

**House Bill 3184**  
Senate Amendments  
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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 defendant; provided that grounds for continuance not existing or not known at the time may be presented and considered at any time before the defendant announces ready for trial;
- (6) Motions to suppress evidence--When a hearing on the motion to suppress evidence is granted, the court may determine the merits of said motion on the motions themselves, or upon opposing affidavits, or upon oral testimony, subject to the discretion of the court;
- (7) Motions for change of venue by the State or the defendant; provided, however, that such motions for change of venue, if overruled at the pre-trial hearing, may be renewed by the State or the defendant during the voir dire examination of

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the jury;  
(8) Discovery;  
(9) Entrapment; ~~and~~  
(10) Motion for appointment of interpreter; and  
(11) Motion to allow the defendant to enter a pretrial victim-offender mediation program established under Subchapter A-1, Chapter 56.

SECTION 2. 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. (a)

The commissioners court of a county or governing body of a municipality may, in coordination with the office of the attorney representing the state in the county or municipality, 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 and punishable by fine only.

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

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

(1) allow for referral to the program of arrested persons described by Subsection (a) who have not yet been formally

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

(1) allow for referral to the program of arrested persons described by Subsection (a) who have not yet been formally

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charged with an offense;

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

and

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

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

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

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

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

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

(A) include an apology by the defendant; or

(B) require the defendant to:

(i) pay restitution to the victim;

(ii) perform community service; or

(iii) both pay restitution and perform community service.

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charged with an offense;

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

and

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

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

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

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

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

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

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

(d) A pretrial victim-offender mediation may be conducted by a court-appointed mediator who meets the training requirements provided by Sections 154.052(a) and (b), Civil Practice and Remedies Code, and has completed training in criminal justice mediation, or by any other appropriate person designated by the court. Neither the attorney representing the state nor the attorney representing the defendant in the criminal action may serve as a mediator in the defendant's pretrial victim-offender mediation program.

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

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

(1) a pretrial victim-offender mediation does not result in a

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

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

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

(e) A pretrial victim-offender mediation may be conducted by a court-appointed mediator who meets the training requirements provided by Sections 154.052(a) and (b), Civil Practice and Remedies Code, and has completed training in criminal justice mediation, or by any other appropriate person designated by the court. Neither the attorney representing the state nor the attorney representing the defendant in the criminal action may serve as a mediator in the defendant's pretrial victim-offender mediation program.

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

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mediation agreement:

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

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

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

(B) the mediation will be ineffective.

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

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

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

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

(k) If the defendant is not arrested or convicted of a subsequent felony or misdemeanor other than a misdemeanor

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mediation agreement:

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

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

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

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

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

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

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

Art. 56.24. LEGISLATIVE REVIEW. The lieutenant governor and the speaker of the house of representatives may assign to appropriate legislative committees interim duties relating to the study, review, and evaluation of pretrial victim-offender mediation programs established under this

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subchapter, and those committees may make recommendations to the legislature for appropriate policies to monitor, improve, or provide state resources for those programs.

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

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

(b) Fees collected under this article may be paid on a periodic basis or on a deferred payment schedule at the discretion of the judge, magistrate, or program director administering the 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.

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

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

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follows:

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

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

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

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

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

(b) In a mediation program authorized under this section,

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each victim to whom this section applies must be informed of the victim's right to request victim-offender mediation.

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

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

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

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

- (1) the right to receive from law enforcement agencies adequate protection from harm and threats of harm arising from cooperation with prosecution efforts;
- (2) the right to have the court or person appointed by the court take the safety of the victim or the victim's family into consideration as an element in determining whether the child should be detained before the child's conduct is adjudicated;
- (3) the right, if requested, to be informed of relevant court proceedings, including appellate proceedings, and to be informed in a timely manner if those court proceedings have been canceled or rescheduled;
- (4) the right to be informed, when requested, by the court or a

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person appointed by the court concerning the procedures in the juvenile justice system, including general procedures relating to:

- (A) the preliminary investigation and deferred prosecution of a case; and
- (B) the appeal of the case;
- (5) the right to provide pertinent information to a juvenile court conducting a disposition hearing concerning the impact of the offense on the victim and the victim's family by testimony, written statement, or any other manner before the court renders its disposition;
- (6) the right to receive information regarding compensation to victims as provided by Subchapter B, Chapter 56, Code of Criminal Procedure, including information related to the costs that may be compensated under that subchapter and the amount of compensation, eligibility for compensation, and procedures for application for compensation under that subchapter, the payment of medical expenses under Article [Section] 56.06, Code of Criminal Procedure, for a victim of a sexual assault, and when requested, to referral to available social service agencies that may offer additional assistance;
- (7) the right to be informed, upon request, of procedures for release under supervision or transfer of the person to the custody of the Texas Department of Criminal Justice for parole, to participate in the release or transfer for parole process, to be notified, if requested, of the person's release, escape, or transfer for parole proceedings concerning the person, to provide to the Texas Juvenile Justice Department for inclusion in the person's file information to be considered by the commission before the release under supervision or transfer for parole of the person, and to be notified, if requested, of the person's release or transfer for parole;

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

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

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

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

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

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

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

(c-9) Notwithstanding Subsections (a) and (c) and subject to Subsection (b), a juvenile court may order the sealing of records concerning a child alleged to have engaged in

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delinquent conduct or conduct indicating a need for supervision if the child successfully completed a victim-offender mediation program under Section 54.035. The court may:

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

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

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

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

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

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

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

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

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

SECTION 10. (a) Not later than December 1, 2015, the Texas Juvenile Justice Board shall establish guidelines for victim-offender mediation programs as required by Section

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SECTION 9. Same as House version.

SECTION 10. Same as House version.

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54.035, Family Code, as added by this Act.

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

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

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

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