

SUBJECT: Allowing the creation of pretrial victim-offender mediation programs

COMMITTEE: Corrections — favorable, without amendment

VOTE: 9 ayes — White, Allen, Bailes, Bowers, Dean, Morales, Neave, Sherman,
Stephenson

0 nays

WITNESSES: For — (*Registered, but did not testify*: Douglas Smith, Texas Criminal
Justice Coalition)

Against — None

BACKGROUND: Interested parties have suggested that pretrial victim-offender mediation programs could lower recidivism rates, allow victims to gain real restitution from offenders, and provide flexibility to all stakeholders in the criminal justice system.

DIGEST: HB 4009 would allow the creation of pretrial victim-offender mediation programs and authorize the collection of fees related to these programs.

Pretrial victim-offender mediation programs. HB 4009 would allow the commissioners court of a county or the governing body of a municipality to establish a pretrial victim-offender mediation program in coordination with the attorney's office representing the state in the county or municipality. Individuals eligible for the program would be those who:

- had been arrested for or charged with an offense other than murder, kidnapping, human trafficking, sexual abuse, assault, sexual assault, injury to a child, elderly individual, or disabled person, family violence, or aggravated robbery; and
- had not previously been convicted of a felony or a misdemeanor.

Program requirements. A pretrial victim-offender program established under the bill on or after September 1, 2019, would have to require:

- the designation of defendants eligible to participate in the program based on standards established by the bill and any applicable local standards;
- the attorney representing the state to consent to the referral of a defendant's matter to mediation;
- the consent of the victim to be obtained and documented; and
- the defendant to enter into a binding mediation agreement that required the defendant to take responsibility for the defendant's actions, which could include an apology by the defendant or require the defendant to pay restitution to the victim, perform community service, or both.

A court that implemented a pretrial victim-offender mediation program established before September 1, 2019, could apply the listed provisions in implementing the program.

Rules. A court implementing a mediation program could adopt rules necessary to implement or operate the program. The commissioner's court of a county or governing body of a municipality that established a mediation program could allow, with the permission of the state's attorney, the referral of arrested persons eligible for the program who had not been formally charged and could adopt rules necessary to implement or operate the program and approve additional program requirements as recommended by the state's attorney.

Communications. All communications made in a pretrial victim-offender mediation program would be confidential and could not be introduced into evidence except in an open court proceeding instituted to determine the meaning of a mediation agreement.

Compliance monitoring. A program could require the staff of pretrial services departments and community supervision and corrections departments to assist in the monitoring of the defendant's compliance with a mediation agreement.

Authorized personnel. A program could be conducted by a court-appointed mediator who completed training in dispute resolution or family dynamics and had completed training in criminal justice mediation, or by any other appropriate person designated by the court. Neither the state's attorney nor the defendant's attorney could serve as a mediator.

Deferral of proceedings. A court could defer the proceedings of a defendant who entered into a pretrial victim-offender mediator program without accepting a plea of guilty or nolo contendere or entering an adjudication of guilt. A defendant could not be required to enter a plea of guilty or nolo contendere in order to enter the program.

Return to docket. A case would have to be returned to the docket and proceed through the regular criminal justice system if a pretrial victim-offender mediation did not result in a mediation agreement, the defendant failed to fulfill the terms of the mediation agreement, or the mediator determined that the victim no longer wanted to participate or cooperate or that the mediation would be ineffective.

If a case was returned to the docket, the defendant would retain all rights the defendant possessed prior to entering the mediation program. The time spent by a defendant in a mediation program would be counted toward the determination of an applicable statute of limitation.

Successful completion. Following the successful completion of a mediation program by a defendant, the provision of notice to the state's attorney, and a hearing at which the court determined that a dismissal of any indictment or information charging the defendant with the offense would be in the best interest of justice, the court would dismiss the criminal action against the defendant.

The court or the state's attorney could extend the initial compliance period granted to the defendant. A court determination regarding the successful completion of a mediation agreement would be final and could not be appealed.

Nondisclosure of criminal history record. If a defendant was not arrested or convicted of a subsequent felony or misdemeanor on or before the first anniversary of the completion of a mediation agreement, the court on the motion of the defendant would enter an order of nondisclosure of criminal history record information with respect to the defendant's arrest for the offense for which the defendant entered the program.

Pretrial hearing. The bill would allow a court that set a criminal case for a pretrial hearing to require the defendant and the defendant's attorney to appear before the court regardless of whether the defendant had been formally charged. A pretrial hearing could determine a motion to allow a defendant to enter a pretrial victim-offender mediation program.

Mediation agreement. A mediation agreement established under a mediation program would be in writing, signed by the defendant and the victim, and ratified by the state's attorney in the attorney's request for a court order to document and approve the mediation agreement for the record.

A mediation agreement could require testing, counseling, and treatment of the defendant to address alcohol abuse, abuse of controlled substances, mental health, anger management, or any service reasonably related to the charged offense. A mediation agreement would not be valid for more than one year after the date the agreement was ratified unless an extension was approved by the court and the state's attorney, and an agreement would not constitute a plea or legal admission of responsibility.

Fees and notice. A pretrial victim-offender mediation program established under this bill would collect a reasonable fee from defendants participating in the program to cover the costs of the program, including any required alcohol or controlled substance testing, counseling, or treatment. These fees could be paid on a deferred payment schedule at the discretion of the judge, magistrate, or program director administering the program. The fees would have to be based on the defendant's ability to pay and used only for purposes specific to the program.

The office of an attorney representing the state that participated in a pretrial victim-offender mediation program would have to notify the public by posting information about the program on the office's website.

Court costs. A defendant who participated in a pretrial victim-offender mediation program would pay \$15 in court costs as well as the program participation fee upon successful completion of the terms of the defendant's mediation agreement or on conviction.

The court clerk would collect the costs imposed under a mediation program, keep a separate record of money collected, and pay any money collected to the county or municipal treasurer or any other official who discharged similar duties. The money collected would be deposited in a county pre-trial victim-offender mediation program fund or municipal pretrial victim-offender mediation program, as appropriate. A county or municipality would use the money in the fund exclusively for the maintenance of the mediation program.

Juvenile victim-offender mediation. The Texas Juvenile Justice Board would establish by rule guidelines permitting victim-offender mediation programs to be implemented and administered by juvenile boards. A victim eligible under the bill's provisions would have the right to request victim-offender mediation, and each eligible victim would have to be notified of this right.

The Texas Juvenile Justice Department would monitor the success of victim-offender mediation programs administered by juvenile boards.

Child participation. Participation by a child in a mediation program would be strictly voluntary. If a child's case was forwarded to the office of a prosecuting attorney, the attorney would be required to consent to the mediation. If an agreement was not reached between the victim and the child, or if the child did not successfully complete the terms of the mediation agreement, the child's case would proceed in accordance with normal juvenile judicial proceedings.

Sealing of records. A juvenile court could order the sealing of records concerning a child alleged to have engaged in delinquent conduct or conduct indicating a need for supervision if the child successfully completed a victim-offender mediation program. The court could order the sealing of records immediately without a hearing or could hold a hearing to determine whether to seal the records.

If a court ordered the sealing of a child's records, a prosecuting attorney or juvenile probation department could maintain a separate record of the child's name and date of birth, the allegations against the child, and the date the child successfully completed the mediation program until the child's 17th birthday. The prosecuting attorney or juvenile probation department would be required 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.

Legislative and local review. The lieutenant governor and the House speaker could assign interim duties relating to the study, review, and evaluation of pretrial victim-offender mediation programs to the appropriate legislative committees. These committees could make recommendations to the Legislature regarding mediation programs.

The commissioners court of a county or governing body of a municipality could request an audit of a pretrial victim-offender mediation program's management, operations, finances, or accounting.

Applicability. The provisions relating to pretrial victim-offender mediation programs would apply to all defendants who entered such a program regardless of whether the defendant committed the offense before, on, or after the effective date of the bill.

The provisions relating to the collection of program costs from defendants would apply only to offenses committed on or after the effective date.

The provisions relating to the use of victim-offender mediation programs by juvenile boards would apply only to a mediation that occurred on or

after January 1, 2020.

The Texas Juvenile Justice Board would have to establish guidelines for victim-offender mediation programs by December 1, 2019.

The bill would take effect September 1, 2019.