



Center for Restorative Justice & Peacemaking

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Victim Offender Mediation & Dialogue

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Victim offender mediation and dialogue is a process which provides interested victims of primarily property crimes and minor assaults the opportunity to meet the juvenile or adult offender, in a safe and structured setting, with the goal of holding the offender directly accountable for their behavior while providing importance assistance and compensation to the victim. With the assistance of a trained mediator, the victim is able to let the offender know how the crime affected them, to receive answers to questions they may have, and to be directly involved in developing a restitution plan for the offender to be accountable for the losses they incurred. The offender is able to take direct responsibility for their behavior, to learn of the full impact of what they did, and to develop a plan for making amends to the person(s) they violated. While there exist certain procedural differences and differences in terminology between implementing victim offender mediation in juvenile versus adult courts, the overall approach and procedure is quite similar in both settings.

Victim offender mediation programs were initially referred to as "victim offender reconciliation programs (VORP)" in the mid 1970s and 1980s. Some programs still go by the name of VORP. Today, most programs throughout the world identify themselves as victim offender mediation (VOM). In the United States some programs are also called "victim offender meetings" or "victim offender conferences." In recent years an increasing number of VOM programs are periodically working with cases involving severe violence, including homicide. This requires advanced training and far more preparation of the parties over many months prior to ever meeting face-to-face. This chapter, however, focuses on by far the most widespread application of VOM, in property crimes and minor assaults, in thousands of cases in numerous countries throughout the world. For those interested in learning more about the relatively small, but growing, practice and impact of victim offender dialogue in severely violent crime refer to the book *Facing Violence, The Path of Restorative Justice & Dialogue* (Umbreit, Vos, Coates & Brown, 2003). It reports on a five-year study of the development, implementation, and impact of the first two states (Texas and Ohio) to offer victim offender mediation and dialogue services in cases of severe violence, on a statewide basis.

While many other types of mediation are largely "settlement driven," victim offender mediation is primarily "dialogue driven," with the emphasis upon victim healing, offender accountability, and restoration of losses. Contrary to many other applications of mediation in which the mediator would first meet the parties during the joint mediation session, in most victim offender mediation programs a very different process is used based upon a humanistic model of mediation. A humanistic model of mediation involves: reframing the role of the mediator from being settlement driven to facilitating dialogue and mutual aid; scheduling separate pre-mediation sessions with each party; connecting with the parties through building rapport and trust, while not taking sides; identifying the strengths of each party; using a non-directive style of mediation that creates a

safe space for dialogue and accessing the strengths of participants; and recognizing and using the power of silence.

Most victim offender mediation sessions do in fact result in a signed restitution agreement. This agreement, however, is secondary to the importance of the initial dialogue between the parties that addresses emotional and informational needs of victims that are central to their healing and to development of victim empathy in the offender which can lead to less criminal behavior in the future. Several studies have consistently found that the restitution agreement is less important to crime victims than the opportunity to talk directly with the offender about how they felt about the crime.

From its inception in Kitchener, Ontario when the first victim offender mediation program was established in 1974, many criminal justice officials have been quite skeptical about victim interest in meeting the offender. Victim offender mediation is clearly not appropriate for all crime victims. Practitioners are trained to present it as a voluntary choice to the victim and as voluntary as possible for the offender. With more than twenty years of mediating many thousands of cases throughout North America and Europe, experience has shown that the majority of victims presented with the option of mediation choose to enter the process. A statewide public opinion poll in Minnesota found that 82% of a random sample of citizens from throughout the state would consider participating in a victim offender program if they were the victim of a property crime. A multi-state study found that, of 280 victims who participated in victim offender mediation programs in four states, 91% felt their participation was totally voluntary.

Victim offender mediation is the oldest, most widely developed, and empirically grounded expression of restorative justice. Restorative justice is a movement that is promoting more active involvement of individual victims, victimized communities, families, and offenders in the justice system in such ways that offenders are actively involved in: repairing the emotional and physical harm they caused; victims receive far more support, assistance, and input; and positive relationships within communities are strengthened. While restorative justice consists of a wide range of policies and practices, and is ultimately a very different way of understanding and responding to the real human impact of crime, the core of restorative justice is anchored in processes that allow for direct dialogue between those affected by crime and those who committed the offense. Examples of the more widely known restorative justice dialogue interventions include victim offender mediation, family group conferencing, and peacemaking circles. For more information about conferencing and circles refer to resources listed at the end of the chapter. With a quarter of a century of practice experience, more than 50 empirical studies in North America and Europe have consistently found VOM to have a positive impact upon victim and offender satisfaction and perceptions of fairness, higher rates of restitution completion, and significantly lower rates of recidivism. Victim offender mediation and dialogue programs currently work with many thousands of cases annually through more than 300 programs throughout the United States and more than 1,200 in primarily Europe but also Canada (where it all began), Israel, Japan, Russia, South Korea, South Africa, South America, and the South Pacific, and Turkey. A national survey that examined to what degree victim offender mediation was supported by formal public policy found a considerable amount of legislative backing. A total of 29 states had legislation, in one form or another, that addressed victim offender mediation. Of these, 14 states had quite specific legislation that spoke to various issues related to the use and development of victim offender mediation and 15 states had a more brief reference to victim offender mediation.

The American Bar Association has addressed restorative justice through the practice of victim offender mediation, its most widely used and empirically validated practice. The ABA has played a leadership role over many years in promoting the use of mediation and other forms of alternative dispute resolution in civil court-related conflicts, yet for most of that time remained skeptical and often critical of mediation in criminal court settings. That changed in 1994 when, after a year-long study, the ABA fully endorsed the practice of victim offender mediation and dialogue. The association recommended its use in courts throughout the country and also provided guidelines for its use and development.

Restorative justice policies and practices, including VOM, have been endorsed by two important international bodies. Both the United Nations and the Council of Europe have begun to address restorative justice issues. Meeting in 2000, the United Nations Congress on Crime Prevention considered restorative justice in its plenary sessions and developed a draft proposal for “UN Basic Principles on the Use of Restorative Justice Programs in Criminal Matters”. The proposed principles encouraged the use of restorative justice programming by member states at all stages of the criminal justice process, underscore the voluntary nature of participation in restorative justice procedures, and recommend beginning to establish standards and safeguards for the practice of restorative justice. This proposal was adopted by the United Nations in 2002. The Council of Europe was more specifically focused on the restorative use of mediation procedures in criminal matters, and adopted a set of recommendations in 1999 to guide member states in using mediation in criminal cases.

Careful preparation of participants has been one of the hallmarks of the VOM movement. In a national survey it was found that 78% of the programs reported that participants received at least one preparation meeting. In general, preparation “meetings” are understood to consist of personal, face-to-face contact with the participants, usually by the actual mediator or occasionally by some other worker from the VOM program.

The primary goal of victim offender mediation is to provide a safe place for dialogue among the involved parties that fosters both offender accountability and growth, as well as, victim empowerment and assistance. Today VOM programs frequently involve family members and representatives of the community who frequently serve as volunteer mediators. The mediator facilitates this process, by first allowing time to address informational and emotional needs, followed by a discussion of losses and the possibility of developing a mutually agreeable plan to repair the harm (i.e. money, work for the victim, work for the victim's choice of a charity, etc.). The victim offender mediation process can be summarized by four distinct phases:

1. Referral/Intake
2. Preparation for Mediation
(Individual pre-meeting with offender and victim)
3. Mediation
4. Follow-Up

Readings

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