



Testimony

Testimony to the Senate Criminal Justice Committee for HB 2139

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The Texas Public Policy Foundation is a 501(c)3 non-profit, non-partisan research institute guided by the core principles of individual liberty, personal responsibility, private property rights, free markets, and limited government.

We believe that crimes are first and foremost violations of individual victims and therefore victims should have a greater role in the criminal justice process. Victim-offender mediation offers the opportunity for the victim to be restored while the offender learns the impact of the crime on the victim.

Overview of the Bill

House Bill 2139 provides counties the option of setting up a victim-offender mediation program. The bill has no cost to taxpayers, as it is funded through a \$15 fee on property offenders and a fee on offenders who participate in mediations.

Under the legislation, victim-offender mediation 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. Additionally, the legislation provides that the case only goes to mediation if the district attorney refers it. A written agreement is reached that typically requires restitution, community service, no further offenses, and, in some instances, 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.

House Bill 2139 only applies to first-time, nonviolent property offenders at a state jail felony level or misdemeanor level. These offenses are contained in Title 7 of the Penal Code and include graffiti, shoplifting, and criminal mischief.

The U.S. Department of Justice has recommended victim-offender mediation and published guidelines for its successful implementation.¹ There are over 300 victim-offender mediation programs in North America and over 1,300 worldwide.

Victim-Offender Mediation Improves Outcomes for Victims

First, many victims want this option. In a British Crime Survey, 60 percent of property offense victims expressed interest in a mediation.² Mediation offers victims an expedited means of obtaining justice in contrast to protracted pretrial proceedings, jury selection, and seemingly endless appeals.

A study of mediation programs serving adults and juveniles found that 89 percent of agreements were successfully completed.³ 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. A multi-site study found that 79 percent of victims who participated in mediations were satisfied, compared with 57 percent of victims who went through the traditional court system.⁴

Victim-Offender Mediation Reduces Recidivism

A meta-analysis that looked at 27 victim-offender mediation programs in North America found that 72 percent of them lowered recidivism and that the average decline was 7 percent.⁵ 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.⁶

Victim-offender mediation works because the offender often 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 room of a nursing home resident. 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.

Victim-Offender Mediation Promotes Employment and Is Cost Effective

Since this bill includes the same nondisclosure language that applies to pretrial drug courts, offenders will have the incentive of not having a conviction on their record if they do everything that is required by the agreement to the satisfaction of the victim, prosecutor, and judge. Without a conviction, the offender is much more likely to be employable. Ex-offenders who are employed are three times less likely to recidivate.⁷

Finally, victim-offender mediation saves money on court and prosecutorial costs and avoids the taxpayer expense of court-appointed counsel for indigent defendants. ★

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

² Reeves, H., *The Victim Support Perspective*. In M. Wright & B. Galaway (Eds.), *Mediation and Criminal Justice* (London: Sage, 1989).

³ 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).

⁴ Umbreit, M., with R. Coates and B. Kalanj, *Victim Meets Offender: The Impact of Restorative Justice and Mediation* (Monsey, N.Y.: Criminal Justice Press, 1994).

⁵ Latimer, Dowden & Muise, *The Effectiveness of Restorative Justice Practices: A Meta-Analysis* (2000).

⁶ Umbreit, Mark & R.B. Coates, "The Impact of Mediating Victim Offender Conflict: An Analysis of Programs in Three States," *Juvenile and Family Court Journal* (1992) Reno, Nevada: National Council of Juvenile and Family Court Judges.

⁷ *Austin Goodwill Annual Report*, www.austingoodwill.org/media/literature/Annual%20Report%202007%20Web.pdf.

