

EMPOWERING & RESTORING CRIME VICTIMS

THE ISSUE

In 1989, Texas adopted a constitutional amendment now in Article I, Section 30 establishing the various rights of crime victims, including the right to be reasonably protected from the accused throughout the trial process, the right to notification of court proceedings, the right to be present at all public proceedings, the right to confer with a prosecutor's representative, and the right to restitution.

Current state law allows a victim to submit a written impact statement for consideration prior to sentencing but after conviction of the defendant and to make an oral statement after the sentence is pronounced.

TDCJ's Victim Services Division offers a telephone line through which victims can obtain assistance, including automated updates about an offender's status.

Texas courts have always had the power to order restitution to the victim, and it is usually a condition of probation. In 2005, HB 1751 became law, requiring trial courts that decline to order restitution to provide a written explanation.

The Crime Victims' Compensation Fund was created in 1979 and is overseen by the Attorney General. It offers victims reimbursement of up to \$50,000 in medical and other costs resulting from violent crime.

Texas does not have a statewide pretrial victim-offender mediation program, although 11 Texas juvenile probation departments offer mediation. Victims elect mediation over the traditional court system, and offender participation is also voluntary, since the offender must take responsibility for his conduct and waive his right to trial and appeal. Mediation offers victims an expedited means of obtaining justice in contrast to protracted pretrial proceedings, jury selection, and appeals.

Through mediation, a written agreement is reached that typically requires restitution, community service, and counseling. The agreement is then ratified by the prosecutor or judge. Failure to comply subjects the offender to traditional prosecution and, if necessary, incarceration. There are now more than 1,300 mediation programs today, including more than 300 in North America, mostly focused on first-time property offenders. Because mediation enables offenders to avoid a conviction on their record, they are more successful in finding or retaining a job that enables them to pay restitution.

THE FACTS

- ★ 87,714 victims are registered with the state's notification system, informing them of the progress of the case and the offender's status.

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- ★ A national study found 95 percent of cases resolved through victim-offender mediation result in a written agreement and 90 percent of these restitution agreements are completed within one year, far exceeding the average restitution collection rate of 20 to 30 percent.
- ★ One study found that 79 percent of victims who participated in mediation were satisfied, compared with 57 percent of victims in the traditional court system. Also, the 1,298 juveniles who participated in mediation were 32 percent less likely to recidivate.

RECOMMENDATIONS

- ★ *Allow Victims to Present an Oral Impact Statement Prior to Sentencing.* House Bills 338 and 442 in the 79th Legislature would have permitted this.
- ★ *Enable Victims to Choose Pretrial Victim-Offender Mediation.* Victims of property crimes should be empowered to select mediation with a binding restitution contract enforced by the state as an alternative to traditional prosecution and sentencing. In the 80th session, HB2347 and HB2291 as originally proposed would have created a state framework for adult and juvenile mediation respectively, including a funding stream through an offender fee.
- ★ *Give Victims a Seat at the Table in Plea Bargaining.* Texas should follow Arizona in giving victims the right to participate in any plea negotiations with the accused and requiring that the victim's position on the plea deal be considered by the prosecutor and presented to the judge prior to approval of the plea.
- ★ *Incentivize Restitution Collection.* The state should evaluate probation departments in part based on their success in collecting restitution and include the collection rate as an element of performance-based probation funding.
- ★ *Expand Victims' Access to Offenders' Funds.* Amend Constitution (HJR67 in 80th Legislature) to allow restitution to be garnished from wages, just as with child support. Also, when unpaid restitution orders are converted into civil judgments, lower exemption thresholds should apply than the \$60,000/\$30,000 married/individual property exemptions from other civil judgments.

RESOURCES

- *Restorative Justice in Texas: Past, Present & Future* by Marc Levin, Texas Public Policy Foundation (Sept. 2005) <http://www.texaspolicy.com/pdf/2005-09-restorativejustice.pdf>.
- *Victim-Offender Mediation and Plea Bargaining Reform in Texas* by Marc Levin, Texas Public Policy Foundation (Apr. 2006) <http://www.texaspolicy.com/pdf/2006-04-PP-VOM-ml.pdf>.
- *Testimony on HB 2291-Juvenile Victim-Offender Mediation* (Mar. 28, 2007) <http://www.texaspolicy.com/pdf/2007-03-28-ML-testimony.pdf>.

