

By: McClendon

H.B. No. 167

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the establishment, operation, and funding of
3 victim-offender mediation programs.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 1, Article 28.01, Code of Criminal
6 Procedure, is amended to read as follows:

7 Sec. 1. The court may set any criminal case for a pre-trial
8 hearing before it is set for trial upon its merits, and direct the
9 defendant and his attorney, if any of record, and the State's
10 attorney, to appear before the court at the time and place stated in
11 the court's order for a conference and hearing. The defendant must
12 be present at the arraignment, and his presence is required during
13 any pre-trial proceeding. The pre-trial hearing shall be to
14 determine any of the following matters:

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

18 (2) Pleadings of the defendant;

19 (3) Special pleas, if any;

20 (4) Exceptions to the form or substance of the
21 indictment or information;

22 (5) Motions for continuance either by the State or
23 defendant; provided that grounds for continuance not existing or
24 not known at the time may be presented and considered at any time

1 before the defendant announces ready for trial;

2 (6) Motions to suppress evidence--When a hearing on
3 the motion to suppress evidence is granted, the court may determine
4 the merits of said motion on the motions themselves, or upon
5 opposing affidavits, or upon oral testimony, subject to the
6 discretion of the court;

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

11 (8) Discovery;

12 (9) Entrapment; ~~and~~

13 (10) Motion for appointment of interpreter; and

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

17 SECTION 2. Chapter 56, Code of Criminal Procedure, is
18 amended by adding Subchapter A-1 to read as follows:

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

20 Art. 56.21. AUTHORITY TO ESTABLISH PROGRAM. (a) The
21 commissioners court of a county or governing body of a municipality
22 may, in coordination with the office of the attorney representing
23 the state in the county or municipality, establish a pretrial
24 victim-offender mediation program for persons who:

25 (1) have been arrested for or charged with a
26 misdemeanor under Title 7, Penal Code, in any court in this state
27 other than a district court; and

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

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

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

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

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

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

20 Art. 56.22. PROGRAM. (a) A pretrial victim-offender
21 mediation program established under Article 56.21 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 consent of the victim to be obtained and

1 documented in the record of the court by the attorney representing
2 the state before the case may proceed to pretrial victim-offender
3 mediation; and

4 (3) the defendant to enter into a binding mediation
5 agreement in accordance with Article 56.24 that:

6 (A) includes an apology by the defendant; and

7 (B) requires the defendant to:

8 (i) pay restitution to the victim;

9 (ii) perform community service; or

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

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

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

22 (d) A pretrial victim-offender mediation may be conducted
23 by a court-appointed mediator who meets the training requirements
24 provided by Sections 154.052(a) and (b), Civil Practice and
25 Remedies Code, or by any other appropriate person designated by the
26 court. Neither the attorney representing the state nor the
27 attorney representing the defendant in the criminal action may

1 serve as a mediator under the pretrial victim-offender mediation
2 program.

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

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

11 (1) a pretrial victim-offender mediation does not
12 result in a mediation agreement; or

13 (2) the defendant fails to fulfill the terms of the
14 mediation agreement successfully by the date specified in the
15 mediation agreement.

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

24 (h) The court on the motion of the attorney representing the
25 state shall, and on the motion of the attorney representing the
26 defendant may, dismiss any indictment or information charging the
27 defendant with the commission of the offense, if the defendant:

1 (1) successfully completes the mediation agreement as
2 represented to the court by the attorney representing the state;
3 and

4 (2) either:

5 (A) pays all court costs; or

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

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

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

13 (k) If the defendant is not arrested or convicted of a
14 subsequent felony or misdemeanor other than a misdemeanor
15 regulating traffic and punishable by fine only on or before the
16 first anniversary of the date the defendant successfully completed
17 a mediation agreement under this subchapter, on the motion of the
18 defendant, the court shall enter an order of nondisclosure under
19 Section 411.081, Government Code, as if the defendant had received
20 a discharge and dismissal under Section 5(c), Article 42.12, with
21 respect to all records and files related to the defendant's arrest
22 for the offense for which the defendant entered the pretrial
23 victim-offender mediation program.

24 Art. 56.23. MOTION AND HEARING. (a) The court may hold a
25 pretrial hearing to determine whether to allow an eligible
26 defendant to enter a pretrial victim-offender mediation program
27 under this subchapter on its own motion or on the motion of either

1 party. If the attorney representing the state has documented in the
2 record of the court that the consent of the victim has been
3 obtained, a pretrial hearing to determine whether to allow the
4 pretrial mediation is not required.

5 (b) A pretrial hearing under this article must be conducted
6 in accordance with Chapter 28 and the rules of evidence.

7 (c) At a pretrial hearing under this article, either party
8 may present any evidence relevant to the defendant's eligibility
9 under Article 56.22 to enter a pretrial victim-offender mediation
10 program.

11 Art. 56.24. MEDIATION AGREEMENT. (a) A mediation
12 agreement under this subchapter must be written and:

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

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

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

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

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

1 Art. 56.25. LEGISLATIVE REVIEW. The lieutenant governor
2 and the speaker of the house of representatives may assign to
3 appropriate legislative committees duties relating to the study,
4 review, and evaluation of pretrial victim-offender mediation
5 programs established under this subchapter, and those committees
6 may make recommendations to the legislature for appropriate
7 policies to monitor, improve, or provide state resources for those
8 programs.

9 Art. 56.26. LOCAL REVIEW. The commissioners court of a
10 county or governing body of a municipality may request a
11 management, operations, or financial or accounting audit of a
12 pretrial victim-offender mediation program established under this
13 subchapter.

14 Art. 56.27. FEES. (a) A pretrial victim-offender
15 mediation program established under this subchapter shall collect
16 from a defendant in the program a reasonable program participation
17 fee not to exceed \$500 and may collect from the defendant an alcohol
18 or controlled substance testing, counseling, and treatment fee in
19 an amount necessary to cover the costs of the testing, counseling,
20 or treatment, if such testing, counseling, or treatment is required
21 by the mediation agreement.

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

26 (1) based on the defendant's ability to pay; and

27 (2) used only for purposes specific to the program.

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

4 Art. 102.0179. COSTS ATTENDANT TO PRETRIAL VICTIM-OFFENDER
5 MEDIATION. (a) A defendant who participates in a pretrial
6 victim-offender mediation program established under Subchapter
7 A-1, Chapter 56, on successful completion of the terms of the
8 defendant's mediation agreement or on conviction, shall pay as
9 court costs \$15 plus an additional program participation fee as
10 described by Article 56.27 in the amount prescribed by that
11 article.

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

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

25 SECTION 4. Subchapter B, Chapter 102, Government Code, is
26 amended by adding Section 102.0216 to read as follows:

27 Sec. 102.0216. ADDITIONAL COURT COSTS: CODE OF CRIMINAL

1 PROCEDURE. A defendant who participates in a pretrial
2 victim-offender mediation program established under Subchapter
3 A-1, Chapter 56, Code of Criminal Procedure, shall pay on
4 successful completion of the terms of the defendant's mediation
5 agreement or on conviction, in addition to all other costs, to help
6 fund pretrial victim-offender mediation programs established under
7 that subchapter (Art. 102.0179, Code of Criminal Procedure) . . .
8 \$15 plus an additional program participation fee in an amount not to
9 exceed \$500.

10 SECTION 5. (a) The change in law made by this Act in adding
11 Subchapter A-1, Chapter 56, Code of Criminal Procedure, applies to
12 a defendant who enters a pretrial victim-offender mediation program
13 under that subchapter regardless of whether the defendant committed
14 the offense for which the defendant enters the program before, on,
15 or after the effective date of this Act.

16 (b) The change in law made by this Act in adding Article
17 102.0179, Code of Criminal Procedure, and Section 102.0216,
18 Government Code, applies only to an offense committed on or after
19 the effective date of this Act. An offense committed before the
20 effective date of this Act is governed by the law in effect when the
21 offense was committed, and the former law is continued in effect for
22 that purpose. For purposes of this subsection, an offense was
23 committed before the effective date of this Act if any element of
24 the offense was committed before that date.

25 SECTION 6. This Act takes effect immediately if it receives
26 a vote of two-thirds of all the members elected to each house, as
27 provided by Section 39, Article III, Texas Constitution. If this

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1 Act does not receive the vote necessary for immediate effect, this

2 Act takes effect September 1, 2013.