

By: Toth, Wu, Thompson of Brazoria, Canales,  
et al.

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 a felony offense; and

2 (2) have not previously been convicted of a felony.

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

6 (c) The commissioners court of a county or governing body of  
7 a municipality that establishes a program under this subchapter  
8 may:

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

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

16 (3) approve additional program requirements as  
17 recommended by the attorney representing the state.

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

21 (1) the designation of individual defendants who are  
22 eligible to participate in the program, based on standards  
23 established by Article 56.21 and any local standards approved by  
24 the commissioners court of the county or the governing body of the  
25 municipality, as applicable;

26 (2) the attorney representing the state to consent to  
27 the referral of a defendant's matter to mediation under the

1 program;

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

6 (4) the defendant to enter into a binding mediation  
7 agreement in accordance with Article 56.23 that requires the  
8 defendant to take responsibility for the defendant's actions and  
9 addresses the specific circumstances of the defendant's actions,  
10 which may:

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

12 (B) require the defendant to:

13 (i) pay restitution to the victim;

14 (ii) perform community service; or

15 (iii) both pay restitution and perform  
16 community service.

17 (b) A court that implements a pretrial victim-offender  
18 mediation program established before September 1, 2019, may elect  
19 to apply the provisions under Subsection (a) in implementing the  
20 program.

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

25 (d) A pretrial victim-offender mediation program may  
26 require the staff and other resources of pretrial services  
27 departments and community supervision and corrections departments

1 to assist the court or the attorney representing the state in  
2 monitoring the defendant's compliance with a mediation agreement  
3 reached through the program.

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

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

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

21 (1) a pretrial victim-offender mediation does not  
22 result in a mediation agreement;

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

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

1           (A) the victim or defendant no longer wants to  
2 participate or cooperate; or

3           (B) the mediation will be ineffective.

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

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

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

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

24           (l) If the defendant is not arrested or convicted of a  
25 subsequent felony on or before the first anniversary of the date the  
26 defendant successfully completed a mediation agreement under this  
27 subchapter, on the motion of the defendant, the court shall enter an

1 order of nondisclosure of criminal history record information under  
2 Subchapter E-1, Chapter 411, Government Code, as if the defendant  
3 had received a discharge and dismissal under Article 42A.111, with  
4 respect to all records and files related to the defendant's arrest  
5 for the offense for which the defendant entered the pretrial  
6 victim-offender mediation program.

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

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

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

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

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

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

24 Art. 56.24. LEGISLATIVE REVIEW. The lieutenant governor  
25 and the speaker of the house of representatives may assign to  
26 appropriate legislative committees interim duties relating to the  
27 study, review, and evaluation of pretrial victim-offender

1 mediation programs established under this subchapter, and those  
2 committees may make recommendations to the legislature for  
3 appropriate policies to monitor, improve, or provide state  
4 resources for those programs.

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

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

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

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

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

27 SECTION 3. Subchapter A, Chapter 102, Code of Criminal



1 Procedure, is amended by adding Article 102.0179 to read as  
2 follows:

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

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

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

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

25 Sec. 54.035. VICTIM-OFFENDER MEDIATION. (a) The Texas  
26 Juvenile Justice Board by rule shall establish guidelines  
27 permitting victim-offender mediation programs to be implemented

1 and administered by juvenile boards.

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

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

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

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

17 (a) A victim, guardian of a victim, or close relative of a  
18 deceased victim is entitled to the following rights within the  
19 juvenile justice system:

20 (1) the right to receive from law enforcement agencies  
21 adequate protection from harm and threats of harm arising from  
22 cooperation with prosecution efforts;

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

27 (3) the right, if requested, to be informed of

1 relevant court proceedings, including appellate proceedings, and  
2 to be informed in a timely manner if those court proceedings have  
3 been canceled or rescheduled;

4 (4) the right to be informed, when requested, by the  
5 court or a person appointed by the court concerning the procedures  
6 in the juvenile justice system, including general procedures  
7 relating to:

8 (A) the preliminary investigation and deferred  
9 prosecution of a case; and

10 (B) the appeal of the case;

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

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

26 (7) the right to be informed, upon request, of  
27 procedures for release under supervision or transfer of the person

1 to the custody of the Texas Department of Criminal Justice for  
2 parole, to participate in the release or transfer for parole  
3 process, to be notified, if requested, of the person's release,  
4 escape, or transfer for parole proceedings concerning the person,  
5 to provide to the Texas Juvenile Justice Department for inclusion  
6 in the person's file information to be considered by the department  
7 before the release under supervision or transfer for parole of the  
8 person, and to be notified, if requested, of the person's release or  
9 transfer for parole;

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

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

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

26 (11) the right to be present at all public court  
27 proceedings related to the conduct of the child as provided by

1 Section 54.08, subject to that section; ~~and~~

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

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

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

9 Sec. 58.2561. SEALING RECORDS ON COMPLETION OF  
10 VICTIM-OFFENDER MEDIATION PROGRAM. (a) Notwithstanding Sections  
11 58.253 and 58.255 and subject to Section 58.256(d), a juvenile  
12 court may order the sealing of records concerning a child alleged to  
13 have engaged in delinquent conduct or conduct indicating a need for  
14 supervision if the child successfully completed a victim-offender  
15 mediation program under Section 54.035. The court may:

16 (1) immediately order the sealing of the records  
17 without a hearing; or

18 (2) hold a hearing to determine whether to seal the  
19 records.

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

1 to be added to the child's other sealed records.

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

4 Sec. 102.0215. ADDITIONAL COURT COSTS: CODE OF CRIMINAL  
5 PROCEDURE. A defendant who participates in a pretrial  
6 victim-offender mediation program established under Subchapter  
7 A-1, Chapter 56, Code of Criminal Procedure, shall pay on  
8 successful completion of the terms of the defendant's mediation  
9 agreement or on conviction, in addition to all other costs, to help  
10 fund pretrial victim-offender mediation programs established under  
11 that subchapter (Art. 102.0179, Code of Criminal Procedure) . . .  
12 \$15 plus an additional program participation fee in an amount  
13 necessary to cover the costs of the program.

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

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

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

25 (b) Article 102.0179, Code of Criminal Procedure, and  
26 Section 102.0215, Government Code, as added by this Act, apply only  
27 to an offense committed on or after the effective date of this Act.

1 An offense committed before the effective date of this Act is  
2 governed by the law in effect on the date the offense was committed,  
3 and the former law is continued in effect for that purpose. For  
4 purposes of this subsection, an offense was committed before the  
5 effective date of this Act if any element of the offense was  
6 committed before that date.

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

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

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