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Texas House Criminal Jurisprudence Committee

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Testimony on House Bill 2437 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 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.
- 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

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.

- A study of mediation programs serving adults and juveniles found that 89 percent of agreements were successfully completed⁴ 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
- 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.⁷
- 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.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 and that the average decline was 7 percent.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. Unlike the Victim Offender Mediation/Dialogue program, 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

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 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.

⁸ 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.

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

¹⁰ Umbreit, Mark & 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>.

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 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.
- 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

- This legislation will address the increasing number of offenders who are choosing county jail or state jail over probation because they want to resolve their case quickly. 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. The county jails are full – Dallas County just had to release 700 home burglars and other criminals from their county jail and cancel their warrant round-up and Harris County is proposing a new \$300 million county jail.
- 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 county jail or state jail. The LBB fiscal note indicates this bill will have a total positive fiscal note of \$1.6 million through 2012.
- This bill provides that the costs of the mediation are covered by a general offender fee on property offenders and a participant fee on offenders who go through a mediation. This participant fee will still be cheaper than probation fees and the offender, by successfully completing the mediated agreement, will not have a conviction and therefore be much more likely to be employable.

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>.