

By: Toth

H.B. No. 4009

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 the defendant's [~~his~~] attorney, if any of record, and
10 the State's attorney, to appear before the court at the time and
11 place stated in the court's order for a conference and hearing
12 regardless of whether the defendant has been formally charged. The
13 defendant must be present at the arraignment, and the defendant's
14 [~~his~~] presence is required during any pre-trial proceeding. The
15 pre-trial hearing shall be to determine any of the following
16 matters:

17 (1) Arraignment of the defendant, if such be
18 necessary; and appointment of counsel to represent the defendant,
19 if such be necessary;

20 (2) Pleadings of the defendant;

21 (3) Special pleas, if any;

22 (4) Exceptions to the form or substance of the
23 indictment or information;

24 (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 an offense

1 other than an offense under one or more of the following sections of
2 the Penal Code:

3 (A) Section 19.02 (murder);

4 (B) Section 19.03 (capital murder);

5 (C) Section 20.03 (kidnapping);

6 (D) Section 20.04 (aggravated kidnapping);

7 (E) Section 20A.03 (continuous trafficking of
8 persons);

9 (F) Section 21.02 (continuous sexual abuse of
10 young child or children);

11 (G) Section 21.11 (indecent with a child);

12 (H) Section 22.01(a)(1) (assault), if the
13 offense involved family violence as defined by Section 71.004,
14 Family Code;

15 (I) Section 22.011 (sexual assault);

16 (J) Section 22.02 (aggravated assault);

17 (K) Section 22.021 (aggravated sexual assault);

18 (L) Section 22.04 (injury to a child, elderly
19 individual, or disabled individual); or

20 (M) Section 29.03 (aggravated robbery); and

21 (2) have not previously been convicted of a felony or a
22 misdemeanor, other than a traffic offense punishable by fine only.

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

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

1 may:

2 (1) with the consent of the attorney representing the
3 state, allow for referral to the program of arrested persons
4 described by Subsection (a) who have not yet been formally charged
5 with an offense;

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

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

11 Art. 56.22. PROGRAM. (a) A pretrial victim-offender
12 mediation program established under Article 56.21 on or after
13 September 1, 2019, must require:

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

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

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

26 (4) the defendant to enter into a binding mediation
27 agreement in accordance with Article 56.23 that requires the

1 defendant to take responsibility for the defendant's actions and
2 addresses the specific circumstances of the defendant's actions,
3 which may:

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

5 (B) require the defendant to:

6 (i) pay restitution to the victim;

7 (ii) perform community service; or

8 (iii) both pay restitution and perform
9 community service.

10 (b) A court that implements a pretrial victim-offender
11 mediation program established before September 1, 2019, may elect
12 to apply the provisions under Subsection (a) in implementing the
13 program.

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

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

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

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

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

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

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

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

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

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

23 (B) the mediation will be ineffective.

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

1 purposes of determining the duration and expiration of an
2 applicable statute of limitation under Chapter 12, the running of
3 the period of limitation is tolled while the defendant is enrolled
4 in a program under this subchapter.

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

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

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

17 (l) If the defendant is not arrested or convicted of a
18 subsequent felony or misdemeanor other than a traffic offense
19 punishable by fine only on or before the first anniversary of the
20 date the defendant successfully completed a mediation agreement
21 under this subchapter, on the motion of the defendant, the court
22 shall enter an order of nondisclosure of criminal history record
23 information under Subchapter E-1, Chapter 411, Government Code, as
24 if the defendant had received a discharge and dismissal under
25 Article 42A.111, with respect to all records and files related to
26 the defendant's arrest for the offense for which the defendant
27 entered the pretrial victim-offender mediation program.

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

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

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

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

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

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

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

26 Art. 56.25. LOCAL REVIEW. The commissioners court of a
27 county or governing body of a municipality may request a

1 management, operations, or financial or accounting audit of a
2 pretrial victim-offender mediation program established under this
3 subchapter.

4 Art. 56.26. FEES. (a) A pretrial victim-offender
5 mediation program established under this subchapter shall collect
6 from a defendant in the program a reasonable program participation
7 fee in an amount necessary to cover the costs of the program,
8 including alcohol or controlled substance testing, counseling, and
9 treatment, if such testing, counseling, or treatment is required by
10 the mediation agreement.

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

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

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

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

24 Art. 102.0179. COSTS ATTENDANT TO PRETRIAL VICTIM-OFFENDER
25 MEDIATION. (a) A defendant who participates in a pretrial
26 victim-offender mediation program established under Subchapter
27 A-1, Chapter 56, on successful completion of the terms of the

1 defendant's mediation agreement or on conviction, shall pay as
2 court costs \$15 plus the program participation fee as described by
3 Article 56.26.

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

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

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

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

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

26 (c) Participation in a victim-offender mediation program
27 under this section by a child and by a victim must be voluntary. If a

1 child's case is forwarded to the office of the prosecuting attorney
2 under Section 53.01, the prosecuting attorney must consent to the
3 mediation in which the child may participate under the program.

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

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

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

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

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

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

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

1 relating to:

2 (A) the preliminary investigation and deferred
3 prosecution of a case; and

4 (B) the appeal of the case;

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

10 (6) the right to receive information regarding
11 compensation to victims as provided by Subchapter B, Chapter 56,
12 Code of Criminal Procedure, including information related to the
13 costs that may be compensated under that subchapter and the amount
14 of compensation, eligibility for compensation, and procedures for
15 application for compensation under that subchapter, the payment of
16 medical expenses under Article [~~Section~~] 56.06, Code of Criminal
17 Procedure, for a victim of a sexual assault, and when requested, to
18 referral to available social service agencies that may offer
19 additional assistance;

20 (7) the right to be informed, upon request, of
21 procedures for release under supervision or transfer of the person
22 to the custody of the Texas Department of Criminal Justice for
23 parole, to participate in the release or transfer for parole
24 process, to be notified, if requested, of the person's release,
25 escape, or transfer for parole proceedings concerning the person,
26 to provide to the Texas Juvenile Justice Department for inclusion
27 in the person's file information to be considered by the department

1 before the release under supervision or transfer for parole of the
2 person, and to be notified, if requested, of the person's release or
3 transfer for parole;

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

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

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

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

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

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

1 SECTION 6. Subchapter C-1, Chapter 58, Family Code, is
2 amended by adding Section 58.2561 to read as follows:

3 Sec. 58.2561. SEALING RECORDS ON COMPLETION OF
4 VICTIM-OFFENDER MEDIATION PROGRAM. (a) Notwithstanding Sections
5 58.253 and 58.255 and subject to Section 58.256(d), a juvenile
6 court may order the sealing of records concerning a child alleged to
7 have engaged in delinquent conduct or conduct indicating a need for
8 supervision if the child successfully completed a victim-offender
9 mediation program under Section 54.035. The court may:

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

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

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

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

25 Sec. 102.0215. ADDITIONAL COURT COSTS: CODE OF CRIMINAL
26 PROCEDURE. A defendant who participates in a pretrial
27 victim-offender mediation program established under Subchapter

1 A-1, Chapter 56, Code of Criminal Procedure, shall pay on
2 successful completion of the terms of the defendant's mediation
3 agreement or on conviction, in addition to all other costs, to help
4 fund pretrial victim-offender mediation programs established under
5 that subchapter (Art. 102.0179, Code of Criminal Procedure) . . .
6 \$15 plus an additional program participation fee in an amount
7 necessary to cover the costs of the program.

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

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

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

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

1 SECTION 10. (a) Not later than December 1, 2019, the Texas
2 Juvenile Justice Board shall establish guidelines for
3 victim-offender mediation programs as required by Section 54.035,
4 Family Code, as added by this Act.

5 (b) Section 54.035, Family Code, as added by this Act,
6 applies only to a victim-offender mediation under that section that
7 occurs on or after January 1, 2020, regardless of whether the
8 conduct that is the basis of the mediation occurs before, on, or
9 after that date.

10 SECTION 11. This Act takes effect September 1, 2019.