

Testimony to the House Criminal Jurisprudence Committee *Regarding House Bill 2019*

by Marc Levin, Esq., Director of the Center for Effective Justice

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 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

HB 2019 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 participant fee of \$15 for court costs, a reasonable program participation fee not to exceed \$500, and an alcohol or controlled substance testing, counseling, and treatment fee in an amount necessary to cover such costs (if testing, counseling, or treatment is required by the mediation agreement).

Under the legislation, victim-offender mediation must be chosen by both the victim and the offender, because 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 attorney representing the state 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 admittedly different from mediating a civil dispute because one party has criminally wronged the other. The purpose in 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.

HB 2019 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

Because this bill includes the same nondisclosure language that applies to pretrial drug courts, offenders will not have a conviction on their record if they do everything required by the agreement to the satisfaction of the victim, prosecutor, and judge—a strong incentive. 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/hcj176346.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 Coates, R. & Kalanj, B. 1994. *Victim Meets Offender: The Impact of Restorative Justice and Mediation*. Monsey, N.Y.: Criminal Justice Press.

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

⁶ Umbreit, Mark & Coates, R. 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.

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

