

Texas Public Policy Foundation

Keeping Texas Competitive

A Legislator's Guide to the Issues 2013-2014



Empowering and Restoring Crime Victims

The Issue

When a property or violent crime occurs, the primary party that has been aggrieved is the individual victim, not the government. This simple and long-acknowledged truth is at the heart of the restorative justice movement. In ancient times as well as in colonial America, victims often brought their own prosecutions.

Leviticus 6:2-5 teaches that stolen property should be returned to the owner, plus one-fifth of the value. This is based on the concept that recompense should go to the individual victim, not the government. The same concept is found in the sacred texts of nearly every major religion and widely implemented through the practice of sentencing circles in Aboriginal and American Indian cultures, where the victim, offender, and community come together to discuss the offense and agree on the steps that the offender will take to make the victim and community whole.

Informal restorative practices are not likely to displace the modern criminal justice system, due largely to factors such as population growth, urbanization, and the transient nature of many modern communities. Still, a growing body of evidence indicates the benefit—to victims, taxpayers, and offenders—of integrating practices designed to empower and restore victims into today's criminal justice processes.

In 1989, Texas adopted a constitutional amendment—now in Article I, Section 30—establishing 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. The victim may also submit an oral statement after the sentence is handed down.

The Texas Department of Criminal Justice 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 victims, which then becomes a term of probation or follows the offender to prison. In 2005, HB 1751 became law, requiring trial courts that decline to order restitution to provide a written explanation.

The Crime Victims' Compensation Fund, created in 1979, is overseen by the Attorney General. It offers victims reimbursement of up to \$50,000 in medical and other costs resulting from violent crime in cases where victims are unable to fully collect restitution directly from the offender. The Fund receives monies from court fees and restitution paid by offenders, along with a share of the proceeds from a privately operated secure and monitored pay telephone system for prison inmates legislatively authorized in 2007.

Texas does not have a statewide pretrial victim-offender mediation program, although 11 Texas juvenile probation departments, as well as a few alternative dispute resolution centers, offer criminal mediation in addition to their civil mediation programs. These 17 dispute resolution centers, located around the state, are funded primarily through civil court fees. Many are willing to begin handling criminal mediations or greatly increase their caseload at no additional cost or a nominal cost if prosecutors would refer cases to the centers.

Victims must 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 with often 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 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 often more successful in finding or retaining jobs that enable them to pay restitution.

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The Facts

- More than 87,000 victims are registered with the state's notification system, informing them of the progress of the case and the offender's status.
- In 2008, Texas probationers who owed victim restitution paid an average of \$109, totaling \$46.8 million. Probationers also performed 9.7 million community service hours, worth \$63.3 million based on an hourly rate of \$6.55 per hour. In 2008, Texas prison inmates paid a mere \$501,000 in total victim restitution, fines, fees, and court costs, an average of only \$3.21 per inmate. Parolees did better, paying \$1.2 million solely in victim restitution.
- A national study found that 95% of cases resolved through victim-offender mediation result in a written agreement, 90% of which are completed within one year, far exceeding the average restitution collection rate of 20% to 30%.
- One study found that 79% of victims who participated in mediation were satisfied, compared with 57% in the traditional court system. Also, the 1,298 juveniles who participated in mediation were 32% less likely to re-offend.

Recommendations

- **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. Such legislation was unanimously adopted by each Texas legislative chamber, but time ran out before a conference committee agreed on a final version, and therefore, it has yet to be ultimately enacted.
- **Give Victims a Seat at the Table in Plea Bargaining.** Texas should follow Arizona in two reforms: 1) giving victims the right to participate in any plea negotiations with the accused, and 2) 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 and Strengthen Probation.** The state should evaluate probation departments partly based on their success in collecting restitution and incorporate the collection rate as an element in creating a performance-based probation funding formula. More effective probation supervision and treatment programs not only save taxpayer funds by reducing the unnecessary use of prison capacity, but also help victims since probationers pay exponentially more restitution than prisoners and prevent future victims by reducing re-offending.
- **Expand Victims' Access to Offenders' Funds.** When a victim converts an unpaid restitution order into a civil judgment, lower exemption thresholds should apply than the standard \$60,000/\$30,000 married/individual property exemptions.
- **Give Rights to Property Crime Victims.** The state statute on victims' rights defines "victim" as a person injured by a violent crime. Thus, despite a constitutional victims' rights provision that is not limited to violent crime victims, the silence of Texas statutes means that property crime victims have no legal rights concerning involvement in the criminal justice process. Filed in the 82nd session, HB 1715, would have conferred certain rights on victims of felony property crimes, including the right, upon request, to be informed of relevant proceedings, attend those proceedings, and express a preference to the prosecutor on the type of punishment.

Resources

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

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

Testimony on HB 2139 by Marc Levin, Texas Public Policy Foundation (May 26, 2009).

Treating Texas Crime Victims as Consumers of Justice by Marc Levin (Mar. 2010).

