

1-1 By: McClendon, et al. (Senate Sponsor - Menéndez) H.B. No. 3184
 1-2 (In the Senate - Received from the House May 13, 2015;
 1-3 May 21, 2015, read first time and referred to Committee on Criminal
 1-4 Justice; May 25, 2015, reported adversely, with favorable
 1-5 Committee Substitute by the following vote: Yeas 6, Nays 0;
 1-6 May 25, 2015, sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10			X	
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			

1-16 COMMITTEE SUBSTITUTE FOR H.B. No. 3184 By: Whitmire

1-17 A BILL TO BE ENTITLED
 1-18 AN ACT

1-19 relating to the establishment, operation, and funding of
 1-20 victim-offender mediation programs; authorizing fees.

1-21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-22 SECTION 1. Section 1, Article 28.01, Code of Criminal
 1-23 Procedure, is amended to read as follows:

1-24 Sec. 1. The court may set any criminal case for a pre-trial
 1-25 hearing before it is set for trial upon its merits, and direct the
 1-26 defendant and the defendant's [~~his~~] attorney, if any of record, and
 1-27 the State's attorney, to appear before the court at the time and
 1-28 place stated in the court's order for a conference and hearing
 1-29 regardless of whether the defendant has been formally charged. The
 1-30 defendant must be present at the arraignment, and the defendant's
 1-31 [~~his~~] presence is required during any pre-trial proceeding. The
 1-32 pre-trial hearing shall be to determine any of the following
 1-33 matters:

1-34 (1) Arraignment of the defendant, if such be
 1-35 necessary; and appointment of counsel to represent the defendant,
 1-36 if such be necessary;

1-37 (2) Pleadings of the defendant;

1-38 (3) Special pleas, if any;

1-39 (4) Exceptions to the form or substance of the
 1-40 indictment or information;

1-41 (5) Motions for continuance either by the State or
 1-42 defendant; provided that grounds for continuance not existing or
 1-43 not known at the time may be presented and considered at any time
 1-44 before the defendant announces ready for trial;

1-45 (6) Motions to suppress evidence--When a hearing on
 1-46 the motion to suppress evidence is granted, the court may determine
 1-47 the merits of said motion on the motions themselves, or upon
 1-48 opposing affidavits, or upon oral testimony, subject to the
 1-49 discretion of the court;

1-50 (7) Motions for change of venue by the State or the
 1-51 defendant; provided, however, that such motions for change of
 1-52 venue, if overruled at the pre-trial hearing, may be renewed by the
 1-53 State or the defendant during the voir dire examination of the jury;

1-54 (8) Discovery;

1-55 (9) Entrapment; [~~and~~]

1-56 (10) Motion for appointment of interpreter; and

1-57 (11) Motion to allow the defendant to enter a pretrial
 1-58 victim-offender mediation program established under Subchapter
 1-59 A-1, Chapter 56.

1-60 SECTION 2. Chapter 56, Code of Criminal Procedure, is

2-1 amended by adding Subchapter A-1 to read as follows:

2-2 SUBCHAPTER A-1. PRETRIAL VICTIM-OFFENDER MEDIATION PROGRAM

2-3 Art. 56.21. AUTHORITY TO ESTABLISH PROGRAM. (a) The
 2-4 commissioners court of a county or governing body of a municipality
 2-5 may, in coordination with the office of the attorney representing
 2-6 the state in the county or municipality, establish a pretrial
 2-7 victim-offender mediation program for persons who:

2-8 (1) have been arrested for or charged with a
 2-9 misdemeanor or state jail felony under Title 7, Penal Code; and

2-10 (2) have not previously been convicted of a felony or a
 2-11 misdemeanor, other than a misdemeanor regulating traffic and
 2-12 punishable by fine only.

2-13 (b) A court that implements a program under this subchapter
 2-14 may adopt administrative rules and local rules of procedure as
 2-15 necessary or appropriate to implement or operate the program.

2-16 (c) The commissioners court of a county or governing body of
 2-17 a municipality that establishes a program under this subchapter
 2-18 may:

2-19 (1) allow for referral to the program of arrested
 2-20 persons described by Subsection (a) who have not yet been formally
 2-21 charged with an offense;

2-22 (2) adopt administrative rules and local rules of
 2-23 procedure as necessary or appropriate to implement or operate the
 2-24 program; and

2-25 (3) approve additional program requirements as
 2-26 recommended by the attorney representing the state.

2-27 Art. 56.22. PROGRAM. (a) A pretrial victim-offender
 2-28 mediation program established under Article 56.21 on or after
 2-29 September 1, 2015, must require:

2-30 (1) the designation of individual defendants who are
 2-31 eligible to participate in the program, based on standards
 2-32 established by Article 56.21 and any local standards approved by
 2-33 the commissioners court of the county or the governing body of the
 2-34 municipality, as applicable;

2-35 (2) the attorney representing the state to consent to
 2-36 the referral of a defendant's matter to mediation under the
 2-37 program;

2-38 (3) the consent of the victim to be obtained and
 2-39 documented in the record of the court by the attorney representing
 2-40 the state before the case may proceed to pretrial victim-offender
 2-41 mediation; and

2-42 (4) the defendant to enter into a binding mediation
 2-43 agreement in accordance with Article 56.23 that requires the
 2-44 defendant to take responsibility for the defendant's actions and
 2-45 addresses the specific circumstances of the defendant's actions,
 2-46 which may:

2-47 (A) include an apology by the defendant; or

2-48 (B) require the defendant to:

2-49 (i) pay restitution to the victim;

2-50 (ii) perform community service; or

2-51 (iii) both pay restitution and perform
 2-52 community service.

2-53 (b) A court that establishes a pretrial victim-offender
 2-54 mediation program before September 1, 2015, may elect to apply the
 2-55 provisions under Subsection (a) in implementing the program.

2-56 (c) All communications made in a pretrial victim-offender
 2-57 mediation program are confidential and may not be introduced into
 2-58 evidence except in an open court proceeding instituted to determine
 2-59 the meaning of a mediation agreement.

2-60 (d) A pretrial victim-offender mediation program may
 2-61 require the staff and other resources of pretrial services
 2-62 departments and community supervision and corrections departments
 2-63 to assist the court or the attorney representing the state in
 2-64 monitoring the defendant's compliance with a mediation agreement
 2-65 reached through the program.

2-66 (e) A pretrial victim-offender mediation may be conducted
 2-67 by a court-appointed mediator who meets the training requirements
 2-68 provided by Sections 154.052(a) and (b), Civil Practice and
 2-69 Remedies Code, and has completed training in criminal justice

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

3-6 (f) If a defendant enters a pretrial victim-offender
 3-7 mediation program, the court may defer the proceedings without
 3-8 accepting a plea of guilty or nolo contendere or entering an
 3-9 adjudication of guilt. The court may not require the defendant to
 3-10 admit guilt or enter a plea of guilty or nolo contendere to enter
 3-11 the program.

3-12 (g) The case must be returned to the docket and proceed
 3-13 through the regular criminal justice system if:

3-14 (1) a pretrial victim-offender mediation does not
 3-15 result in a mediation agreement;

3-16 (2) the defendant fails to fulfill the terms of the
 3-17 mediation agreement successfully by the date specified in the
 3-18 mediation agreement; or

3-19 (3) the mediator determines, based on the mediator's
 3-20 training and experience, that:

3-21 (A) the victim or defendant no longer wants to
 3-22 participate or cooperate; or

3-23 (B) the mediation will be ineffective.

3-24 (h) If a case is returned to the docket under Subsection
 3-25 (g), the defendant retains all of the rights that the defendant
 3-26 possessed before entering the pretrial victim-offender mediation
 3-27 program under this subchapter. Notwithstanding any other law, for
 3-28 purposes of determining the duration and expiration of an
 3-29 applicable statute of limitation under Chapter 12, the running of
 3-30 the period of limitation is tolled while the defendant is enrolled
 3-31 in a program under this subchapter.

3-32 (i) If the defendant successfully completes the mediation
 3-33 agreement as represented to the court by the attorney representing
 3-34 the state, after notice to the attorney representing the state and a
 3-35 hearing at which the court determines that a dismissal of any
 3-36 indictment or information charging the defendant with the
 3-37 commission of the offense is in the best interest of justice, the
 3-38 court shall dismiss the criminal action against the defendant.

3-39 (j) The court or the attorney representing the state may
 3-40 extend the initial compliance period granted to the defendant.

3-41 (k) A determination by the court regarding whether the
 3-42 mediation agreement has been successfully completed is final and
 3-43 may not be appealed.

3-44 (l) If the defendant is not arrested or convicted of a
 3-45 subsequent felony or misdemeanor other than a misdemeanor
 3-46 regulating traffic and punishable by fine only on or before the
 3-47 first anniversary of the date the defendant successfully completed
 3-48 a mediation agreement under this subchapter, on the motion of the
 3-49 defendant, the court shall enter an order of nondisclosure under
 3-50 Section 411.081, Government Code, as if the defendant had received
 3-51 a discharge and dismissal under Section 5(c), Article 42.12, with
 3-52 respect to all records and files related to the defendant's arrest
 3-53 for the offense for which the defendant entered the pretrial
 3-54 victim-offender mediation program.

3-55 Art. 56.23. MEDIATION AGREEMENT. (a) A mediation
 3-56 agreement under this subchapter must be in writing and:

3-57 (1) signed by the defendant and the victim; and

3-58 (2) ratified by the attorney representing the state in
 3-59 the attorney's request for a court order to document and approve the
 3-60 mediation agreement for the record.

3-61 (b) A mediation agreement may require testing, counseling,
 3-62 and treatment of the defendant to address alcohol abuse, abuse of
 3-63 controlled substances, mental health, or anger management or any
 3-64 other service that is reasonably related to the offense for which
 3-65 the defendant was arrested or charged.

3-66 (c) A mediation agreement is not valid for more than one
 3-67 year after the date on which the mediation agreement is ratified
 3-68 unless the court and the attorney representing the state approve
 3-69 the extension of the agreement.

4-1 (d) A mediation agreement under this subchapter does not
 4-2 constitute a plea or legal admission of responsibility.

4-3 Art. 56.24. LEGISLATIVE REVIEW. The lieutenant governor
 4-4 and the speaker of the house of representatives may assign to
 4-5 appropriate legislative committees interim duties relating to the
 4-6 study, review, and evaluation of pretrial victim-offender
 4-7 mediation programs established under this subchapter, and those
 4-8 committees may make recommendations to the legislature for
 4-9 appropriate policies to monitor, improve, or provide state
 4-10 resources for those programs.

4-11 Art. 56.25. LOCAL REVIEW. The commissioners court of a
 4-12 county or governing body of a municipality may request a
 4-13 management, operations, or financial or accounting audit of a
 4-14 pretrial victim-offender mediation program established under this
 4-15 subchapter.

4-16 Art. 56.26. FEES. (a) A pretrial victim-offender
 4-17 mediation program established under this subchapter shall collect
 4-18 from a defendant in the program a reasonable program participation
 4-19 fee not to exceed \$500 and may collect from the defendant an alcohol
 4-20 or controlled substance testing, counseling, and treatment fee in
 4-21 an amount necessary to cover the costs of the testing, counseling,
 4-22 or treatment, if such testing, counseling, or treatment is required
 4-23 by the mediation agreement.

4-24 (b) Fees collected under this article may be paid on a
 4-25 periodic basis or on a deferred payment schedule at the discretion
 4-26 of the judge, magistrate, or program director administering the
 4-27 pretrial victim-offender mediation program. The fees must be:

4-28 (1) based on the defendant's ability to pay; and

4-29 (2) used only for purposes specific to the program.

4-30 Art. 56.27. NOTICE. The office of an attorney representing
 4-31 the state that participates in a pretrial victim-offender mediation
 4-32 program established under this subchapter shall notify the public
 4-33 by posting information about the program on the office's website.

4-34 SECTION 3. Subchapter A, Chapter 102, Code of Criminal
 4-35 Procedure, is amended by adding Article 102.0179 to read as
 4-36 follows:

4-37 Art. 102.0179. COSTS ATTENDANT TO PRETRIAL VICTIM-OFFENDER
 4-38 MEDIATION. (a) A defendant who participates in a pretrial
 4-39 victim-offender mediation program established under Subchapter
 4-40 A-1, Chapter 56, on successful completion of the terms of the
 4-41 defendant's mediation agreement or on conviction, shall pay as
 4-42 court costs \$15 plus an additional program participation fee as
 4-43 described by Article 56.26 in the amount prescribed by that
 4-44 article.

4-45 (b) The court clerk shall collect the costs imposed under
 4-46 this article. The clerk shall keep a separate record of any money
 4-47 collected under this article and shall pay any money collected to
 4-48 the county or municipal treasurer, as appropriate, or to any other
 4-49 official who discharges the duties commonly delegated to a
 4-50 treasurer, for deposit in a fund to be known as the county pretrial
 4-51 victim-offender mediation program fund or in a fund to be known as
 4-52 the municipal pretrial victim-offender mediation program fund, as
 4-53 appropriate.

4-54 (c) A county or municipality that collects court costs under
 4-55 this article shall use the money in a fund described by Subsection
 4-56 (b) exclusively for the maintenance of the pretrial victim-offender
 4-57 mediation program operated in the county or municipality.

4-58 SECTION 4. Chapter 54, Family Code, is amended by adding
 4-59 Section 54.035 to read as follows:

4-60 Sec. 54.035. VICTIM-OFFENDER MEDIATION. (a) The Texas
 4-61 Juvenile Justice Board by rule shall establish guidelines
 4-62 permitting victim-offender mediation programs to be implemented
 4-63 and administered by juvenile boards.

4-64 (b) In a mediation program authorized under this section,
 4-65 each victim to whom this section applies must be informed of the
 4-66 victim's right to request victim-offender mediation.

4-67 (c) Participation in a victim-offender mediation program
 4-68 under this section by a child and by a victim must be voluntary. If a
 4-69 child's case is forwarded to the office of the prosecuting attorney

5-1 under Section 53.01, the prosecuting attorney must consent to the
5-2 mediation in which the child may participate under the program.

5-3 (d) If an agreement is not reached between the victim and
5-4 the child or if the child does not successfully complete the terms
5-5 of the agreement, as determined by the juvenile court, the child's
5-6 case shall proceed in accordance with the applicable provisions of
5-7 this title.

5-8 SECTION 5. Section 57.002(a), Family Code, is amended to
5-9 read as follows:

5-10 (a) A victim, guardian of a victim, or close relative of a
5-11 deceased victim is entitled to the following rights within the
5-12 juvenile justice system:

5-13 (1) the right to receive from law enforcement agencies
5-14 adequate protection from harm and threats of harm arising from
5-15 cooperation with prosecution efforts;

5-16 (2) the right to have the court or person appointed by
5-17 the court take the safety of the victim or the victim's family into
5-18 consideration as an element in determining whether the child should
5-19 be detained before the child's conduct is adjudicated;

5-20 (3) the right, if requested, to be informed of
5-21 relevant court proceedings, including appellate proceedings, and
5-22 to be informed in a timely manner if those court proceedings have
5-23 been canceled or rescheduled;

5-24 (4) the right to be informed, when requested, by the
5-25 court or a person appointed by the court concerning the procedures
5-26 in the juvenile justice system, including general procedures
5-27 relating to:

5-28 (A) the preliminary investigation and deferred
5-29 prosecution of a case; and

5-30 (B) the appeal of the case;

5-31 (5) the right to provide pertinent information to a
5-32 juvenile court conducting a disposition hearing concerning the
5-33 impact of the offense on the victim and the victim's family by
5-34 testimony, written statement, or any other manner before the court
5-35 renders its disposition;

5-36 (6) the right to receive information regarding
5-37 compensation to victims as provided by Subchapter B, Chapter 56,
5-38 Code of Criminal Procedure, including information related to the
5-39 costs that may be compensated under that subchapter and the amount
5-40 of compensation, eligibility for compensation, and procedures for
5-41 application for compensation under that subchapter, the payment of
5-42 medical expenses under Article [~~Section~~] 56.06, Code of Criminal
5-43 Procedure, for a victim of a sexual assault, and when requested, to
5-44 referral to available social service agencies that may offer
5-45 additional assistance;

5-46 (7) the right to be informed, upon request, of
5-47 procedures for release under supervision or transfer of the person
5-48 to the custody of the Texas Department of Criminal Justice for
5-49 parole, to participate in the release or transfer for parole
5-50 process, to be notified, if requested, of the person's release,
5-51 escape, or transfer for parole proceedings concerning the person,
5-52 to provide to the Texas Juvenile Justice Department for inclusion
5-53 in the person's file information to be considered by the commission
5-54 before the release under supervision or transfer for parole of the
5-55 person, and to be notified, if requested, of the person's release or
5-56 transfer for parole;

5-57 (8) the right to be provided with a waiting area,
5-58 separate or secure from other witnesses, including the child
5-59 alleged to have committed the conduct and relatives of the child,
5-60 before testifying in any proceeding concerning the child, or, if a
5-61 separate waiting area is not available, other safeguards should be
5-62 taken to minimize the victim's contact with the child and the
5-63 child's relatives and witnesses, before and during court
5-64 proceedings;

5-65 (9) the right to prompt return of any property of the
5-66 victim that is held by a law enforcement agency or the attorney for
5-67 the state as evidence when the property is no longer required for
5-68 that purpose;

5-69 (10) the right to have the attorney for the state

6-1 notify the employer of the victim, if requested, of the necessity of
6-2 the victim's cooperation and testimony in a proceeding that may
6-3 necessitate the absence of the victim from work for good cause;

6-4 (11) the right to be present at all public court
6-5 proceedings related to the conduct of the child as provided by
6-6 Section 54.08, subject to that section; ~~and~~

6-7 (12) for a victim to whom Section 54.035 applies, the
6-8 right to request victim-offender mediation under that section; and

6-9 (13) any other right appropriate to the victim that a
6-10 victim of criminal conduct has under Article 56.02 or 56.021, Code
6-11 of Criminal Procedure.

6-12 SECTION 6. Section 58.003, Family Code, is amended by
6-13 adding Subsections (c-9) and (c-10) to read as follows:

6-14 (c-9) Notwithstanding Subsections (a) and (c) and subject
6-15 to Subsection (b), a juvenile court may order the sealing of records
6-16 concerning a child alleged to have engaged in delinquent conduct or
6-17 conduct indicating a need for supervision if the child successfully
6-18 completed a victim-offender mediation program under Section
6-19 54.035. The court may:

6-20 (1) immediately order the sealing of the records
6-21 without a hearing; or

6-22 (2) hold a hearing to determine whether to seal the
6-23 records.

6-24 (c-10) If the court orders the sealing of a child's records
6-25 under Subsection (c-9), a prosecuting attorney or juvenile
6-26 probation department may maintain until the child's 17th birthday a
6-27 separate record of the child's name and date of birth, the
6-28 allegation against the child, and the date the child successfully
6-29 completed the victim-offender mediation program. The prosecuting
6-30 attorney or juvenile probation department, as applicable, shall
6-31 send the record to the court as soon as practicable after the
6-32 child's 17th birthday to be added to the child's other sealed
6-33 records.

6-34 SECTION 7. Subchapter B, Chapter 102, Government Code, is
6-35 amended by adding Section 102.0215 to read as follows:

6-36 Sec. 102.0215. ADDITIONAL COURT COSTS: CODE OF CRIMINAL
6-37 PROCEDURE. A defendant who participates in a pretrial
6-38 victim-offender mediation program established under Subchapter
6-39 A-1, Chapter 56, Code of Criminal Procedure, shall pay on
6-40 successful completion of the terms of the defendant's mediation
6-41 agreement or on conviction, in addition to all other costs, to help
6-42 fund pretrial victim-offender mediation programs established under
6-43 that subchapter (Art. 102.0179, Code of Criminal Procedure) . . .
6-44 \$15 plus an additional program participation fee in an amount not to
6-45 exceed \$500.

6-46 SECTION 8. Subchapter A, Chapter 221, Human Resources Code,
6-47 is amended by adding Section 221.013 to read as follows:

6-48 Sec. 221.013. MEDIATION MONITORING. The department shall
6-49 monitor the success of victim-offender mediation programs
6-50 established under Section 54.035, Family Code.

6-51 SECTION 9. (a) Subchapter A-1, Chapter 56, Code of Criminal
6-52 Procedure, as added by this Act, applies to a defendant who enters a
6-53 pretrial victim-offender mediation program under that subchapter
6-54 regardless of whether the defendant committed the offense for which
6-55 the defendant enters the program before, on, or after the effective
6-56 date of this Act.

6-57 (b) Article 102.0179, Code of Criminal Procedure, and
6-58 Section 102.0215, Government Code, as added by this Act, apply only
6-59 to an offense committed on or after the effective date of this Act.
6-60 An offense committed before the effective date of this Act is
6-61 governed by the law in effect when the offense was committed, and
6-62 the former law is continued in effect for that purpose. For
6-63 purposes of this subsection, an offense was committed before the
6-64 effective date of this Act if any element of the offense was
6-65 committed before that date.

6-66 SECTION 10. (a) Not later than December 1, 2015, the Texas
6-67 Juvenile Justice Board shall establish guidelines for
6-68 victim-offender mediation programs as required by Section 54.035,
6-69 Family Code, as added by this Act.

7-1 (b) Section 54.035, Family Code, as added by this Act,
7-2 applies only to a victim-offender mediation under that section that
7-3 occurs on or after January 1, 2016, regardless of whether the
7-4 conduct that is the basis of the mediation occurs before, on, or
7-5 after that date.

7-6 SECTION 11. This Act takes effect September 1, 2015.

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