make
11 restitution to the victim of the child's conduct.

12 SECTION 8. (a) Subchapter A-1, Chapter 56, Code of Criminal
13 Procedure, as added by this Act, applies to a defendant who enters a
14 pretrial victim-offender mediation program under that subchapter
15 regardless of whether the defendant committed the offense for which
16 the defendant enters the program before, on, or after the effective
17 date of this Act.

18 (b) Article 102.0179, Code of Criminal Procedure, and
19 Section 102.0215, Government Code, as added by this Act, apply only
20 to an offense committed on or after the effective date of this Act.
21 An offense committed before the effective date of this Act is
22 governed by the law in effect when the offense was committed, and
23 the former law is continued in effect for that purpose. For
24 purposes of this subsection, an offense was committed before the
25 effective date of this Act if any element of the offense was
26 committed before that date.

27 SECTION 9. (a) Not later than December 1, 2015, the Texas

1 Juvenile Justice Board shall establish guidelines for
2 victim-offender mediation programs as required by Section 54.035,
3 Family Code, as added by this Act.

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

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