

BILL ANALYSIS

H.B. 4009
By: Toth
Corrections
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Reports indicate that victim-offender mediation programs can serve an invaluable purpose for the community, as they allow offenders to take responsibility for their actions while giving the victims expedited relief for the harm they have suffered. It has been suggested that restorative justice programs such as victim-offender mediation programs have proven to reduce recidivism while remaining cost-effective. H.B. 4009 seeks to facilitate the use of such programs.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Juvenile Justice Board in SECTION 4 of this bill.

ANALYSIS

H.B. 4009 amends the Code of Criminal Procedure to authorize the commissioners court of a county or governing body of a municipality, in coordination with the office of the attorney representing the state in the county or municipality, to establish a pretrial victim-offender mediation program for persons who have not previously been convicted of a felony or a misdemeanor, other than a fine-only traffic offense, and who have been arrested for or charged with an offense other than one or more of certain offenses against the person, as specified by the bill. The bill, with respect to this authorization:

- applies to a defendant who enters such a program regardless of whether the defendant committed the offense for which the defendant enters the program before, on, or after the bill's effective date; and
- requires the office of an attorney representing the state that participates in such a program to notify the public by posting information about the program on the office's website.

H.B. 4009 authorizes a court that implements such a program to adopt administrative rules and local rules of procedure as necessary or appropriate to implement or operate the program. The bill authorizes the commissioners court of a county or governing body of a municipality that establishes such a program to:

- allow for referral to the program of eligible arrested persons who have not yet been formally charged with an offense, with the consent of the attorney representing the state;
- adopt administrative rules and local rules of procedure as necessary or appropriate to implement or operate the program; and
- approve additional program requirements as recommended by the attorney representing the state.

H.B. 4009 requires a program to require the following with respect to a program established on or after September 1, 2019, and authorizes a court to elect to apply these requirements in implementing such a program that was established before that date:

- the designation of defendants who are eligible to participate;
- the consent from the attorney representing the state;
- the consent of the victim; and
- the entry of the defendant into a binding mediation agreement.

H.B. 4009 sets out additional program provisions relating to:

- the confidentiality of all communications made in a program;
- the use of staff and other resources of the 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;
- the authority of a court-appointed mediator who meets certain training requirements or any other appropriate person designated by the court to conduct a pretrial victim-offender mediation;
- a prohibition on the attorney representing the state and the attorney representing the defendant in the criminal action from serving as a mediator in the defendant's program;
- an authorization for the court, if a defendant enters such a program, to defer the proceedings without accepting a plea of guilty or nolo contendere or entering an adjudication of guilt; and
- a prohibition on the court requiring the defendant to admit guilt or enter a plea of guilty or nolo contendere to enter the program.

H.B. 4009 sets out the circumstances under which the case of a defendant participating in a program is required to be returned to the docket and proceed through the regular criminal justice system. The bill establishes that the defendant retains all of the rights that the defendant possessed before entering the program if a case is returned to the docket and that the running of the period of the applicable statute of limitations is tolled while the defendant is enrolled in the program.

H.B. 4009 requires the court, 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, to dismiss the criminal action against the defendant if the defendant successfully completes the mediation agreement as represented to the court by the attorney representing the state. The bill, with respect to completion of the agreement:

- authorizes the court or the attorney representing the state to extend the initial compliance period granted to the defendant;
- establishes that a determination by the court regarding whether the mediation agreement has been successfully completed is final and may not be appealed; and
- provides for an order of nondisclosure of criminal history record information, with respect to all records and files related to the defendant's arrest for the offense for which the defendant entered the program.

H.B. 4009 sets out provisions applicable to a mediation agreement, including provisions:

- requiring a mediation agreement to be in writing, signed by the defendant and the victim, and 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;

- authorizing such an agreement to require testing, counseling, and treatment of the defendant;
- limiting the period during which a mediation agreement is valid; and
- establishing that a mediation agreement does not constitute a plea or legal admission of responsibility.

H.B. 4009 provides for the legislative study, review, and evaluation of pretrial victim-offender mediation programs, including recommendations to monitor, improve, or provide state resources for those programs, and provides for local review by the commissioners court of a county or governing body of a municipality.

H.B. 4009 requires such a program to collect from a defendant in the program a reasonable program participation fee in an amount necessary to cover program costs and sets out related provisions. The bill requires a defendant participating in a program, on successful completion of the terms of the mediation agreement or on conviction, to pay as court costs \$15, plus the prescribed program participation fee, and sets out provisions relating to the collection of such a fee by the court clerk and the use of such a fee.

H.B. 4009, with respect to the authorization for a court to set any criminal case for a pretrial hearing before it is set for trial upon its merits and to direct the defendant, the defendant's 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, specifies that such authority applies regardless of whether the defendant has been formally charged. The bill includes a motion to allow a defendant to enter a pretrial victim-offender mediation program among the matters to be determined at a pretrial hearing.

H.B. 4009 amends the Family Code to require the Texas Juvenile Justice Board, not later than December 1, 2019, to establish by rule guidelines permitting victim-offender mediation programs to be implemented and administered by juvenile boards. The bill entitles a victim of the delinquent conduct of a child, the guardian of a victim of such conduct, or a close relative of a deceased victim of such conduct to the right to request the victim-offender mediation. The bill, with respect the such a program:

- requires each applicable victim to be informed of the victim's right to request victim-offender mediation;
- requires participation in a victim-offender mediation program by a child and by a victim to be voluntary;
- requires the prosecuting attorney, if a child's case is forwarded to the office of the prosecuting attorney prior to judicial proceedings, to consent to the mediation in which the child may participate under the program;
- requires a child's case to proceed in accordance with the applicable provisions of the juvenile justice code 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; and
- establishes that these bill provisions apply only to such mediation that occurs on or after January 1, 2020, regardless of whether the conduct that is the basis of the mediation occurs before, on, or after that date.

H.B. 4009, with respect to the sealing of records concerning a child alleged to have engaged in delinquent conduct or conduct indicating a need for supervision:

- authorizes a juvenile court, with certain exceptions, to order the records sealed if the child successfully completed a victim-offender mediation program under the bill's provisions;

- authorizes the court to immediately order the sealing of the records without a hearing or to hold a hearing to determine whether to seal the records;
- authorizes a prosecuting attorney or juvenile probation department, if the court orders the sealing, to 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; and
- requires the prosecuting attorney or juvenile probation department, as applicable, to 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.

H.B. 4009 amends the Human Resources Code to require the Texas Juvenile Justice Department to monitor the success of victim-offender mediation programs in which the offender is a child.

H.B. 4009 amends the Government Code to make a conforming change.

EFFECTIVE DATE

September 1, 2019.