

By: Keough

H.B. No. 72

A BILL TO BE ENTITLED

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 under Title 7, Penal Code; and

2 (2) have not previously been convicted of a felony or a
3 misdemeanor, other than a misdemeanor traffic offense punishable by
4 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, 2017, 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 may elect to apply the provisions under
19 Subsection (a) in implementing a pretrial victim-offender
20 mediation program that was established by the commissioners court
21 of a county or governing body of a municipality before September 1,
22 2017.

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

27 (d) A pretrial victim-offender mediation program may

1 require the staff and other resources of pretrial services
2 departments and community supervision and corrections departments
3 to assist the court or the attorney representing the state in
4 monitoring the defendant's compliance with a mediation agreement
5 reached through the program.

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

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

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

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

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

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

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

5 (B) the mediation will be ineffective.

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

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

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

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

26 (l) If the defendant is not arrested or convicted of a
27 subsequent felony or misdemeanor other than a misdemeanor traffic

1 offense punishable by fine only on or before the first anniversary
2 of the date the defendant successfully completed a mediation
3 agreement under this subchapter, on the motion of the defendant,
4 the court shall enter an order of nondisclosure of criminal history
5 record information under Subchapter E-1, Chapter 411, Government
6 Code, as if the defendant had received a discharge and dismissal
7 under Article 42A.111, with respect to all records and files
8 related to the defendant's arrest for the offense for which the
9 defendant entered the pretrial victim-offender mediation program.

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

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

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

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

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

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

27 Art. 56.24. LEGISLATIVE REVIEW. The lieutenant governor

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

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

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

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

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

27 Art. 56.27. NOTICE. The office of an attorney representing

1 the state that participates in a pretrial victim-offender mediation
2 program established under this subchapter shall notify the public
3 by posting information about the program on the office's website.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 (B) the appeal of the case;

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

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

1 Procedure, for a victim of a sexual assault, and when requested, to
2 referral to available social service agencies that may offer
3 additional assistance;

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

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

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

27 (10) the right to have the attorney for the state

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 the defendant enters the program before, on, or after the effective
2 date of this Act.

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

12 SECTION 10. (a) Not later than December 1, 2017, the Texas
13 Juvenile Justice Board shall establish guidelines for
14 victim-offender mediation programs as required by Section 54.035,
15 Family Code, as added by this Act.

16 (b) Section 54.035, Family Code, as added by this Act,
17 applies only to a victim-offender mediation under that section that
18 occurs on or after January 1, 2018, regardless of whether the
19 conduct that is the basis of the mediation occurs before, on, or
20 after that date.

21 SECTION 11. This Act takes effect September 1, 2017.