

Victim-Offender Mediation—Game Changer or Fad?  
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Retributivism and reductivism are the two dominant schools of thought regarding justification for punishment within the criminal justice system. The retributivist principle represents the idea that wrongdoers should be punished because they deserve it, whereas the reductivist principle justifies punishment as a means of controlling crime. However, in the past 40 years, the idea of restorative justice as an approach to dealing with offenders has been gaining support. Restorative justice seeks to restore or repair damage caused to offenders, victims, and the community from the commission of crime. Michael Cavadino, et. al., The Penal System, (2007).

Although a seemingly new and innovative approach to punishment, the concept of restorative justice dates back to the 10<sup>th</sup> Century. Procedures existed in Europe and throughout the world that replaced trial and blood revenge with private adversarial affairs, which often lead to conciliation of the parties following some monetary repayment for harm caused. Some procedures involved the use of mediators, usually wise men or elders trusted within the community. Stephen C. Thaman, Comparative Criminal Procedure, (2008). However, reference to such practices as “restorative justice” is a modern trend. Only since the late 1980’s and early 1990’s have a “realm of practices, social movements, theory-formation, ethical reflection, and empirical research” been categorized as restorative justice. Lode Walgrave, Investigating the Potentials of Restorative Justice Practice, 36 Wash. U. J.L. & Policy 91, 94 (2011). Principles of restorative justice have offered broad applicability in areas such as neighborhood conflict, discipline issues in schools, workplace disputes, child welfare cases, and criminal matters. *Id.*

Victim Offender Mediation (VOM) is a particular model of restorative justice commonly used in criminal matters. VOM is a process where offenders and victims come face-to-face in the presence of a neutral third party, talk about and deal with the offending behavior, and work toward an agreement, often involving restitution. Trenzcek, Thomas (2005) "Victim Offender Mediation and Restorative Justice in Europe—a short overview," *ADR Bulletin*: Vol. 7:No. 6, Article 5. VOM benefits victims, offenders, the community, and the criminal justice system. For victims, VOM provides the opportunity to be heard, to ask questions, and express feelings of anger. Victims needs are taken seriously and VOM attempts to make victims whole again through monetary restitution or community service. For offenders, VOM is a learning experience where they are directly faced with the full impact of their behavior, take accountability for their actions, and help determine the means by which they can help repair the harm they caused. For the community, VOM enhances the possibility of offender rehabilitation and reduces recidivism so the community is spared future criminal action and victimization. Agreements typically involve some level of community service, so the offender is also repaying harm done to the community at large. For the justice system, VOM promotes efficiency and economy by providing an alternative to the processing of criminal matters, and more severe and costly sanctions. Harry Mika, The Practice and Prospect of Victim-Offender Programs, 46 SMU L. Rev. 2191, 2198-99 (1993).

In the United States, VOM programs vary in the types of cases and clients they handle. Some VOM programs serve only adults, others only juvenile offenders. Some programs are limited to certain types of crimes, such as misdemeanors or property crimes, while others address violent crimes. However, the majority of VOM programs throughout the United States do not deal with serious offenses. Providers of VOM also vary throughout the United States. Programs

may be affiliated with religious organizations, nonprofit community organizations, or the traditional court system. Despite the varied nature of the VOM programs, the process itself generally follows the same basic steps. First, a case is referred to a mediation program. Referrals generally come from someone within the criminal justice system, typically a prosecutor or judge. However, mediation referrals can be made at any time from the date of the offense to the period of parole. Second, the case goes through an extensive “pre-mediation” phase, where victims and offenders are contacted separately to determine willingness to participate, and mediators can gather information, answer questions, and schedule the sessions. The third step is the actual meeting between offender and victim(s). The meeting allows parties to discuss the facts of the case, ask questions, express feelings, and discuss a resolution. If an agreement is reached, it is written and signed by both parties, and typically returned to the referral source, which then monitors compliance. Katherine L. Joseph, Victim-Offender Mediation: What Social & Political Factors Will Affect Its Development, 11 Ohio St. J. on Dis. Res. 207, 209 (1996).

VOM programs throughout the United States vary significantly between jurisdictions. In contrast, the established VOM program in New Zealand is very structured. New Zealand provides the only systematic implementation of restorative justice in the world. The Children, Young Persons and their Families’ Act of 1989 designated family group conferencing (a type of VOM program) as the primary way for responding to all serious youth offenses. Lode Walgrave, Investigating the Potentials of Restorative Justice Practice, 36 Wash. U. J.L. & Policy 91, 132 (2011). Family group conferences in New Zealand are facilitated by an independent person employed by the state, and referrals come from either a youth court or a police youth aid officer. All cases admitted or proved in court involving youth crime are referred to family group conferencing. The juvenile is entitled to a lawyer at any conference, but the lawyer’s role is that

of “adviser and supporter rather than advocate.” McElrea, Judge F.W.M. (2011) “Twenty Years of Restorative Justice in New Zealand—Reflections of a Judicial Participant,” *Journal of Commonwealth Criminal Law*. Unlike the United States, there are no gate-keepers who decide which type of cases go to a conference and no limit on the seriousness of offenses. It is a commonly held belief that the comprehensive nature of the New Zealand system has been fundamental to its success. *Id.*

There is much debate over the actual effectiveness of VOM programs. One major criticism is the lack of quantitative and qualitative research. As a result, in many areas suffering budgetary cutbacks due to the economic crisis, court funded VOM programs are among the first to be cut. Most criticism comes from proponents of the retributive model of justice, who view VOM as being too soft on crime. Such criticism poses significant difficulty for gaining support of VOM in the political arena. To openly support a program that is soft on crime would be tantamount to political suicide. It would take clear, convincing, and consistent statistical data to persuade the general population in the United States that VOM programs have far reaching benefits to the criminal justice system and is worthy of widespread support. Hence, even though there is great potential for VOM to be a game changer in the criminal justice system, it may instead fade away like just another fad.