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Texas House Juvenile Justice & Family Issues Committee

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Testimony on House Bill 2291 Relating to Victim-Offender Mediation

Background

- It must be chosen over the traditional process by both the victim and the offender, since the offender is required to take responsibility for his conduct and waive his right to trial and appeal. A written agreement is reached that typically requires restitution, community service, no further offenses, and counseling. The agreement is then ratified by the prosecutor or judge. Failure to comply leads to traditional prosecution and, if necessary, incarceration.
- This is different from mediating a civil dispute because one party has admittedly criminally wronged the other. The purpose in a victim-offender mediation is not to negotiate but to create a dialogue that allows the victim to discuss the impact of the crime, specify what is needed to make them whole, and obtain closure on unanswered questions.
- The U.S. Department of Justice has recommended victim-offender mediation and published guidelines for its successful implementation.¹
- This bill applies strictly to nonviolent offenses that cause only a financial loss.
- There are over 300 victim-offender mediation programs in North America and over 1,300 worldwide. One study found 95 percent of cases mediated result in a written agreement and 90 percent of these restitution agreements are completed within one year.²

Victim-Offender Mediation Improves Outcomes for Victims

- First of all, many victims want this option. In a British Crime Survey, 60 percent of property offense victims expressed interest in a mediation.³
- A study of mediation programs serving adults and juveniles found that 89 percent of agreements were successfully completed.⁴ That means the restitution was fully paid in these cases, as that is part of over 90 percent of agreements. In contrast, the national restitution collection rate in the U.S. is 20 to 30 percent. There is no exact estimate for Texas, but it is not more than 50 percent according to the Crime Victims Institute at Sam Houston State.⁵

- A multi-site study found that 79 percent of victims who participated in VOMPs were satisfied, compared with 57 percent of victims who went through the traditional court system.⁶ A study of three victim-offender mediation programs in Indiana and one in Ohio found that 89 percent of victims were satisfied with the mediation.⁷
- In mediation programs in the U.S. and Canada, victims who went through mediation were over 50 percent less likely to express fear of revictimization than a sample of victims who did not go through mediation.⁸

Victim-Offender Mediation Reduces Recidivism

- A meta-analysis that looked at 27 victim-offender mediation programs in North America found that 72% of them lowered recidivism.⁹
- Similarly, a comparison group study of four U.S. programs by Umbreit & Coates found that 18.1 percent of offenders who took part in mediation committed a new offense, compared to 26.9 percent of those who did not participate and that, of the reoffenders, 41 percent of those in the mediation group committed less serious offenses than before but only 12 percent in the control group.¹⁰
- A national study of juvenile pretrial victim-offender mediation found a 32 percent recidivism reduction.¹¹
- Bridges to Life, a privately run, ecumenical program that operates in some Texas prisons, features facilitated sessions involving offenders within six months of release and volunteer crime victims. The victims and offenders were not parties to the same crime. The current recidivism rate for released offenders who have participated is 14.9 percent, compared to Texas' average recidivism rate of 30.7 percent.¹² The fact that hundreds of victims, many through their churches, drive hundreds of miles to participate in these mediations also indicates the importance of this to them, even where it is not the same offender that victimized them as it would be in a pretrial mediation.
- Victim-offender mediation works because an offender realizes the harm they have caused to the victim and develops a sense of empathy. The more indirect the connection between the crime and the actual victim, the easier it is for an offender to rationalize his conduct. For example, many more people would shoplift from Wal-Mart than would take something out of the garage of a next door neighbor. The mediation also allows the victim to get closure and ask questions that only the offender can answer, such as why the offender did it and why they were the chosen victim.
- The availability of mediation may also promote crime control by increasing the percentage of crimes reported by victims. A New Zealand study found that 28% of victims who failed to report a crime did not do so because they thought that the crime should be solved by the community or by themselves.¹³ Mediation offers victims an expedited means of obtaining justice in contrast to protracted pretrial proceedings, jury selection, and the prospect of seemingly endless appeals.

Victim-Offender Mediation is Cost Effective

- Victim-offender mediation saves money on court and prosecutorial costs, the taxpayer expense of court-appointed counsel for indigent defendants, long probation terms, and in some cases diversion from incarceration. A California victim-offender mediation program was found to cost only \$250 per case.¹⁴

- To assist counties with the cost of operating the program, the committee substitute includes a \$5 offender fee. However, Travis County Juvenile Probation runs their program through Dispute Resolution Services, a non-profit, and their director informed me the cost of the mediation is negligible. They have hundreds of volunteer mediators, many of whom are gaining experience to ultimately make a living as licensed mediators in commercial matters. Volunteer mediators also include ministers and concerned citizens from all walks of life.

Victim-Offender Mediation Does Not Unconstitutionally Favor the Wealthy

- Some 29 states have victim-offender mediation or the statutory authority for it and it has never been held unconstitutional or even challenged in court on the basis that it would favor wealthy offenders.¹⁵ By his standard, the entire criminal justice system would be unconstitutional. If a person cannot afford to pay the fine on a speeding ticket, a warrant is issued and they are jailed. You can be revoked from probation to jail or prison for not paying your probation fees.
- The real objection is that the use of restitution in any context favors the wealthy, but victims have a right to restitution under the Texas Constitution. Even without mediation, courts would order restitution in most of these cases. A law passed last session requires that a judge order restitution unless he makes writing findings as to why it is not merited.
- Most mediation agreements would include more than just paying money restitution - there would also be personal service restitution, community service, and/or counseling. A provision could also require that at least some of the money restitution be paid by the youth, not the youth's parent or guardian. Of course, that might be difficult to enforce, just as it would be in the case of court-ordered restitution, fines, court costs, etc. Ultimately though, regardless of the portion of money restitution paid by the youth or parent, the purpose of the mediation is fulfilled if youth comes to understand the connection between their illegal conduct and the harm suffered by another person.
- It is incorrect to assume that wealthy parents will always cover for their kids. Most of them will be upset at their kids and want them to learn from this, so they will probably make them pay the money by mowing lawns and such. Where parents do try to divert responsibility from their child, the victim will likely sense that and demand restitution service and/or community service.
- Most of these cases like graffiti and shoplifting likely will involve a relatively small amount of financial loss and most offender families are likely to be low income. So the case of an offender with a rich family who committed a crime resulting in a loss of tens of thousands of dollars is going to be the very exceptional case. Also, most mediation agreements will provide for a time period over which the restitution is to be made – it is not unreasonable for someone who has few resources – and presumably squandered what they stole from the victim – to do the work necessary to make the victim whole over the period of the agreement.

Endnotes

¹ http://www.ojp.usdoj.gov/ovc/publications/infores/restorative_justice/restorative_justice_ascii_pdf/ncj176346.pdf.

² See <http://www.vorp.com/articles/crime.html>.

³ Reeves, H. The Victim Support Perspective. In M. Wright & B. Galaway (Eds.), *Mediation and Criminal Justice*. London: Sage, 1989.

⁴ Gehm, J. Mediated Victim-Offender Restitution Agreements: An Exploratory Analysis of Factors Related to Victim Participation. In B. Galaway & J. Hudson (Eds.), *Criminal Justice, Restitution, and Reconciliation*, Monsey, NY: Criminal Justice Press.

⁵ See <http://www.crimevictimsinstitute.org/doc/RestitutionReport.pdf>.

⁶ Umbreit, M., with R. Coates and B. Kalanj. 1994. *Victim Meets Offender: THE IMPACT OF RESTORATIVE JUSTICE AND MEDIATION*. Monsey, N.Y.: Criminal Justice Press.

⁷ Coates, R.B. & Gehm, J.. An Empirical Assessment. In M. Wright & B. Galaway (Eds.), *Mediation and Criminal Justice: Victims, Offenders and Community*. Thousand Oaks, CA, 1989.

⁸ Umbreit, Mark, Coates, Robert & Vos, Betty, *Impact of Restorative Justice Conferencing with Juvenile Offenders: What We Have Learned From Two Decades of Victim Offender Dialogue Through Mediation and Conferencing, Balanced and Restorative Justice Project*, Community Justice Institute, Florida Atlantic University, November 28, 2000, available at http://rjp.umn.edu/img/assets/13522/Victim_Impact_RJC_with%20Juvenile_Offenders.pdf.

⁹ Latimer, Dowden & Muise, *The Effectiveness of Restorative Justice Practices: A Meta-Analysis*, 2000.

¹⁰ Umbreit, Mark & and R.B.Coates. 1992. *The Impact of Mediating Victim Offender Conflict: An Analysis of Programs in Three States*. *Juvenile and Family Court Journal*. Reno, Nevada: National Council of Juvenile and Family Court Judges.

¹¹ See, <http://www.voma.org/docs/connect3.pdf>.

¹² See <http://www.bridgestolife.org>.

¹³ *Experiences of Crime and the State's Response*, Published in Monograph No 45, *Justice versus Retribution: Attitudes to Punishment in the Eastern Cape*, February 2000, available at <http://www.iss.co.za/Pubs/Monographs/No45/experiences.html>.

¹⁴ Niemeyer, M. and D. Shichor (1996). "A Preliminary Study of a Large Victim/Offender Reconciliation Program," *FEDERAL PROBATION* 60(3):30-34.

¹⁵ Lightfoot, Elizabeth, and Umbreit, Mark. An Analysis of State Statutory Provisions for Victim-Offender Mediation, *CRIMINAL JUSTICE POLICY REVIEW* 2004; 15; 418.