



Empowering and Restoring Crime Victims



The Issue

In modern criminal procedure, the State has come to be viewed as the central victim of illegal activities. This paradigm is an affront to the individual who lost property, a loved one, or were injured due to the callous actions of another. Restorative justice programs offer an opportunity to empower the true victims of crime through an increased stake in the criminal process.

Rooted in Biblical tradition, these programs center on the return of property or value to the injured party. Over the course of history, this approach has been “crowded out” of the formalized justice system as centralized governments grew larger. As such, it is only ubiquitously practiced among small, native societies. However, as victims feel increasingly marginalized in today’s mechanical criminal process, these programs have enjoyed a renewed interest.

Restorative justice programs are not intended to usurp the formalized criminal justice system, offer a lenient, punishment-free sanction to the offender, or add another layer of government bureaucracy. To the contrary, these programs are complementary, impose strict punishment, and are handled less formally than the traditional criminal process, all while providing greater levels of satisfaction, ensuring the victim obtains restitution, and offering the offender a chance to atone for his or her misdeeds.

In 2013, the Legislature amended the Code of Civil Procedure to allow the use of Alternate Dispute Resolution (ADR) procedures, rather than criminal procedures, upon referral from the prosecutor. Victim-offender mediation/conferencing are among the methods of criminal ADR used around the world and that are now expressly authorized by Texas statute. In addition to clarifying that such programs are permissible, the statute also allows a nominal offender fee to be collected to cover the cost of the program, which is anticipated to make it more likely that counties will pursue this approach. Restorative justice approaches such as mediation must be chosen not only by the victim, but also by the offender, as the offender thereby waives his right to trial and appeal, which is one reason these approaches are far more efficient than the traditional method of processing cases.

Even with the strides already made towards victim empowerment, more can be done to ensure the harm inflicted on victims of crimes is remedied. In addition to prosecutors, victims and law enforcement should be empowered to refer minor property offense cases to criminal ADR, with the assent of the offender. There are also opportunities to give willing victims a larger stake in plea negotiations. These reforms will allow Texas to solidify a reputation of putting her citizens first, versus heaping insult upon injury when one is victimized.

The Facts

- Studies have shown that victims are decidedly more satisfied following participation in restorative justice programs compared to the formal justice system, with as much as 96% reporting being pleased with the process.
- Mediation also benefits the public safety and, by extension, the offender. One study has found that juveniles, having been confronted with the harm they had caused and made to remedy it, were 32% less likely to reoffend than their similar peers in the traditional criminal justice system.

Recommendations

- **Reform ADR Referral Process.** Rather than burdening prosecutors with the need to refer cases to ADR processing, allow the victim or police (with victim consent) to make this decision. This will allow those more intimately familiar with the case to decide its handling. Cases that are not successfully mediated in ADR will revert to the traditional process. Further, data collected on cases diverted to ADR from the court and handled successfully should reflect this, not count as a dismissal for the prosecutor.
- **Empower Victims in Plea Decisions.** Since the harm caused by crime is almost fully borne by the victims, they should in turn be allowed to contribute to the plea process. Texas can require that prosecutors involved in plea negotiations be required to solicit victim input and inform the presiding judge of the victim's position before a plea can be accepted.
- **Recognize Importance of Property Crime Victims.** Under current law, victim status is only conferred on those who fall prey to a violent crime. This negates the harm done to property crime victims, who comprise over 89% of all crime victims in Texas. Many of the same statutory provisions, such as requiring that they be given notice of developments in the case and an opportunity to provide input, should apply to property crime victims as well.

Resources

Reviving Restorative Justice: A Blueprint for Texas by Derek Cohen, Texas Public Policy Foundation (Dec. 2013).

Giving Victims a Voice: Victim Offender Conferencing in Texas by Jeanette Moll and Marc Levin, Texas Public Policy Foundation (Apr. 2013).

Victim-Offender Mediation and Plea Bargaining Reform in Texas by Marc Levin, Texas Public Policy Foundation (Apr. 2006).

Restorative Justice in Texas: Past, Present & Future by Marc Levin, Texas Public Policy Foundation (Sept. 2005).

