



Empowering & Restoring Crime Victims

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THE ISSUE

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

Leviticus 6:2-5 instructs that stolen property should be returned to the owner, plus one fifth of the value. This makes clear that the recompense should go to the individual victim, not the government. The same concept is found in the sacred texts of nearly every major religion.

Informal restorative practices are not likely to displace the modern criminal justice system, due 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 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.

Texas courts have always had the power to order restitution to victims, which then becomes a term of pro-

bation or follows the offender to prison. In 2005, HB 1751 became law, requiring trial courts that decline to order restitution in property crimes to provide a written explanation.

The Crime Victims' Compensation Fund 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.

Texas does not have a statewide pretrial victim-offender mediation program, although 11 Texas juvenile probation departments conduct mediation, and a few alternative dispute resolution centers offer juvenile and/or adult criminal mediation in addition to their civil mediation programs. Many centers 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.

Mediation—in which participation is voluntary both for victim and offender—offers victims an expedited means of obtaining justice in contrast with protracted pretrial proceedings, jury selection, and appeals. A mediation agreement is ratified by the prosecutor or judge. Failure to comply subjects the offender to traditional prosecution and, if necessary, incarceration. 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.

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 mil-

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lion. Probationers also performed 9.7 million community service hours, worth \$63.3 million based on a hypothetical hourly rate of \$6.55 per hour. In 2008, 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 percent of cases resolved through victim-offender mediation result in a written agreement, 90 percent of which are completed within one year, far exceeding the average restitution collection rate of 20 to 30 percent.
- ★ Nationally, 79 percent of victims who participated in mediation were satisfied, compared with 57 percent in the traditional court system. Also, the 1,298 juveniles who participated in mediation were 32 percent less likely to re-offend.

RECOMMENDATIONS

- ★ Enable victims to choose pretrial victim-offender mediation.
- ★ Give victims a seat at the table in plea bargaining. Texas should follow Arizona in: 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.
- ★ Expand victims' access to offenders' funds by lowering exception thresholds that apply to other civil judgments.

- ★ Give rights to property crime victims. The state statute on victims' rights defines "victim" as a person injured by a violent crime. HB 1228 filed in the 81st session 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 sentence.

RESOURCES

Treating Texas Crime Victims as Consumers of Justice by Marc Levin, Texas Public Policy Foundation (Mar. 2010)
<http://www.texaspolicy.com/pdf/2010-03-PP03-victimconsumers-ml.pdf>.

Testimony on HB 2139 (Victim-Offender Mediation) by Marc Levin, Texas Public Policy Foundation (May 26, 2009)
<http://www.texaspolicy.com/pdf/2009-05-testimony-ml.pdf>.

Victim-Offender Mediation and Plea Bargaining Reform by Marc Levin, Texas Public Policy Foundation (Apr. 2006)
<http://www.texaspolicy.com/pdf/2006-04-PP-VOM-ml.pdf>. ★

