Crime Victims and Offenders Face to Face: An Overview of the TDCJ Victim Offender Mediation/Dialogue

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CRIME VICTIMS AND OFFENDERS FACE TO FACE:

AN OVERVIEW OF THE TEXAS DEPARTMENT OF CRIMINAL JUSTICE VICTIM OFFENDER MEDIATION/DIALOGUE PROGRAM

Richard B. Keeton

The Victim Offender Mediation Dialogue was the first such program of its type in the United States, designed specifically for victims of violent offenses. Other states have since followed suit, but what are the benefits? And why would a victim of a violent crime want to rehash the memories of possibly the worst few moments in his or her life? This Note will offer answers to such questions as it presents a brief overview of victim-offender mediation in general and the Texas Department of Criminal Justice Victim Offender Mediation/Dialogue program.

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1 Candidate for Juris Doctor, May 2015, Texas Tech University School of Law. I would like to thank Professors Larry Spain and Gene Valentini for their inspiration and guidance in writing this Note. Further, I wish to thank Mark Odom, Deputy Director of the Victim Services Division of the Texas Department of Criminal Justice for graciously affording me an interview to gain insight into this unique program. All mistakes are my own.
I. Introduction to Victim-Offender Mediation

Since the beginning of the modern mediation development in the early 1980s, mediation as a method of dispute resolution has continually expanded and thrived in the civil context. Mediation was premised upon empowerment of the general public and as a means of promoting shared values in the community. Today, mediation has become an essential element in many fields of law, including family and employment law. But the widespread acceptance of mediation as the predominant form of dispute resolution in civil law matters has not been similarly embraced in the field of criminal law.

Criminal law scholars have written extensively on the four main purposes of the criminal justice system: restraint, deterrence, retribution, and rehabilitation. The modern criminal law system focuses on the offender. Crimes are considered an offense against the state; and thus, imprisonment satisfies the restraint and deterrence elements of the criminal justice theory. However, for the victims, the offender being punished by the state does not restore the losses they have suffered; it does not “answer their questions, relieve their fears, help them make sense of the tragedy or heal their

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4 “Incapacitation” is often used synonymously with “restraint.” See, e.g., Michele Cotton, *Back with a Vengeance: The Resilience of Retribution as an Articulated Purpose of Criminal Law*, 37 AM. CRIM. L. REV. 1315–16. (“Four purposes are usually ascribed to criminal punishment: retribution, deterrence, incapacitation, and rehabilitation.”).


6 Id. (noting that “crime is against ‘the state’ and state interests drive the process of doing justice, [while] individual crime victims are left on the sidelines of justice, with little or no input.”).
wounds."  

New movements in restorative justice focus primarily on the victim and the community at large. Restorative justice includes a variety of different practices, including apologies, restitution, community service, specialized courts, and victim-offender interaction. Like criminal law theory, restorative justice has four main components (known as the four R’s): repair, restore, reconcile, and reintegrate. These methods benefit the victim (through restitution or apology), the offender (through rehabilitation), and the community (by taking steps to transform the offender into a productive member of society).

This Note will focus on just one form of restorative justice: victim-offender mediation, specifically, in the State of Texas. Victim-offender mediation is “a process that provides interested victims an opportunity to meet their offender, in a safe and structured setting, and engage in a mediated discussion of the crime.” The goal is to hold offenders directly accountable for their actions while providing support and assistance to the victims. With the assistance of a trained mediator, the victim is able

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8 Umbreit, *supra* note 5 (noting that restorative justice (1) is more concerned about the victim and the victimized community rather than the punishment for the offender; (2) elevates the role of the victim in the criminal justice process; and (3) “encourages the entire community to be involved in holding the offender accountable and promoting a healing response to the needs of victims and offenders.”)


10 *Id.*


to tell the offender about the crime’s physical, emotional, and financial impact while receiving answers to lingering questions about the crime and the offender. The offender is required to admit guilt and take direct responsibility for his behavior. However, by participating, the offender learns of the full impact of what he did and is often able to make amends to the person whom he violated.

[T]he victim-offender mediation process can serve to humanize the criminal justice experience for both the victim and the offender. It holds offenders directly accountable to the people they have victimized, allows for more active involvement of crime victims and community members (as volunteer mediators and support persons) in the justice process, and reduces further criminal behavior of offenders.

Thus, those who are most directly affected by the crime are afforded an active role in restoring the peace between individuals and within the community.

II. Victim-Offender Mediation in the United States and Texas

Modern day victim-offender mediation (also called “dialogue”) was first utilized in Ontario, Canada in 1974, as part of an alternative court sanction involving two accused vandals who were ordered to meet face-to-face with many of their victims.

14 Just Alternatives, VOD Guide to Best Practices, available at http://justalternatives.org/research-project-work/vod-guide-to-best-practices/ (last visited July 25, 2014) (noting that most programs “require the offender to admit guilt and take responsibility for the crime itself, although in some states exceptions can be made in the case of an offender who takes responsibility for some level of involvement in the crime, or even for a more general awareness of his/her own victimizing behavior”).
15 Umbreit & Greenwood, supra note 12, at 7.
16 Id.
The practice spread to the United States in 1978, with the implementation of a program in Elkhart, Indiana that dealt exclusively with juvenile property crimes.\textsuperscript{18} Today, there are over three hundred programs in the United State offering victim-offender mediation.\textsuperscript{19} “Several programs . . . currently receive nearly 1,000 case referrals annually from local courts.”\textsuperscript{20} The majority of cases involve juvenile offenders, most of which are for minor property offenses.\textsuperscript{21}

The number of victim-offender mediation programs in the U.S. has been increasing for over thirty years, but they are still far from gaining widespread acceptance in most juvenile probation programs in Texas and elsewhere. Of Texas’s 166 juvenile probation departments, only twelve have reported offering victim offender mediation services.\textsuperscript{22} Referral criteria and types of crimes mediated vary among each program in Texas. For example, the Dispute Resolution Center of Harris County offers a Juvenile Mediation Program in which most cases are mediated at the request of parents, school counselors, teachers, law enforcement, or upon reference of the Harris County Juvenile Probation Department.\textsuperscript{23} This program handles only cases involving juvenile offenders for issues such as minor assaults, school fights, vandalism, and

\textsuperscript{18} Id.
\textsuperscript{19} See supra, note 17. (According to the Survey of ADR and Restorative Justice Programs by the ABA Criminal Justice Section, ADR and Restorative Justice Committee, and the Mediation in Criminal Matters Enterprise Project, there are currently 13 restorative justice programs in Texas).
\textsuperscript{20} NCJRS, supra note 13.
\textsuperscript{21} Id.
\textsuperscript{22} Vicki Spriggs, \textit{Victim Offender Mediation Programs in Texas}, TEXAS JUVENILE PROBATION COMMISSION, 3 (2009) (also noting that the majority of victim-offender mediation programs operating in juvenile probation departments serve only a few youth annually, and only three of these programs served an average of 100 or more juveniles on an annual basis).
parent/adolescent disputes. Other public programs, such as the Dallas County Mediation Department, handle a wider range of cases—both juvenile and adult—including sex offenses and robberies.

In addition to numerous county-run victim-offender mediation programs, there are several private non-profit mediation services in Texas, which generally handle minor and non-violent offenses. For example, Dispute Mediation Services, Inc. of Dallas has provided face-to-face mediation services since the 1980s for cases involving theft, burglary, assault and battery, and personal injury. The Dispute Resolution Center of Houston handles adult probation, accidental homicide, vandalism, and theft. Other programs, such as Innovative Alternatives in Houston, offer additional services to complement victim-offender mediation, including anger management as well as general and family counseling.

III. Victim Offender Mediation/Dialogue Program by the Texas Department of Criminal Justice

All previously mentioned county and non-profit programs are offered only for lessor, non-violent offenses. These programs are offered at the county level, and the State of Texas does not mandate their implementation. On the other hand, victim-

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24 Id.
25 Id. at 54.
26 Id.
27 Id. at 56.
28 Id. at 53–57. Similar additional services also provided by Dispute Resolution Services in Corpus Christi, Dispute Mediation Services Inc. in Dallas, and the Dispute Resolution Center in Austin.
29 See supra notes 22–28 and accompanying text.
30 See infra text accompanying notes 31–32.
offender mediation for violent offenses is currently required by law of the State of Texas to be offered to victims of violent crime. The Texas Code of Criminal Procedure, Article 56.13 outlines the state law regarding victim-offender mediation as follows:

**Art. 56.13. VICTIM OFFENDER MEDIATION.** The victim services division of the Texas Department of Criminal Justice shall:

1. *train volunteers to act as mediators* between victims, guardians of victims, and close relatives of deceased victims and offenders whose criminal conduct caused bodily injury or death to victims; and
2. *provide mediation services* through referral of a trained volunteer, if requested by a victim, guardian of a victim, or close relative of a deceased victim.


The Victim Services Division of the Texas Department of Criminal Justice (TDCJ) established the Victim Offender Mediation/Dialogue (VOM/D) program in 1993. The program “is recognized as the first statewide, in-system dialogue program [in the country] in crimes of severe violence.”

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32 Id. (emphasis added).
2001 upon the passage of House Bill 1572. This legislation mandates the TDCJ to train volunteer mediators for the specialized purpose of violent offender-victim mediations. The uniqueness of this program is that it was developed for only adult victims of violent crime. Cases of intentional and unintentional murder, attempted murder, rape, other sexual assault or exploitation, kidnapping, armed robbery, manslaughter, and other such deeply traumatizing crimes are among the many that have successfully been mediated.

The TDJC Victim Offender Mediation/Dialogue program was the first of its kind in the United States. In 1991, a lady by the name of Cathy Phillips began demanding to meet with her daughter’s killer, but prison officials denied her request. She wanted to ask him questions; one in particular, only the killer could answer: how long did it take her daughter to die? Phillips had seen a television program on victim-offender mediation that prompted her to contact Raven Kazen, the sole statewide TDCJ Victim Services Director at the time. After Kazen’s Victim Offender

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36 TEX. CRIM. PROC. ANN. art. § 56.13 (1) (West, Westlaw through 2013 Third Called Session of the 83rd Legis.).
37 Id. See also Tex. Dep’t of Crim. Justice, Victim Servs. Div., supra note 33.
39 See Obbie, supra note 38 (noting that the Texas VOM/D program was the first such government run program for victims of violent crimes).
40 Id.
41 Id.
42 LEVIN, supra note 35.
Mediation/Dialogue program merged with the TDCJ, she managed to expand the budget of the Victim Services Division with the help of Ellen Halbert, a victim of violent crime who then served on the Texas Board of Criminal Justice.\textsuperscript{43} With a new budget, Kazen hired David Doerfler, a former prison guard turned Lutheran minister, who started learning how to conduct victim-offender mediations.\textsuperscript{44}

The TDCJ established five specific goals that guided the implementation of its victim-offender mediation program:

1. To provide victims with the opportunity for closure to unresolved trauma associated with violent crime.
   - To directly and constructively express to offenders current and repressed feelings, such as fear, anxiety, anger, pain, and grief.
   - To ask questions and receive answers and insights which only offenders can provide.
   - To experience a sense of empowerment through a direct voice and participation in this process of justice by helping to determine appropriate acts of restitution and accountability for the offender, and constructive acts of healing for the victim.

2. To provide offenders with an opportunity to face the full human impact of their crime upon the victim.
   - To hear firsthand the depth and trauma experienced by the victim.
   - To express remorse related to their offense and resulting impact.
   - To answer questions for the purpose of personal assistance for the victim rather than legal defense of the offender.

3. To provide victims and offenders the opportunity for clearer understanding and personalization of the crimes’ impact upon their lives.

\textsuperscript{43} Obbie, \textit{supra}, note 38. (Halbert’s request and subsequent grant of a $240,000 appropriation to the TDCJ VOM/D launched the program into a statewide service).

\textsuperscript{44} \textit{Id.} (Doerfler began to conduct victim-offender mediations in March 1995).
4. To provide victims and offenders participating in victim offender mediation/dialogue with a process for developing mutual agreements, insights, or projects that could serve to benefit other victims and offenders in similar circumstances, such as mutual commitment to crime prevention, assurance of personal safety, victim advocacy, service to/within the community, criminal justice reform, and victim impact panels.

5. To provide the community and society-at-large an opportunity to receive healing and restoration. 45

The TDCJ’s Victim Offender Mediation/Dialogue program commenced in 1995, and Cathy Phillips became one of its first participants. 46 Currently, the program conducts an average of thirty-five mediations each year. 47 The process can only be initiated at the request of the victim, and offender participation is completely voluntary. 48 If the offender chooses to participate, he or she must admit guilt and take responsibility for the offense. 49 Either party may withdraw from the process at any time. 50

All VOM/D mediations are conducted post-adjudication. Participation in the program is not expected to affect the offender’s prison, parole, or probation status. 51

Thus, this assures that offenders are not participating in the process in order to enhance

46 Obbie, supra note 38.
49 Id.
50 Id.
51 Id.; LEVIN, supra note 35, at 13.
their chances for parole approval.52 The majority of mediations are conducted inside Texas prisons, but the VOM/D program has also conducted mediations with probationers and parolees who are not incarcerated.53

Once a victim initiates the VOM/D process, creative alternatives are offered if the offender should decline to meet.54 Victims are first given the option of corresponding with the victim through letters or taped messages.55 If the offender refuses this as well, “surrogate” offenders may provide answers for the victims.56 A surrogate is typically a fellow inmate and friend of the real offender—whom may not want to face his victim directly.57 In such a case, the surrogate acts as a middleman between the victim and the offender, thus alleviating some of the tension that might arise as a result of the communication.58 The use of surrogate offenders is quite uncommon in the Texas VOM/D program, averaging perhaps one a year.59

The TDCJ Victim Offender Mediation/Dialogue program now employs five full-time mediators—three based out of Austin and two based out of Huntsville.60 The program also utilizes several volunteer mediators.61 Although the program offers limited specified credentials necessary to become a mediator, candidates with

52 See supra note 33.
53 Telephone Interview with Odom, supra note 47.
55 Levin, supra note 42, at 13.
57 Office of Justice Programs, U.S. Dep’t of Justice, supra note 45.
58 Id.
59 Odom, supra note 47.
60 Id.
61 Id.
backgrounds in mediation, psychology, and social work are given preference. New mediators are required to undergo 40 hours of training. VOM/D mediators are also required to complete about four hours of continuing education every three months. Preparation is also key to the victims participating in the program. The victim, offender, and mediator each go through approximately one hundred hours of preparation prior to a VOM/D meeting. Accordingly, “it often can take at least six months between the time the victim requests a meeting and the actual [mediation].”

In the 2013 fiscal year, there were 108 cases that were initiated at the TDCJ Victim Offender Mediation/Dialogue program. This resulted in 43 mediation/dialogues conducted—25 person-to-person and 18 creative alternative mediations (exchange of letters). Most of these mediations were for violent offenses—primarily cases involving homicide, assault and battery, or armed robbery. These numbers are up from the 2012 fiscal year, in which 83 cases were initiated, and 36 mediation/dialogues were conducted (24 person-to-person and 12 creative alternative mediations). In 2011, 82 cases were initiated, and 49 mediations were conducted (26

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62 Id.
63 Id.
64 Odom, supra note 47.
65 Levin, supra note 42, at 13.
66 Id.
67 Id.
68 Odom, supra note 47. See also Tex. Dep’t of Crim. Justice, Victim Servs. Div., Fiscal Year 2013 Annual Report, supra note 54.
69 See supra note 54 (“Some VOM/D cases are initiated in one fiscal year, but are not conducted until a later fiscal year due to the waiting list for assignment and VOM/D’s preparation phase.”).
70 Odom, supra note 47.
person-to-person and 23 creative alternative mediations). The addition of two new mediators based out of Huntsville will likely result in an increase of the number of cases initiated in 2014.

IV. The Benefits of Victim-Offender Mediation

After a violent crime has occurred, victims are often left with feelings of hopelessness and despair. Additionally, some victims—especially those directly affected by the offense—may have numerous lingering questions running through their minds, including:

- Why did you choose me to victimize instead of somebody else?
- Does my offender realize the emotional, physical, and financial losses that I have endured as a result of his/her action?
- Does my offender feel any remorse?
- Can my offender, through words or actions, be directly accountable to me so I can reconstruct my life in the aftermath of the crime?

Victims who participate in victim offender mediation typically feel that the meeting “humanized” their experience of the crime. Offenders generally possess personalities distinct from the crimes they have committed, and they often present themselves in a pleasant and gentle demeanor. Furthermore, offenders will usually 

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73 Odom, supra note 47. (The addition of two mediators to the VOM/D staff started with the 2014 fiscal year. Therefore, 2014 fiscal numbers will likely reflect a significantly higher number of mediation/dialogues conducted).
74 Office for Victims of Crime, supra note 17, at 1.
offer some type of explanation and/or an apology for the act of wrongdoing. After the mediation/dialogue, victims reported experiencing a variety of mental changes and personal emotions, including:

- they had finally been heard
- the offender now no longer exercised control over them
- they could see the offender as a person rather than a monster
- they felt more trusting in their relationships with others
- they felt less fear; they felt peace; they had no more anger
- they weren’t preoccupied with the offender any more

Satisfaction surveys administered by Dr. Marilyn Armour, a professor of social work at the University of Texas at Austin, show that 97 percent of participants in the VOM/D program were satisfied with the process, and over 80 percent reported major life changes as a result. Armour also states that, following the meetings, victims’ families would not excuse the crime, “but were able to ease their feelings of anger and vengeance.” Armour’s research further indicates that “participating offenders gain self-esteem from a sense that they were able to provide some measure of compensation to the victim.”

Victims are not the only people who benefit from the program. Armour noted that offenders had fewer disciplinary problems in prison after participating in a

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80 Id.
81 Id.
Additionally, offenders expressed positive emotional changes as a result of mediated dialogue with the victim, including:

- feelings of empathy and discovering emotions
- increasing awareness of the impacts of their acts; increasing self-awareness
- opening eyes to the outside world, rather than closed institutional thinking
- feeling good about having tried the process
- achieving peace of mind in knowing one has helped a former victim

Because the VOM/D program only handles cases involving violent crimes, offenders are usually serving long prison sentences, and thus, there are no statistics available to show whether the program reduced recidivism rates. One national study indicates that victim-offender mediation reduces recidivism rates by between 18 and 27 percent. However, recent statistics indicate that overall recidivism rates are down in Texas. Between 1998 and 2009, the reincarceration rate fell from 31.4 percent to 22.6 percent in the TDCJ prison system. Therefore, any recent statistical data supporting reduction of recidivism as a result of victim-offender mediation may simply be a bi-product of the statewide trend.

V. The Future of the TDCJ Victim Offender Mediation/Dialogue Program

\[\text{Id.}\]
\[\text{Umbreit, supra note 78.}\]
\[\text{See infra note 86 and accompanying text.}\]
\[\text{This figure represents three-year re-incarceration rates for twelve separate prison release cohorts. Cohorts include all offenders discharged from a Texas prison and those released under parole supervision, discretionary mandatory supervision, and mandatory supervision. Shock probation and state boot camp releases are excluded from this analysis. The 2009 release cohort is the most recent group for which complete three-year follow-up data are available. Legislative Budget Board, State of Texas, \textit{Statewide Criminal Justice Recidivism and Revocation Rates}, Submitted to the 83rd Texas Legislature (January 2013).}\]
The success of the TDCJ Victim Offender Mediation/Dialogue program can be traced back to its inception in the mid-nineties. This groundbreaking program, along with a similar plan in Ohio that started around the same time, has commonly served as a model for other states.87 One example is Alabama—created in 2002—in which officials noted that their program was based upon the Texas model.88 Currently, about half the states in the nation offer similar programs for victims of violent crime.89

Extensive research has found uniform and intensely positive responses in both victims and offenders in mediated dialogues involving severe violence. Furthermore, administrators and researchers claim that the worst result mediation and dialogue might produce is disappointment, should the process not provide the substantial relief a victim hoped for.90 “There have been no disasters—no freak-outs by inmates or victims—in all the years the mediation-and-dialogue process has been used.”91

The Victim Offender Mediation/Dialogue program’s biggest challenge is one of budget. Although nationally it remains the largest of its type, the program is still miniscule within the context of the multibillion-dollar Texas Department of Criminal Justice system. As of 2010, the VOM/D program only consisted of three dedicated staff

87 Levin, supra note 42, at 13.
88 Id. (citing ASSOCIATED PRESS, July 17, 2002).
90 Obbie, supra note 38.
91 Id.
members with a $200,000 yearly budget. With such a financial constraint, it was difficult to exceed over forty or fifty completed mediations each year. But perhaps the most significant barrier to its growth is lack of interest. Research has indicated that the majority of victims of violent crimes simply don’t want to participate in the process.

Furthermore, the painstaking preparation process through which the program protects victims can consume tremendous resources to achieve often-unsatisfactory results. Over the life of the VOM/D program, about 1,000 victims who started it never completed it. Their reasons have varied: “changes of heart, frustration over long waits, and occasionally a judgment by a mediator that a victim wasn’t ready.” Officials note that rarely have uncooperative inmates been to blame.

However, the main objective of the program is to make the service available to those who want it. Local victim-services agencies are required by law to inform violent crime victims of the service. The recent addition of two new full-time mediators frames a promising future for the TDCJ Victim Offender Mediation/Dialogue program. With a larger staff, more cases can be assigned, resulting in a shorter

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92 Id.
93 Id.
94 Id.
95 Obbie, supra note 38.
96 Id.
97 Id.
98 Id.
99 Odom, supra note 47.
100 Id.
101 See Odom, supra note 73 and accompanying text.
waiting period. Victim Services Division Director Angie McCowan believes that with better promotion and a larger staff of mediators capable of handling more cases, “people w[ill] come out of the woodwork” to try to find solace and peace within themselves through Texas’s Victim Offender Mediation/Dialogue program.

\textsuperscript{102} See id.  
\textsuperscript{103} Id.